Republic of the Philippines
COURT OF APPEALS
Manila

SIXTEENTH DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,*	**CA-G.R. CR. No. 29573**
versus –	**Members:** **Guevara-Salonga** *Chairperson,* **Roxas,** and
ROMULO PECSON, *Accused-Appellant.*	**Bruselas, Jr. JJ.**
	Promulgated: _____

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D E C I S I O N

Bruselas, Jr. J.

This is an appeal from the decision[1] of the Regional Trial Court of Aparri, Cagayan, in Criminal Case No. 09-1031 for Attempted Arson, the dispositive portion of which reads as follows:

> "WHEREFORE, accused ROMULO PECSON is hereby found guilty beyond reasonable doubt of the crime ATTEMPTED ARSON defined and penalized under Article 320, in relation to Articles 6 and 51 of the Revised Penal Code, as amended by

[1] Written by Judge Andres Q. Cipriano (Branch 9).

> Republic Act No. 7659, and after appreciating in his favor the provisions of the Indeterminate Sentence Law hereby imposes upon him the penalty of imprisonment ranging from SIX (6) MONTHS AND ONE (1) DAY OF PRISON(sic) CORRECCIONAL, as minimum, to SIX (6) YEARS and ONE (1) DAY OF PRISON (sic) MAYOR, as maximum, and to pay the cost of this suit.
>
> SO ORDERED." (emphasis supplied)

The facts of the case as gathered from the records are as follows:

Accused-appellant Romulo Pecson, in an Information[2] dated April 20, 1999, was charged with the crime of Attempted Arson, to wit:

> "That on or about January 1, 1998, in the municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to set fire on the sari-sari store of one Catalina Belandres y Rodriguez, did then and there willfully, unlawfully, and feloniously pour crude oil on the wall of the said store, the said accused knowing fully well and aware that said store is being occupied by said Catalina Belandres and her family.
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> That the accused had commenced the commission of the crime of arson directly by overt acts but he did not perform all acts of execution which would have produced it by reason of some cause or accident, that is, said accused was not able to light the corn husk to start the fire, other than his own spontaneous desistance.
>
> CONTRARY TO LAW."

[2] Records, page 1.

Upon arraignment, appellant Romulo Pecson pleaded "Not Guilty" to the charge of Attempted Arson[3]. Pre-trial and trial ensued, after which the trial court convicted the appellant with the crime charged.

The trial court's findings of fact are as follows:

> "On January 1, 1998 at around 12:30 o'clock in the early morning, while Tessie Buena was inside her store located left of the national highway in Lopogan, Gattaran, Cagayan, storing food in their refrigerator, in the company of her husband and youngest daughter, who were sleeping at that time, she observed that the electric bulb installed outside their store was abruptly put off.
>
> She discreetly peeped through the window, and she saw their neighbor- Romulo Pecson holding a gallon of crude oil with his right hand and a corn husk on his left hand, pouring crude oil on the bamboo wall of the front side of the store.
>
> She irately screamed at him, saying "ROMULO SIKA GAYAM TALAGA NGA NATANGKEN TI ULBOD MO", meaning --- "Romulo you are the one, you are a hardened liar."
>
> She exclaimed those words because there was an incident of December 27, 1997, when he again ignited the front part of their store, and there was also a time that he threw a coca cola which hit the jars of their merchandi(z)se (sic).
>
> Despite these harsh words she emitted, Romulo daringly continued pouring crude oil at the bamboo wall of the store, prompting her to precipitatively dash outside and bellowed again at him, causing Romulo to scamper towards the east direction.
>
> She went to call for succor from their neighbors and friends. A bosso(o)m (sic) body- Bevelyn Santos responded, and gazed at

[3] Records, page 79.

the bamboo wall still dripping with crude oil. They also saw a corn husk.

She woke up her husband, asked him to linger in the store, and summoned her mother-Catalina Belandres, who responded and noticed what happened. Her mother reported the matter to Barangay Captain- Jimmy Pecson, a cousin of Romulo.

The barangay captain arrived and inspected the scene of the misdeed. He scheduled a confrontation, but no amicable settlement was reached, and so she went to the poblacion and reported the matter to the police authorities. After receiving such report, SPOIV Elpidio Salvattiera, the chief investigator of Gataran Police Station; Senior Fire Officer II (I) (sic) Warlo Juan, the Municipal Fire Marshal of Gatarran Fire Station and his deputy FPO Edmund Narag, conducted an ocular inspection.

In the course of their inquisition, they unearthed a corn husk in front of the store and when they probed the front wall, they found out that it is still wet with the smell of crude oil.

They ripped a part of the bamboo wall applied with crude oil and some soil particles were seized from the ground beneath the bamboo wall poured with crude oil, to serve as evidence."[4]

In his brief, appellant admitted the following facts which he captioned as, "FACTS ADMITTED BY BOTH PARTIES"[5], to wit:

"The prosecution witness, Tessie Buena, admitted that she did not see a match held by the accused at the time of the alleged incident complained of; SF(P)O2 Warlo Juan, of the Bureau of Fire Protection admitted likewise that when he and his companions conducted investigation of the premises of the alleged incident, they did not see any match or lighting device. This was also admitted by the prosecution that no portion of the wall was burned.

[4] Decision, pp. 2-3; Rollo, pp. 8-9.
[5] Rollo, page 30.

> The defense admitted that the private complainant, Catalina Belandres, is the owner of the store; that her daughter, Tessie Buena, reported to her the act of the accused in pouring crude oil on the bamboo wall of her store; that Catalina Belandres reported the matter to the PNP of Gattaran, Cagayan and that they conducted investigation on the scene of the crime."

The appellant also discussed the following facts which he captioned as "FACTS IN CONTROVERSY,"[6] to wit:

> "The complaint states that the accused did then and there willfully, unlawfully and feloniously pour crude oil on the wall of the said store, the said accused knowing fully well and aware that said store is being occupied by said Catalina Belandres and her family.
>
> Based on the testimony of Tessie Buena and Catalina Belandres, it was not established that it was Catalina Belandres who was the one occupying the said store at the time of the incident complained of. On the contrary, it was shown that it was Tessie Buena and her family were the ones occupying the store at that time. Furthermore, it was not established by the prosecution that the accused knew that at the time of the incident complained of, the store was occupied by Catalina Belandres and family.
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> The complaint, likewise, stated that the accused had commenced the commission of the crime of Arson directly by overt acts but he did not perform all the acts of execution which would have produced it by reason of some cause or accident, that is, the accused was not able to light the corn husk to start the fire. (underscoring supplied)
>
> Nowhere in the testimonies of all the three witnesses presented by the prosecution could we find that the accused attempted to light the corn husk but was not able to do so to start the fire. On the contrary, Tessie Buena, the alleged eyewitness herself, admitted that she never saw a match held by the accused at the time she allegedly saw him pouring crude oil on the bamboo wall of the store. Furthermore, SF(P)O2 Warlo Juan testified that

[6] Rollo, page 31.

he did not see any lighting material in the premises during their investigation."

Thus, the appellant summarized his issues of fact as follows:

"Granting, without admitting, that the accused poured crude oil on the bamboo wall of the store of Catalina Belandres, the following would be the issues of fact:

I. WHETHER OR NOT THE ACCUSED KNEW THAT THE STORE WAS OCCUPIED BY CATALINA BELANDRES AND HER FAMILY AT THE TIME OF THE INCIDENT COMPLAINED OF;

II. WHETHER OR NOT THE ACCUSED ATTEMPTED TO LIGHT THE CORN HUSK BUT WAS NOT ABLE TO DO SO;

III. WHETHER OR NOT THE ACCUSED HAD THE INTENT TO BURN THE STORE OF CATALINA BELANDRES OR MERELY TO ANNOY TESSIE BUENA AND HER HUSBAND WHO WERE AT THE STORE AT THE TIME OF THE INCIDENT COMPLAINED OF."

By reason of the assailed decision, the appellant states the following issues of law:

"I. WHETHER OR NOT THE MERE ACT OF POURING CRUDE OIL ON THE BAMBOO WALL COULD ALREADY BE CONSIDERED AS AN ATTEMPT TO COMMIT THE CRIME OF ARSON;

II. WHETHER OR NOT THE PROSECUTION EVIDENCE WAS SUFFICIENT TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT AND TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE."

We find merit in the appeal.

Appellant is being prosecuted for the crime of attempted arson under Article 320, as amended[7], in relation to Article 6 and 51 of the Revised Penal Code for attempting to burn private complainant's

[7] By Republic Act No. 7659.

store-cum-dwelling by pouring crude oil on the wall of the same. We must, however, consider the nature and rationale behind the law on Destructive Arson as explained in the case of People vs. Soriano,[8] to wit:

> "Arson is the malicious burning of property. Under Art. 320 of *The Revised Penal Code*, as amended, and PD 1613, Arson is classified into two kinds: (1) *Destructive Arson* (Art. 320) and (2) *other cases of arson* (PD 1613). This classification is based on the kind, character and location of the property burned, *regardless* of the value of the damage caused.
>
> Article 320 of *The Revised Penal Code*, as amended by RA 7659, contemplates the malicious burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other military, government or commercial establishments by any person or group of persons. The classification of this type of crime is known as *Destructive Arson*, which is punishable by *reclusion perpetua* to death. The reason for the law is self-evident: to effectively discourage and deter the commission of this dastardly crime, to prevent the destruction of properties and protect the lives of innocent people. Exposure to a brewing conflagration leaves only destruction and despair in its wake; hence, the State mandates greater retribution to authors of this *heinous crime*. The exceptionally severe punishment imposed for this crime takes into consideration the extreme danger to human lives exposed by the malicious burning of these structures; the danger to property resulting from the conflagration; the fact that it is normally difficult to adopt precautions against its commission, and the difficulty in pinpointing the perpetrators; and, the greater impact on the social, economic, security and political fabric of the nation."

Thus, taking into consideration the foregoing disquisition, we find that the conviction of the accused for such a grave offense is unwarranted. The testimonial and documentary evidence presented

[8] G.R. No. 142565, July 29, 2003, 407 SCRA 367.

by both the prosecution and defense clearly show that no part of the store-cum-dwelling was burned, nor was there a showing that the accused was able to use the corn husk as an instrument to perpetrate the crime of arson.

Going over the testimony of SFO2 Warlo Juan[9], the Municipal Fire Marshal of Gatarran Fire Station, he stated thus:

> "Q: When you reach (sic) the place, what did you do if any?
> A: We conducted the investigation, sir.
> Q: What kind and how did you conduct the investigation?
> A: We found out the origin(a) of the fire, sir.
> Q: When you said you found out the origin of the fire, what do you mean?
> A: The source of the fire, sir.
> Q: Were you able to determine if there was fire when you went there to conduct the inspection?
> A: When we reached the place, **nothing was burned, sir.**"
> (emphasis supplied)

The testimony of SFO2 Warlo Juan undoubtedly revealed that in conducting the investigation, he, together with his companions tried to find out the origin of the fire but after investigation, they found out that nothing was burned.

On the other hand, appellees herein do not deny the findings of the authorities that indeed, no part of the store was burned. Tessie Buena even admitted in her testimony that she never saw a match

[9] TSN dated September 03, 2003, page 7.

being held by the accused at the time she allegedly saw him pouring crude oil on the bamboo wall of the store-cum-dwelling.

> "Q: And you saw Romulo Pecson pouring crude oil at the bamboo wall of your store and you also saw him holding a corn peeling?
> A: Yes, ma'am.
> XXX
> Q: You did not see the accused Romulo Pecson holding a match?
> A: I saw him poured crude oil **but I did not see any match, ma'am.** "[10]
> (emphasis supplied)

Thus, settled is the fact that no part of the store was burned and no matches were found in the scene of the crime but only a corn husk smelling of crude oil and a wet bamboo wall with crude oil dripping on the ground. SFO2 Warlo Juan further testified:

> "Q: What did you find out, if any?
> A: The corn husk smell like crude oil, sir.
> XXX
> Q: What else did you inspect, if any?
> A: The bamboo wall of the store was wet with crude oil and it reaches the ground, sir.
> XXX
> Q: How about the ground floor immediately below the wall which you concluded to have been placed with crude oil, were you able to determine whether it was wet or not?
> A: I also examined by picking up a soil and it smelled crude oil.[11]

The appellees heavily relied on the presence of a strong criminal intent in the mind of accused Romulo Pecson to commit the crime of

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[10] TSN, Tessie Bueno dated July 23, 2003, pages 25 and 29.
[11] TSN, SPO2 Warlo Bueno dated September 3, 2003, page 8.

arson by burning the store of private complainant. They used as basis the previous acts of the accused, more particularly the December 27, 1997 incident of burning the front part of the same store and the throwing of a coca cola bottle at the merchandise as testified to by Tessie Buena during her direct examination.[12] However, the prosecution was remiss in presenting proof of the actual occurrences of the above-mentioned incidents. Nothing was presented before the trial court to establish accused's earlier acts of causing damage on the subject store that may warrant this court's consideration that the accused adhered resolutely to his desire or intent to burn the store of the private complainant. Thus, the application of Section 34, Rule 130 of the Rules of Court[13] is misplaced.

From the local jurisprudence available about attempted arson, appellant cited the case of People vs. Go Kay[14] wherein the court held:

> "Thus, if a person has poured gasoline under the house of another and **was about to strike the match to set the house on fire when he was apprehended,** even if actually there was no blaze, the crime of attempted arson has already been committed, because the offender has commenced the commission of a crime directly by overt acts although he was not able to consummate all the acts by reason of a timely intervention of outside causes." (emphasis supplied)

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[12] TSN, Tessie Bueno, August 23, 2003, pages. 10-12.
[13] *Section 34. Similar acts as evidence*- Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.
[14] No. 17474-R, December 19, 1957, CA, 54 O.G. 2225.

From the above-mentioned jurisprudence, it maybe observed that the example used was that the accused was caught in the act of ***"about to strike the match to set the house on fire"***, thus, the criminal intent of the accused to burn the house is very evident. In that same example, the offender was able to commence the commission of the crime directly by overt acts with the act of soaking the rags and striking or lighting a match but does not perform all the acts of execution (the setting of the fire to the rags) due to his timely apprehension. This ruling finds support under Article 6 of the Revised Penal Code, which provides:

> "There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance."

In the case at bar, the accused was caught in the act of merely pouring crude oil on the bamboo wall of the store and was not even seen holding a match or any instrument to ignite the corn husk that he also brought. The act committed by Pecson is apparently lesser than what was done by the accused in the case of Go Kay as to charge him with the crime of attempted arson.

We should also take into account that the appellant's use of crude oil itself, the raw source of gasoline, kerosene and other easily inflammable liquid, reveals an apparent inconsistency with a clear

intent to burn because crude oil has a relatively high flash point and does not easily ignite. In fact, diesel oil or fuel which is a lesser treated motor oil has a higher flash point compared to gasoline, "Diesel Fuel is a product of crude oil. XXX Normal diesel fuel is more difficult to ignite than gasoline because of its higher flash point XXX"[15]. Thus, it necessarily follows that crude oil, the raw product itself has the highest flash point and the most difficult to ignite.

In addition, the court in the Go Kay case[16] had the occasion to discuss the stages of the development of a crime as follows:

> "There are several stages of diverse characters in the development of a crime; some are purely internal, such as the planning and the determination to commit the crime, and others are external characterized by physical acts. The former are beyond the sphere of the penal law, for anything that is still in the innermost thoughts of an individual has no juridical transcendency. External acts constituting mere preparation for the crime **which are equivocal and do not clearly and distinctly reveal the criminal intent are not punishable under our laws.** XXX But when the acts are external and have a direct connection with the crime intended to be committed, said acts may be subject to penalties, because they are essential ingredients of an attempted crime." (emphasis supplied)

In the more recent case of People vs. Lizada[17], the Supreme Court thoroughly explained when an external act ripens into an overt act which commences the attempted stage of a felony:

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[15] WIKIPEDIA, the free encyclopedia, Website: http://en.wikipedia.org/wiki/Diesel_engine.

[16] Supra.

[17] G.R. No. 143468-7, January 24, 2003, 396 SCRA 62.

> "XXX **It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act** or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. XXX"(emphasis supplied)

With the foregoing discussion, the crucial point is whether the external act performed by the appellant ripened into an overt act to warrant a conviction for the crime of attempted arson or whether it merely constituted a preparatory act, a plan or intention to commit arson which is not punishable under our laws.

Our appreciation is that the intention of the accused in pouring crude oil on the bamboo wall of the store-cum-dwelling of the private complainant is equivocal and ambiguous. Such external act of pouring crude oil cannot be said to constitute or ripen into an overt act so as to convict appellant Pecson of the crime of attempted arson. Such act is a mere preparatory act. The same act of the accused is susceptible of other interpretations and may not furnish a ground by itself for the attempted crime of arson. The purpose of the offender in the case at bar in performing such act, especially that the evidence revealed that no match or any other lighting device was recovered from the scene of the crime nor was seen by Tessie Buena in the possession of the accused on the night of the incident, unmistakably

proves accused's ambiguous objective which may either be any of the following: 1) to cause the burning of the store which may amount to arson; or 2) to cause damage to the store which may amount to the crime of malicious mischief. Between the two possible interpretations, one of a serious felony and the other of a less serious one that is embraced by the former, that of a less serious felony is the more prudent choice in keeping with the principle of construing penal provisions liberally in favor of the accused.

The appellees further alleged that the accused had courted Tessie Buena but was rejected; that the accused therefore has an "ax to grind" against Tessie Buena, hence, his testimony deserves scant consideration. While we agree that the existence or non-existence of sufficient motive is a fact affecting the credibility of the witness in the case of arson,[18] such an appreciation by itself may not overcome the existence of a reasonable doubt with respect to the issue of whether or not the accused did intend to burn down the store-cum-dwelling.

Moreover, records also show that the alleged pieces of evidence recovered from the scene of the crime were brought by SPO4 Elpidio Salvatierra to the Municipal Court of Gattaran. A certified xerox copy of the "RECEIPT" signed by Arsenia D. Verbo, Branch Clerk of Court of MTC Gattaran showing that "corn husk" etc. were received by the

[18] People vs. Acosta, G.R. No. 126351, 326 SCRA 2000, February 18, 2000; People vs. Siguin, 299 SCRA 124, G. R. No. 126517, November 24, 1998.

Office of the Provincial Prosecutor in Aparri, Cagayan on December 7, 1998 was attached to the Comment/Opposition to the Demurrer of Evidence filed by Private Prosecutor Juan T. Antonio. However, when asked to be presented in court, these items were no longer available.[19] The non-presentation and non-identification of the alleged pieces of evidence by the prosecution exclude them from forming part of the object evidence.

Although we find that the external act of the accused in pouring crude oil on the bamboo wall of the store-cum-dwelling does not amount to an overt act and is a mere preparatory act, we nevertheless find that the accused is criminally liable for the consummated crime of malicious mischief which belongs to the same Title Ten (10) of the Revised Penal Code where arson is also found.[20] The elements of the crime of malicious mischief under Article 327 of the Revised Penal Code are as follows:

> "1. That the offender deliberately caused damage to the property of another;
> 2. That such act does not constitute arson or other crimes involving destruction;
> 3. That the act of damaging another's property be committed merely for the sake of damaging it."[21]

[19] Records, pages 140-141.
[20] People vs. Lizada, supra. "However, if the preparatory acts constitute a consummated felony under the law, the malefactor is guilty of such consummated offense."
[21] Valeroso vs. People of the Philippines, G.R. No. 149718, September 29, 2003, 412 SCRA 257.

Evident is the specific desire of the appellant to "inflict damage" on the property of the private complainant and we find it to be the accused's malicious intent to cause injury on the store-cum-dwelling and not an equivocal specific "intent to burn" as revealed by the absence of evidence of any burned items or specimen or any matches or lighting devices in the crime scene.

With the first two (2) elements of malicious mischief being being present, evidence also discloses that the act of the accused in damaging the private complainants' property was inspired by hatred and revenge. Such criminal act was done after he was rejected by private complainant Tessie Buena. It is just in the natural course of things that a person will feel a bit of resentment or hatred against another after the former is rejected by the latter especially so that what is involved is the subject of unrequited love.

Finally, we conclude that the evidence adduced is sufficient to induce the belief with moral certainty that the accused is guilty of the crime of consummated malicious mischief only and not for the grave offense of arson. This must be so for when there is variance between the offense charged in the complaint or information and that proved, and the offense charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged

which is included in the offense proved.[22] Malicious mischief which is the crime proved herein, is a felony that is necessarily included in the crime of arson which is the felony charged. It is so because the essential elements of malicious mischief also constitute the essential elements of arson.

Under Article 329 of the Revised Penal code, the mischiefs not included in the next preceeding article[23] shall be punished by, "arresto mayor in its medium and maximum periods, if the value of the damage caused exceed 1,000 pesos." The damage caused by the crude oil being poured over a portion of the store-cum-dwelling may not be said to exceed the value of One Thousand Pesos (P 1,000.00).

WHEREFORE, the trial court's Decision of July 27, 2005 is **SET ASIDE.** We find that the crime committed is not attempted arson as charged in the Information but that of the consummated crime of **malicious mischief** as defined and penalized under Articles 327 and 329.

The accused-appellant Romulo Pecson is found liable therefore and accordingly sentenced to serve the straight penalty of six (6) months of arresto mayor.

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[22] Section 4, Rule 120, 2000 Revised Rules of Criminal Procedure.
[23] Article 328- Special cases of malicious mischief.

IT IS SO ORDERED.

APOLINARIO D. BRUSELAS JR.
Associate Justice

WE CONCUR:

JOSEFINA GUEVARA-SALONGA
Associate Justice

VICENTE Q. ROXAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

JOSEFINA GUEVARA-SALONGA
Associate Justice
Chairperson, 16th Division