

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEES, VS.
ERNESTO KIPTE, ET AL., DEFENDANTS, ERNESTO KIPTE,
DEFENDANT AND APPELLANT.**

G.R. No. L-26662. October 30, 1971

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

In an information filed with the Court of First Instance of Masbate on May 19, 1965, Ernesto Kipte, Juanito Bailon and two unidentified persons, known only as John Doe and Richard Doe, were charged with the crime of murder, for having killed one Nemesio Gundayao. Upon arraignment, Ernesto Kipte and Juanito Bailon, assisted by counsel, entered a plea of not guilty of the crime charged in the information. The other two accused, however, until the time of the promulgation of the decision in the court below, remained at large.

During the trial in the lower court, the prosecution presented as witnesses, Beotico Calimotan, Aniceto Omilgo, Sgt. of Police Ciriaco Conejos, Crisanta Villegas, Apolinario Cañete, Domingo Villegas and Dr. Alfonso H. Aliño. The summary of the testimonies of these witnesses, as narrated by the trial court in its decision, and which the appellant does not dispute[1], are as follows:

"Beotico Calimotan declared that he is 25 years of age, married, farmer, and resident of sitio Mabanaybanay, barrio Calabang, Municipality of Dimasalang, Province of Masbate; that at sitio Mabanaybanay, on the afternoon of March 7, 1965, after hearing two gunshot reports, he saw at a distance of 25 meters accused Ernesto Kipte pointing with a long rifle Cal. 22 (Exh. a) at Nemesio Gundayao, and shot him while he was running away chased by Juanito Bailon and other man whom he did not recognize, but both of them were without arm; that after hearing another four gunshot reports, Ernesto Kipte was holding yet the rifle; that although he saw three persons in this occasion only Ernesto Kipte shot Nemesio Gundayao.

"Aniceto Omilgo declared that he is 28 years of age, married, farmer, and resident of sitio Mabanaybanay, Calabang, Dimasalang, Masbate; that between 5 and 6 o'clock in the afternoon of March 7, 1965, he heard gunshot reports at sitio Mabanaybanay, and he saw a person pursued by four persons, but he could not recognize them because of their distance; that he only came to know the victim when upon hearing shouts of help in the house of Domingo Villegas he saw Nemesio Gundayao with wounds lying on a bench, who was later on brought to the hospital of Dr. Aliño at Dimasalang, Masbate.

"Ciriaco Conejos declared that he is 48 years of age, married, a Sgt. of Police of Dimasalang, Masbate; that he took the declaration of Nemesio Gundayao (Exh. C) by hearing the sounds of his words which were not then clear in the clinic of Dr. Alfonso H. Aliño at Dimasalang, Masbate, on the evening of March 7, 1965, and after a few minutes Nemesio Gundayao died (Exh. C-1, official translation of Exh. C); that before March 7, 1965, the Chief of Police of Dimasalang investigated Nemesio Gundayao and his father-in-law Domingo Villegas, regarding their report; that on March 1, 1965, at 6:00 P.M. the former was chased by Ernesto Kipte, Juanito Bailon, and other person, but no action was taken because Nemesio Gundayao and his father-in-law refused to file the same.

"Crisanta Villegas declared that she is 32 years of age, widow of the late Nemesio Gundayao, housekeeper, and resident of sitio Mabanaybanay, Masbate; that when her husband (Nemesio Gundayao) went home at sitio Mabanaybanay, on the afternoon of March 7, 1965, she saw his body full of blood and asked what happened to him, and he answered that he was shot by Ernesto Kipte and Juanito Bailon, after which he caused him to be brought to the poblacion of Dimasalang at about 7:00 P.M. for medical treatment.

"Apolinario Cañete declared that he is 47 years of age, married, a preacher of Iglesia ni Cristo, and resident of Cataingan, Masbate; that at past 5 P.M. of March 7, 1965, he saw Nemesio Gundayao full of blood in his body at sitio Mabanaybanay, barrio Calabad, Dimasalang, Masbate, and asked what happened to him and he answered that he was shot by Ernesto Kipte, after which he brought him to his house where his wife questioned him, then he told to the barrio people to bring him to town for medical treatment.

"Domingo Villegas declared that he is 56 years of age, married, farmer, and resident of sitio Mabanaybanay, barrio Calabad, Dimasalang, Masbate; that before March 7, 1965, Nemesio Gundayao had an altercation with Ernesto Kipte regarding the coconut plantation of Inocencio Miajres of which he is the overseer and cautioned Ernesto Kipte and Juanita Bailon not to allow their carabaos to enter in the premises of said plantation."

Dr. Alfonso Aliño, a witness for the prosecution, testified on the medical certificate he issued.[2] The medical certificate contains the following statements:

"Nemesio Gundayao was brought to me on March 7, 1965 at 8:00 o'clock in the evening for treatment of the following fatal bullet wounds:

"2 entrance wounds 2 cm. apart with a diameter of 1 cm. each located along the posterior axillary, back on the level of the 4th rib, left side.

"1 entrance wound 1 cm. in diameter located at the right side, along the midscapular region on the back at the level of the 10th rib.

"1 entrance wound 1 cm. in diameter on the back along the right posterior axillary line at the level of the 8th rib.

"1 entrance wound 1 cm. in diameter located at the lateral side of the left orbital region of the left.

"3 exit wounds on the anterior abdominal wall namely: 1 at the umbilical region 2 cm. in diameter; 1 at the right hypochondrium 2 cm. in diameter.

"1 exit wound on the chest along the anterior axillary line, right side, at the level of the nipple.

"1 exit wound at the left ear 2 cm. in diameter.

"The patient died at 9:45 in the evening after one hour and 45 minutes stay in the clinic."

The defense presented as witnesses, Atanacio Dao, a municipal councilor of Dimasalang; Antonina Atanoso, also a municipal councilor of Dimasalang; Francisco Canelas, a farmer and barrio captain; Julia Manuel, a restaurant operator in Dimasalang; Damaso Adigue, another municipal councilor of Dimasalang; and the accused, Juanito Bailon and Ernesto Kipte. By the testimonies of these witnesses, the defense tried to establish "that on the date and time when allegedly accused Ernesto Kipte and Juanito Bailon were chasing and shooting at Nemesio Gundayao, the former (the two accused) were at the cockpit of the poblacion of Dimasalang, as early as 1:00 p.m. and left the place at already past 5:00 p.m., and were seen as late as 7:00 p.m., in barrio Calabad, Dimasalang, which is about 3 kilometers distance from barrio Mabanaybanay and that it takes about one hour to walk from Calabad to barrio Mabanay-banay." [3]

The lower Court accepted the version of the prosecution, gave no credence to the evidence of the defense, and rendered a decision finding accused Ernesto Kipte guilty as charged, but acquitting accused Juanito Bailon. The dispositive portion of the decision reads as follows:

"IN VIEW OF THE FOREGOING, the Court finds the accused Ernesto Kipte, guilty as principal beyond reasonable doubt of the crime of murder, as charged in the information, and there being no aggravating nor mitigating circumstances present in the commission of the crime, said accused is hereby sentenced to RECLUSION PERPETUA, medium of the penalty for the crime of murder penalized by Article 248 of the Revised Penal Code, and to indemnify the heirs of the victim (Nemesio Gundayao) in the sum of SIX THOUSAND (P6,000.00) PESOS, without subsidiary imprisonment in case of insolvency, and to pay one-fourth (1/4) of the costs de oficio. The gun used in the commission of crime is hereby ordered confiscated in favor of the government.

"With respect to the accused Juanito Bailon, the prosecution failed to prove beyond reasonable doubt of his participation in the commission of the crime, and is therefore ordered acquitted, with one-fourth (1/4) of the costs de oficio."

Appellant Ernesto Kipte now comes to this Court on appeal from the above-mentioned decision of the trial court. The appellant claims that the lower court erred:

1. When it convicted accused-appellant Ernesto Kipte.
2. When it disregarded the defense of alibi presented by the accused-appellant.
3. In not finding that the crime committed under the facts and circumstances exposed by prosecution evidence is homicide and not murder.
4. In not acquitting the accused-appellant.

The errors assigned by the appellant boil down to the question of whether or not the lower court had correctly found the appellant guilty of the crime of murder of which he is charged.

1. In discussing the first error assigned, the appellant contends that his identity as the perpetrator of the crime has not been established beyond reasonable doubt, since his conviction is mainly based on the uncorroborated testimony of Beotico Calimotan, and the testimonies of Crisanta Villegas and Apolinario Cañete who declared that after he was shot, when he was brought to his house badly wounded and bleeding, Nemesio Gundayao told them that Ernesto Kipte and Juanito Bailon shot him. The appellant challenges the veracity of the testimonies of these witnesses, claiming that: (1) their testimonies are full of contradictions and flaws; (2) it took Beotico Calimotan and Apolinario Cañete several months to come out and testify for the prosecution; and (3) the witnesses for the prosecution are biased because Crisanta Villegas and Domingo Villegas are wife and father-in-law, respectively, of the deceased; and Beotico Calimotan and Apolinario Cañete and the deceased belonged to the same religious sect, the Iglesia ni Kristo.

It is the well-settled rule in this jurisdiction that where the issue to be resolved involves a question regarding the credibility of witnesses, the appellate court generally does not disturb the findings of fact of the trial court -- the trial judge being in a much better position to decide the matter, having seen and heard the witnesses testify, and had observed their demeanor and their manner of testifying during the trial - - unless there is a showing that the trial court had overlooked certain facts of substance and weight that, if considered, might affect the result of the case[4]. Where there is an irreconcilable conflict in the testimonies of witnesses for the prosecution and for the defense, as in the instant case, the appellate court will not disturb the findings of fact of the trial court when the evidence of the prevailing party is adequate to sustain the judgment appealed from.[5]

We have made a thorough and careful study of the record of this case, and We find no cogent reason to disturb the factual findings and conclusions of the trial court. The inconsistencies and discrepancies in the testimonies of the witnesses for the prosecution, pointed out by the appellants, are not of the nature as would warrant the reversal of the decision appealed from. Minor inconsistencies in the testimonies of witnesses are, more often than not, indicative of the good faith and truthfulness of witnesses.[6]

The appellant would discredit the testimonies of witnesses Beotico Calimotan and Apolinario Cañete because it took them two months after the day when the incident took place to come out and give their testimonies. This is not unusual. As observed by this Court in *People v. Delfin, et al.*[7], "(T)he initial reluctance of witnesses in this country to volunteer information about a criminal case, and their unwillingness to be involved in or dragged into a criminal investigation, is common, and has been judicially declared not to affect credibility."

As regards the relationship of the witnesses to the victim, We are of the view that it does not render the clear and positive testimonies of said witnesses less worthy of full faith and credit.[8] The declarations of interested witnesses are not necessarily biased and incredible.[9]

It is also contended by appellant that the ante mortem statements given by the deceased were unreliable and the trial court erred in giving credence to testimonies regarding those statements of the deceased. Witness Ciriaco Conejos, a police sergeant, testified that when Nemesio Gundayao was at the clinic of Dr. Alfonso Aliño in the evening of March 7, 1965, he took down in writing the declaration of Nemesio Gundayao (Exhibit C), hearing the sound of the words he uttered, which were not clear then. Conejos stated that when he investigated Gundayao the latter was so weak and he died a few minutes after he asked him some questions. Conejos further declared that one of the questions he asked Gundayao was "who shot you?", and he (Conejos) could hear the weak voice of Gundayao which sounded the words "Kipte and Bailon". We have noted, however, that the trial court did not rely on the testimony of Sgt. Conejos regarding the statements made by Gundayao before he died. The lower court relied more on the testimonies of Crisanta Villegas and Apolinario Cañete. In this connection the trial court said:

"However, from the testimony of Crisanta Villegas and Apolinario Cañete, it appears that on the afternoon of March 7, 1965, at sitio Mabanaybanay, barrio Calabad, Dimasalang, Masbate, immediately after the incident, they saw the body of Nemesio Gundayao full of blood and they asked what happened to him, and he answered that he was shot by Ernesto Kipte. The testimonies of Apolinario Cañete and Crisanta Villegas is a part of *Res Gestae* pursuant to Section 36, Rule 130, Rules of Court. Though these witnesses are not eye-witnesses to the commission of the crime, yet their testimony corroborates the testimony of Beotico Calimotan that he saw the accused Ernesto Kipte shot Nemesio Gundayao with a long rifle, Cal. 22 (Exh. A) on the afternoon of March 7, 1965, at sitio Mabanaybanay, barrio Calabad, Dimasalang, Masbate."

We are of the view that the trial court has correctly considered the statements made by the deceased Gundayao to Crisanta Villegas and Apolinario Cañete as part of the *res gestae*, because those statements were given immediately after he was shot and the statements appear to be spontaneously and naturally given.[10]

2. The defense of appellant is alibi. The appellant tried to prove that he was in the poblacion of Dimasalang from one o'clock to five o'clock in the afternoon of March 7, 1965, left the poblacion at five o'clock and was at barrio Calabad at about seven o'clock in the evening; and that from barrio Calabad to sitio Mabanaybanay it is about one hour walking distance. The appellant, therefore, asserts that he could not be at sitio Mabanaybanay between five and six o'clock in the afternoon when the shooting incident, of which Nemesio Gundayao was the victim, took place.

We have held that the defense of alibi, to be successful, must be proved by clear, positive, and satisfactory evidence, and unless this requirement is met alibi cannot prevail over the clear, and positive identification of the accused by the witnesses for the prosecution.[11] Upon an examination of the record, We agree with the

following findings and observations of the trial court:

"The defense of alibi presented by accused Ernesto Kipte is of no credit and could not prevail over the positive testimony of Beotico Calimotan who was an eyewitness to the commission of the crime. (People vs. Rafanan, et al. G.R. L-13289, Sept. 29, 1962; People vs. Enrique Joson y de la Rosa, CA-G.R. No. 03595-CR, Feb. 15, 1965; O.G. Vol. 62 No. 26, P. 4604, June 27, 1966.)

The doctrine in the cases above-cited says:

'The rule is well settled that alibi cannot prevail over the positive testimony of a witness or witnesses identifying the accused as the author of the offenses charged, especially where no motive is shown for such witness or witnesses to falsely testify against him.'

"In the present case the defense did not establish a valid motive why the witnesses for the prosecution falsely testified against accused Ernesto Kipte, who even testified that he had no quarrel with Crisanta Villegas, the widow of the victim, Nemesio Gundayao.

"The testimony of defense witnesses Damaso Adigue, Atanacio Dao, Ernesto Kipte and Juanito Bailon which try to establish that the accused Ernesto Kipte and Juanito Bailon were in the cockpit in the poblacion of Dimasalang, Masbate from 1:00 to 5:00 p.m. in the afternoon of March 7, 1965, and the testimony of Mrs. Julia Manuel, a defense witness in this case, which tends to show that the said accused were in her restaurant eating from 4:00 p.m. to 5:00 p.m. are of no credit for the reason that it contradict each other."

The trial court made a categorical finding regarding the identity of the appellant, as follows:

"From the testimony of Beotico Calimotan, an eyewitness in the commission of the crime, it shows that after hearing two gunshot reports, he saw accused Ernesto Kipte pointing a long rifle, Cal. 22 (Exh. A) at Nemesio Gundayao, and shot the latter while running away, being chased by accused Juanito Bailon and another man whom he could not recognize, but both of them were without arm, at sitio Mabanaybanay, barrio Calabad, municipality of Dimasalang, province of Masbate, on the afternoon of March 7, 1965; and after hearing other four gunshot reports, he saw accused Ernesto Kipte still holding the rifle, and he was the only one who shot Nemesio Gundayao."

Even if the testimony of Beotico Calimotan is not corroborated by the testimony of another eyewitness, the same was given full faith and credit by the trial judge, and that testimony can serve as a sufficient basis for a finding of guilt. The trial judge, however, has pointed out that the testimony of Beotico Calimotan was corroborated by Crisanta Villegas and Apolinario Cañete who testified that Nemesio Gundayao soon after the shooting incident told them that it was Ernesto Kipte who shot him.

3. In the third error assigned, the appellant contends that under the facts and circumstances exposed by the evidence of the prosecution, the crime committed is homicide and not murder. We do not find merit in this contention of appellant.

The evidence is clear that Nemesio Gundayao died of several gunshot wounds, and that four wounds of entrance were found at the back of said deceased. Beotico Calimotan testified that Nemesio Gundayao was running, being chased by Juanito Bailon and a companion, and Ernesto Kipte fired at him. It is clear that appellant shot Nemesio Gundayao at the back as he was running away from him under a circumstance that entailed no risk to his own life -- the victim being completely helpless and had no means of defending himself. The fact that the victim died as a result of four shots that hit him at the back as he was running away from his aggressor constitutes an attendant circumstance of treachery or alevosia, which qualifies the killing as that of murder and not that of simple homicide.[12]

We find that the Trial Court did not err in finding the appellant guilty beyond reasonable doubt of the crime of murder. No modifying circumstances having attended the perpetration of the criminal act, the court a quo correctly imposed the prescribed penalty in its medium period, that is, reclusion perpetua. However, the indemnity of P6,000.00 which the lower court ordered the appellant to pay to the heirs of the deceased Nemesio Gun-dayao should be increased to P12,000.00 in accordance with the ruling of this Court in the case of *People v. Pantoja*[13].

WHEREFORE, with the modification of the amount to be paid by the appellant as indemnity, the decision appealed from is affirmed in all other respects, with costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, Makalintal, Ruiz Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

[1] Appellant's Brief, p. 4.

[2] Exhibit E.

[3] The words in quotation marks are as stated on page 3 of appellant's brief.

[4] *People v. Espejo, et al.*, G.R. No. L-27708, Dec. 19, 1970, 36 SCRA 400, 420; *People v. Sina-on*, G.R. No. L-15631, May 27, 1966, 17 SCRA 260 and cases cited therein.

[5] *People v. Tila-on, et al.*, G.R. No. L-12406, June 30, 1961, 2 SCRA 563, 657.

[6] *People v. Mercado*, G.R. No. L-30298, March 30, 1971, 38 SCRA 168, 173, citing *People v. De Otero* 51 Phil. 201, 208, 209; *People v. Quimbo*, 49 Phil. 94, 99.

[7] G.R. No. L-15230 & G.R. No. L-15979-81, July 31, 1961, 2 SCRA 911, 918 citing *People v. Villamin*, 64 Phil. 880, 885; see also *People v. Repato*, 6 SCRA 202, 207.

[8] *People v. Malillos*, G.R. No. L-16568, July 29, 1968, 24 SCRA 133; *People v. Ricaplaza*, L-25856, April 29, 1968, 23 SCRA 374, 381 and cases cited therein.

[9] *People v. Bagsican*, 6 SCRA 400; *People v. Lardi-zabal*, G.R. No. L-894, May 11, 1956; *People v. Alcantara*, 33 SCRA 812, 821 citing *People v. Gutierrez, et al.*, 26 SCRA 143.

[10] *People v. De Gracia, et al.*, G.R. No. L-21419, Sept. 29, 1966; 18 SCRA 197, 205.

[11] *People vs. Moro Ambahang, et al.*, G.R. No. L-12907, May 30, 1960, 108 Phil. 325, 331, citing *U.S. vs. Pascua*, 1 Phil. 631 and *U.S. vs. Hudieres*, 27 Phil. 45.

[12] *People vs. Ambis*, 68 Phil. 635; *People vs. Log-rono*, G.R. No. L-5714, February 28, 1955.

[13] G.R. No. L-18793, October 11, 1968, 25 SCRA 468, 473.

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