

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CATALINO GUTIERREZ, JR. Y BUQUID, ACCUSED-APPELLANT.

G.R. No. L-39383. March 14, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

Catalino Gutierrez, Jr. was charged with murder and found guilty thereof by the Court of First Instance of Batangas.[1] The Court found that the People's evidence had established beyond reasonable doubt the facts averred in the information,[2] to wit:

"That on or about the 28th day of September, 1971 at around 3:50 o'clock in the afternoon, inside the office of the (Bureau of) Telecommunications, Bo. Kumintang, Ibaba, Batangas City, * * (Gutierrez, then) armed with a fan knife (balisong), with intent to kill, through treachery and with evident premeditation, suddenly and without warning attacked, assaulted and stabbed from behind one Florentino Mantuano y Abrenica with the * * fan knife, thereby inflicting upon the latter a stab wound on his back which directly caused ** (his) death ** about an hour after admission at the Batangas Provincial Hospital."

The Court's sentence made the following disposition:

"WHEREFORE, the court finds the accused CATALINO GUTIERREZ y BUQUID guilty beyond reasonable doubt of the crime of murder charged in the information and there being no mitigating or aggravating circumstances that attended the commission of the crime, hereby sentences him to reclusion perpetua, together with the accessory penalties, to indemnify the heirs of the late Florentino Mantuano in the amount of P12,000.00, another P1,187.00 as actual damages, and the further sum of P10,000.00 by way of moral damages without subsidiary imprisonment in case of insolvency, and to pay the costs."

The prosecution relied chiefly on the testimony of the victim's son, Benjamin Mantuano, who was working with him in the same office.

Benjamin's testimony is simple and to the point.[3] On the day and on the time in question, he was at work in the "operating section" of the Telecommunications Office, transmitting messages on a teletype machine. His father, the late Florentino, had just come from the comfort room and was about to enter the door leading into the said "operating section", when the voice of the Catalino Gutierrez was heard from somewhere at the front door of the office, challenging Florentino to a duel: "Lumabas ka at hinahamon kita nang panaksak." "Parine ka at kita'y (mag)panaksak." The challenge was repeated two or three times. Benjamin got up and walked to the door to talk to Catalino, who was also an employee in the same office. He saw that Catalino was holding a balisong; and was red of face and looked angry. He was with a man whom Benjamin did not know. Benjamin said to him, "Kung ano man iyon, ay hinihingi ko na sa iyo." Catalina replied, "Nakikinig naman ako sa iyo." Benjamin then went back to his machine after closing the door of the "operating section", believing that he had succeeded in calming down and pacifying Catalino. But no sooner had he settled himself to resume work than he saw Catalino open the door, come in and rush towards Florentino. At that time Florentino had his back to Catalino and was walking towards the side door of the room, on its northeastern side. Catalino stabbed Florentino in the back. Florentino

turned to face him and a struggle ensued between them. Benjamin joined the fray and tried to stop the assault and help his father wrest the balisong away from Catalino. Catalino however, passed the knife to his companion who quickly fled. The stricken Florentino staggered out through the side door, and fell on his face on the sward outside the office. Benjamin went to his father, who was already all bloodied, and turned him on his back. His mother came at this point; so he left her to see to his father and went in pursuit of Catalino who had also fled in the meantime. Sgt. Malaluan of the Local police force joined in the chase. As Catalino was nearing the national highway, another son of the victim, Manolo, overtook and confronted him. Manolo had an iron pipe in his fist. When Sgt. Malaluan reached Catalino, he asked him if he was the one who had stabbed Florentino. Catalino did not answer, but Manalo told Sgt. Malaluan that it was indeed Catalino who had knifed his father. A car then arrived, and Sgt. Malaluan used it to bring both Catalino and Benjamin Mantuano to the police headquarters.

Other proofs presented by the People were the following, to wit -

1) the testimony of the aforementioned Sgt. Malaluan, who corroborated Benjamin Mantuano's declarations regarding the apprehension of Catalino at the National Highway;[4]

2) the testimony of the victim's widow, Felisa Dimaculangan, who deposed that at the time of the incident, she was taking coffee in the balcony of her home, 25 brazas away from the Telecom Office; that she saw her husband totter out of the door of the office and suddenly drop to the ground; that she had rushed down to him and placed his head on her lap and asked him what had happened; that although gasping for breath and speaking very softly, he had said quite clearly that he was suddenly stabbed in the back by Catalino while he was going out of the office to go home; that a jeep having arrived, she and others, including her son, Pablo, had lifted Florentino into the vehicle which thereupon proceeded to the provincial hospital; that on the way, while cradling her husband's head on her lap, he had told her to urge their sons to avenge him because he had been most grievously wronged (aping-api); that at the hospital, Pat. Herman Osera interrogated her husband and wrote down his answers; that she left the hospital to try to get some blood from the Red Cross station, but at around 5 o'clock p.m. she was told her husband had already died;[5]

3) the medico-legal findings that the injuries inflicted on Florentino were "(1) wound, stab, 2.5 cms. long, right lower posterior chest, 7.5 cms. from the middle directed medially, anteriorly, upward, penetrating thoracic cavity, perforating lower lobe of right lung through and through with massive hemorrhage; (2) wound, stab, 2 cms. long, left thigh, upper and lateral aspect, level of anterior superior iliac spine, directed medially and posteriorly with a depth of 3.5 cms.; (3) hematoma, right leg, middle third, postero-medial aspect"; that both the first and second wounds had been caused by a sharp instrument, e.g., a balisong, but only the first was fatal, and wound No. 3 could have been caused by impact with a blunt object, e.g., a jeep; and that the victim's death resulted from "severe hemorrhage due to stab wound at the back penetrating thoracic cavity perforating lower lobe of right lung through and through";[6]

4) the testimony of Pfc. Herman Osera, police investigator,[7] that in his own handwriting and on two sheets of bond paper,[8] he had taken down the ante-mortem declaration of Florentino Mantuano; that after the statement had first been read to Florentino, the latter had thumb-marked both sheets in his own blood, since he was then receiving dextrose intravenously and could not sign his name; that although in serious condition, and having been told that it was possible that he would die of his injuries, he was able to answer the investigator's questions clearly and intelligibly; that Osera had thereafter gone to the police headquarters and there copied the ante-mortem declaration on a typewriter, which he had entitled, "Salaysay ni Florentino Mantuano na Kinuha ni Pfc. Herman O. Osera, ** ";[9] that in said declaration, Florentino named Catalino as his assailant, identified the place where had had been stabbed, the number of time he had been hit, and the persons who had seen the incident; that he had also gone to the TELECOM office where he had noticed a bloodstain near the door at the southeastern side of the

building, and interviewed the persons named by the deceased as having observed the event, although all denied having seen anything;

5) the decedent's polo shirt, which had a slit at the back about 1 1/2 inch in length, evidently caused by a knife thrust; his undershirt (sando) which had a similar tell-tale slit at the back; his briefs; two handkerchiefs, all stained with blood;[10] and finally,

6) the testimony of Pat. Wilfredo Servillano, another police investigator, who declared[11] that he had questioned the accused Gutierrez ahead of the victim's son, Benjamin Mantuano, in the belief that since no one had yet talked to the former, this would assure that his answers would be voluntary; that at the time the defendant's face was flushed, and he appeared to be under the influence of liquor but not too drunk; that in response to questions, the accused said he had been brought to the police station because he had been apprehended by the P.C., and his upper garment was smeared with blood because he had had a fight with a co-employee, Mr. Mantuano, and had stabbed him; that Gutierrez had subsequently declined to have his statement taken down in writing, but this notwithstanding, he had signed (but refused to place his thumb-mark on) the arrest report drawn up by Pat. Sevillano in which his verbal admission of having stabbed the victim was incorporated;[12] that the same admission was included in Pat. Sevillano's report;[13] and that Pat. Sevillano had also taken down the statement of Benjamin Mantuano in which inter alia he had pointed to the accused as his father's assailant.[14]

The accused stoutly denied the accusation against him, asserting that the killing had been done by his friend, Johnny Antipas. Testifying in his own behalf, he declared that he had gone to the TELECOM Office at the time in question to request his chief to excuse him from work because he intended to go to Barrio Dumantay with Johnny and there ask for a goat from his grandfather; that as he was approaching the side door of the office, he had heard Florentino Mantuano repeatedly making the following and other disparaging remarks of him, "Putang inang mga iyan, bakit nakakatrabaho dito ay walang alam na trabaho," and "Panahon lamang ng malalakas na amo ng mga iyan kaya natanggap ang hayop ng mga iyan"; on entering the office, he had needled Florentino, "Mang Tino, magsaway nga kayo nang maingay"; that Florentino had turned to face him, angrily said, "Why are you meddling, you are a meddler," and at the same time gave him a fist blow that found its mark on his right upper lip; that a fist fight then ensued between the accused and Florentino who seemed to the former to have drunk liquor; that when Florentino happened to turn his back to Johnny, the latter suddenly stabbed him twice, shouted to him, "Boy; run!" and himself ran away from the scene, never to be seen again by the accused; that at this point, seeing Benjamin Mantuano approaching, he had broken loose from Florentino's embrace and fled towards the highway; that he was however overtaken and stopped by another son of Florentino, Manolo Mantuano, after which he was brought by Sgt. Malaluan and Benjamin Mantuano to the police headquarters; that he had been interviewed by a police officer but had not mentioned Johnny Antipas because of fear that he might still be around and molest his family; that he had signed the investigator's arrest report which then contained only one paragraph, but after he had signed it another paragraph was added to the effect that he had verbally admitted something, which is why he refused to affix his thumbmark thereon; that he had received medical treatment from Dr. Girao at the Provincial Hospital.[15]

Only one other person, Dr. Romeo Girao, Resident Physician of the Batangas Provincial Hospital, was called to the witness stand by the defense. He told the Court that he had found a contusion on the defendant's left deltoid area, caused by a blunt instrument or a fist blow, and had issued a medico-legal certificate to this effect.[16]

In this Court, appellant Gutierrez argues for the reversal of his conviction, attributing to the Trial Court two errors: (1) in classifying the killing as murder; and (2) in not finding that the evidence does not satisfy the requirement of proof of guilt beyond reasonable doubt, and hence disregarding the statutory and constitutional presumption of innocence.

The killing cannot be considered as murder, the appellant contends, because the avowed qualifying circumstance of treachery was absent. The circumstance of the deceased having been challenged to a fight had put him on guard; this, the accused says, effectively precluded the adoption or employment by the accused of means of attack calculated to ensure the killing without risk to himself. The argument disregards the fact that an event had supervened between the challenge and the assault: i.e., the attempt of the victim's son to pacify the accused and his companion which had seemingly succeeded in the light of the latter's response, "Nakikining naman ako sa iyo." There was thus no longer any reason for either the victim, Florentino, or his son, Benjamin, to expect any attack from the accused. Florentino was in fact already walking toward the side door of the office, on the point of going home, and Benjamin was seating himself back at his desk to resume work when suddenly and swiftly, the accused had flung open the front door, rushed at Florentino and stabbed him in the back. The attack was clearly attended by alevosia; it was sudden and unexpected,[17] perpetrated from behind, the victim being unarmed,[18] with no chance to defend himself.[19] What this Court said in a 1984 decision[20] may quite aptly be said in this case:

“ * * (This) killing was an assassination pure and simple. It was a deliberate, sudden and unexpected assault from behind, without warning and without giving the victim a chance to defend himself or repel the assault, and without risk to the assailant. That is the characteristic or distinguishing hallmark of alevosia. It was not a killing made on the spur of the moment. It was not prompted by mere impulse. It was well-planned and reflected upon as shown by the prior threatening acts of the accused and the manner it was executed. The existence of treachery cannot be doubted.”

The appellant also maintains that the closeness of relationship between the victim and the principal prosecution witness necessarily colored the latter's testimony and so detracted from the credit that should otherwise be accorded to it. This is untenable. Such a relationship, of itself, does not prove prejudice or bias;[21] it may indicate at most the need for some caution in its assessment, but it should not be deemed as impairing testimonial credit,[22] specially where, as here, the testimony in question finds ample corroboration as regards material details not only from the declarations of other prosecution witnesses but also from the testimony of the appellant himself.

The appellant also theorizes that Benjamin Mantuano's testimony is flawed because uncorroborated. This theory, too, is untenable. Benjamin's testimony is in the first place corroborated by his father's dying declaration,[23] which the record shows to have been made under a consciousness of his impending death, and relates to the cause and surrounding circumstances of the declarant's mortal injuries.[24] It is corroborated, too, in certain other details, by his mother's declarations on the witness box.[25] It is, moreover confirmed in measure by appellant's own recorded statements that he had indeed fought with the deceased, had fled from the scene after the victim was stabbed, was chased, was overtaken, and was brought by Benjamin Mantuano and Sgtr. Malaluan to the office of the police.[26] In any case, it is established that the testimony of a single witness is sufficient to support a conviction, even in a charge for murder, where it is positive and credible.[27]

The defense would make capital of the omission of the prosecution to present as witnesses the employees of the TELECOM Office who presumably had seen the killing and were in a position to confirm the testimony of Benjamin Mantuano. The record discloses the unwillingness of those employees to give evidence, occasioned by their fear that something "might befall them." [28] Moreover, these employees were not listed by the prosecution as its witnesses, conformably with its privilege and discretion to choose those who will give evidence for the State.[29] Under these circumstances, and apart from the fact that these potential witnesses were equally at the disposal of the defense (entitled, as is well known, to compulsory process to procure their attendance in behalf of the accused), their non-production should not give rise to any presumption as regards the Government that their testimony would be adverse.[30]

The appellant finally adverts to what he describes as inconsistencies, contradictions and improbabilities in the testimony of the Government witnesses, particularly Benjamin Mantuano, e.g., that although Benjamin witnessed his father's slaying, he declared that he was not angry with the slayer, nor does he hate him; Benjamin's changes in statement: from "about three brazas" to "less than a braza" in his estimate of distance, from the declaration that he did not see the accused holding anything to that to the effect that he had a balisong in his fist; that Benjamin had not moved from his place until his father had been stabbed and had begun to wrestle with his assailant, etc. The contradictions are for the most part more apparent than real, being merely the result of a failure of comprehension of the question on the part of the witness but later corrected or otherwise satisfactorily explained. The other discrepancies refer to minor points in the witness' narrative and by established jurisprudence cannot be considered as sufficient to discredit testimonial credit.[31]

As to Benjamin's lack of reaction during the initial phase of the assault on his father, his explanation is not unnatural or incredible. He had no reason to expect that the appellant would still attack his father, his impression being on the contrary that he had succeeded in pacifying him; and the attack coincided with a call received over the telegraph machine from the Manila circuit; and he had been rendered immobile because he was shocked, stunned by the sudden aggressive action by the appellant. It is after all a recognized truism that people react differently to similar situations, and actual conduct or behavior should prevail over speculated or posited reactions.[32]

So, too, the fact that the appellant's challenge to Florentino Mantuano was made in the presence and observation of many persons is not so incredible a happening as to warrant disbelief. The evidence shows that it did happen. Besides, the appellant ascribes to his victim, Florentino, the same act of provoking him into a fight -- by insulting and cursing him and striking him -- in the presence and observation of the same persons.

The Court finds no reason to disturb the findings and conclusions of the Court a quo. However, the award of damages for the death of Florentino Mantuano should be increased from that granted by the Trial Court, P12,000.00, to P30,000.00 in accordance with established jurisprudence.[33]

WHEREFORE, with the modification above stated, increasing the award of damages for the death of Florentino Mantuano from P12,000.00 to P30,000.00, the judgment of the Court a quo subject of the appeal is affirmed in all other respects, with costs against the appellant.

Teehankee, C.J., Cruz, Gancayco, and Grino-Aquino, JJ., concur.

[1] Crim. Case No. 148 (Br. 1-156) of Branch II: Judge Jaime R. Agloro, presiding

[2] Filed Oct. 7, 1971 (Rollo, p. 3)

[3] TSN, March 8, 1972, pp. 20-37; Record, pp. 413-429

[4] TSN, Jan. 11, 1972, pp. 62-69

[5] TSN, July 28, 1972, pp. 38-50

[6] The victim was attended to by Dr. Romeo Girao, assisted by Dr. Arreglado, Jr., and others: TSN, Jan. 11, 1972, pp. 5-10; Exhibit "A"

[7] TSN, Jan. 11, 1972, pp. 27-61

[8] Marked Exhibits C and C-1

- [9] Marked Exhibit C-2
- [10] Exhs. H, H-1, J, J-1, K, L and L-1
- [11] TSN, Jan. 11, 1972, pp. 80-95; TSN, Feb. 9, 1972, pp. 20-30
- [12] Exh. E
- [13] Exh. F
- [14] Exh. D
- [15] TSN, Aug. 9, 1973, pp. 6-29
- [16] TSN, Aug. 20, 1973, pp. 9-10; Exh. 6
- [17] Peo. v. de la Fuente, 126 SCRA 518
- [18] Peo. v. Crisanto, Jr., 135 SCRA 413; Peo. v. Cortega, 134 SCRA 526, 532; Peo. v. Escoltera, 139 SCRA 218; Peo. v. Pampanga, 139 SCRA 393
- [19] Peo. v. Canete, 129 SCRA 452; Peo. v. Guipas, 29 SCRA 539; Peo. v. Maruhom, 132 SCRA 116; Peo. v. Moral, 132 SCRA 474; Peo. v. Pasea, Jr., 137 SCRA 508
- [20] Peo. v. Villanueva, 130 SCRA 75
- [21] Peo. v. Ciria, 106 SCRA 383; Peo. v. Puesca, 87 SCRA 130
- [22] Peo. v. Surban, 123 SCRA 218; Peo. v. Aquino, 122 SCRA 797; Peo. v. Cruz, 133 SCRA 426; Peo. v. Bautista, 147 SCRA 500
- [23] Exhs. C, C-1 and C-2; SEE footnotes 5 (at p. 3) and 1 (at p. 4), supra
- [24] Sec. 31, Rule 130, Rules of Court
- [25] SEE footnote 2, page 4, supra
- [26] SEE footnote 1, page 5, supra
- [27] Peo. v. Romero, 119 SCRA 240, supra; Peo. v. dela Cruz, 148 SCRA 587
- [28] TSN, July 28, 1972, pp. 33-35; TSN, Jan. 11, 1972, pp. 51-53
- [29] Peo. v. Quebral, 134 SCRA 425; Peo. v. Martinez, 127 SCRA 260
- [30] Sec. 5 (e), Rule 131, Rules of Court; SEE Peo. v. Cristobal, 1 SCRA 151
- [31] Peo. v. Yutila, 102 SCRA 264; Peo. v. Hinlo, 102 SCRA 472; Peo. v. Jardiniano, 103 SCRA 530
- [32] SEE Peo. v. Gordon, 129 SCRA 476; Peo. v. Radomas, 141 SCRA 548
- [33] Peo. v. de la Fuente, 126 SCRA 518; Peo. v. Atanacio, 128 SCRA 22; Peo. v. Centeno, 130 SCRA 198; Peo. v. Aldemita, 145 SCRA 451

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