

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EUFROCINO ATANACIO, ALIAS “APPA”
ACCUSED-APPELLANT.**

G.R. No. L-39211. March 05, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Mandatory review of a death sentence.

In Criminal Case No. 202 of the defunct Court of First Instance of Capiz, an information for murder was filed against EUFROCINO ATANACIO as follows:

"That on or about the 5th day of November, 1970, in the municipality of Jamindan, province of Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a locally made shotgun called 'pogakhang', with evident pre-meditation and treachery, and taking advantage of nighttime to facilitate the commission of the offense, did then and there, wilfully and unlawfully, with intent to kill, shoot and hit one Federico Escala with said shotgun, killing him instantly.

"Contrary to law, with the qualifying circumstance of treachery and generic aggravating circumstances of evident premeditation and nighttime." (Expediente, p. 23.)

The accused was tried on his plea of "not guilty" and there-after he was sentenced as follows:

"WHEREFORE, in view of the foregoing, this court finds the accused Eufrocino Atanacio guilty beyond reasonable doubt of the crime of murder; and judgment is hereby rendered imposing upon him the capital penalty of DEATH; to indemnify the heirs of Federico Escala the sum of P12,000.00, and to pay the costs. The bailbond posted by the accused for his provisional liberty is hereby can-celled." (Id., pp. 207-208.)

The People's version of the facts is:

"On the moonlit night of November 5, 1970, at about 8:00 o'clock, Remedios Pablo went to fetch her husband Leodegario Pablo from the house of her neighbor, barrio captain Federico Escala, nicknamed Feding, in the barrio of Agambulong, Jamindan, Capiz. Upon reaching the front yard of the house, she saw a man squatting under the kitchen thereof with a shotgun pointed upward. Having recognized him (by the reflection of the bright light of the moon augmented by the light of the kerosene lamp in the said kitchen, the front part of which had no flooring)as "Appa", the nickname of Eufrocino Atanacio, she wanted to greet him but then his shotgun exploded, causing her to hide posthaste behind a post near the ladder of the house, even as "Appa" ran away toward the opposite direction where she was hiding. She forthwith went up to the house, as she heard screams from upstairs that 'Feding is dead'. Indeed, she saw Federico Escala lying on the floor between the kitchen and the "sala" surrounded by his mother, wife and children. Right then and there, Remedios Pablo whispered to Federico's wife, Liberta Escala, that she saw "Appa" with a shotgun under their (the Escala's) house and that he fired it upward (TSN, pp. 22-30, Vol. I).

"Apolinario Escala, who was then repairing to the small store of Federico Escala inside the latter's house to buy

a canned good for viand, likewise heard the gun fire just as he was nearing said house. The blast punctuated his walk for he was taken aback by it. Shortly, he saw a man come out from under the kitchen of the house, and, having recognized him as "Appa", nickname of Eufrocino Atanacio, he instinctively asked him what happened. In reply, "Appa" pointed his shotgun at him (Apolinario) and warned the latter, 'Do not tell anybody,' after which, "Appa" de-camped (TSN, pp. 2-4, 13, Vol. I).

"Later, Apolinario proceeded up to the house as he heard outcries of Federico's wife that 'Federico was shot.' There he found Federico in serious condition, being attended to by his mother and his wife. Moments thereafter, Federico expired. Whereupon, Apolinario asked Federico's wife as to who shot him, and, when she could not tell, he apprised her of what he had seen, that is, that he saw "Appa" come out from under the kitchen of her house with a long gun, which he "Appa" pointed at him, Apolinario, warning the latter not to reveal what he saw to anyone. (TSN, pp. 14-15, Vol. I.)

"The evidence further reveals that about two (2) weeks prior to the shooting at bar, Federico Escala, as overseer of Isidro Orocio harvested the palay on the parcel of land owned by the latter; that said land was claimed by Manuel Intas, who had Eufrocino Atanacio farm the same; that Eufrocino Atanacio went to the aforestated land and asked Federico Escala for his share of the harvest but Federico would not want to grant the request and told Eufrocino to see Oracio and ask him for his share; and that angered by said refusal of Federico to give him his share thereof, Eufrocino told Federico 'You will know someday, because something will happen to you' after which Eufrocino left in disgust (TSN, pp. 6-8, Vol. I)." (Brief, pp. 2-5.)

The appellant claimed that he did not kill Federico Escala; that he was somewhere else when Federico was killed; and that it was another person - Carmelino Gevero - who killed Federico. His assignment of errors raises the sole issue of the credibility of witnesses as shown by the following:

"I. THAT THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDIT TO THE EVIDENCE OF THE PROSECUTION.

"II. THAT THE TRIAL COURT ERRED IN NOT CONSIDERING THE FATAL FLAWS IN THE EVIDENCE FOR THE PROSECUTION.

"III. THAT THE TRIAL COURT ERRED IN CONSIDERING THE EVIDENCE OF THE DEFENSE AS INCREDIBLE.

"IV. THAT THE TRIAL COURT ERRED IN RULING THAT MORE CREDENCE BE GIVEN TO VERSION OF THE PROSECUTION BECAUSE ACCUSED HAD THE MOTIVE TO COMMIT THE CRIME. (Brief, p. A.)

The judge who presided during the trial also penned the decision. It is well-settled in this jurisdiction that the conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court was in a better position to examine the real evidence as well as to observe the demeanor of the witnesses. Accordingly, Our principal task in this appeal is to scrutinize the record in order to ascertain if there is some fact or circumstance of weight and influence which was overlooked or the significance of which was misinterpreted.

The appellant states that "The government rested its case without any autopsy report or medico-legal findings on the injuries of the deceased x x x and the death weapon was not submitted in evidence." (Brief, p. 5.)

As to the autopsy report, its lack was explained by the Fiscal as follows: "The medical certificate was not presented because the doctor, who was then the Rural Health Physician of Jamindan, his whereabouts could not be found, I think he has separated from the service already." (TSN, Pabelico, p. 58.) And the failure to submit the gun in evidence was not a fatal omission because the People's evidence had established that the deceased died as a

result of a gunshot and, in fact, the appellant's claim that Carmelino Gevero was the assailant tacitly admits the use of a gun.

Two witnesses pointed to the appellant as the perpetrator of the killing. They were Remedios Pablo and Apolinario Escala whose testimony is summarized in the People's version of the facts, *supra*.

The appellant questions the credibility of Remedios and Apolinario thus: "x x nowhere in their testimonies is their mutual presence [near the house of the deceased] confirmed by each other. It is inherently impossible that one could not have seen the other."

We cannot perceive the significance of the supposed failure of the witnesses to see each other near the house of the deceased; We do not see how such circumstance could affect their credibility. The substance of their testimony was not that they saw each other but that they saw the appellant - in the case of Remedios that he was under the house of the deceased and in the case of Apolinario that he met the appellant near the house of the deceased.

The appellant also claims that the evidence given by Apolinario and Remedios is "underscored with a series of contradictions, inconsistencies and deliberate falsehoods." True it is that the narration of events given by one was not completely congruent with the narration given by the other. But the variances can be attributed to the fact that different persons have varying impressions and perceptions of a startling event. In fact, the testimony of the two witnesses would be under a serious cloud if their evidence was completely congruent for such a circumstance would not be natural. And it should also be noted that the discrepancies in this case related to minor matters only.

The defense of the appellant is not only alibi; he goes farther by attributing the crime to another person.

On the alibi, We quote with approval the trial court's decision as follows:

"3. The defense of alibi of the accused cannot prevail over the positive identification of the witnesses of the prosecution that he was the person responsible for the commission of this crime. These witnesses had not been shown to have been actuated by any improper motive in falsely laying this crime at his door. The absence of evidence as to an improper motive actuating the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive existed, and that their testimonies are worthy of full faith and credit. (People vs. Sawah, No. L-15333, June 29, 1962, 5 SCRA 385). Besides, it was not entirely impossible for the accused to be at the scene of the crime at the time of its commission considering that Alimodian, Iloilo where he was working as a tenant of Baltazar Ambaan to Agambulong, Jamindan, Capiz, was easily accessible by bus. The accused could have been in Agambulong, Jamindan on the day of the commission of the crime visiting with his family and commit it in the evening thereof. To establish alibi, the accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission. (People vs. Alcantara, No. L-26867, June 30, 1970, 33 SCRA 812.)" (Expediente, pp. 203-204.)

Further on the defense of alibi, the appellant makes much of the entry in the police blotter (Exhibit 3, 3-A) which states: "Federico Vacano, Nemsio Orocio, Elpidio Escala and Ening Escala reported to this office at 11:00 P.M. that the barrio captain Federico Escala was shot at his house at 8:00 P.M. by the suspect persons Adorico Domingo, Samuel Intas and Daniel Villarante. He died spontaneously." But the persons who made the report could not have identified the culprits because they were not eye-witnesses to the crime.

Two witnesses testified that it was Carmelino Gevero who shot Federico Escala; they were Benjamin Laurilla and Jose Advincula.

Benjamin Laurilla said that he was the compadre of Federico Escala; that in the evening of November 5, 1970, he was on the way to Escala's house to buy kerosene when he heard a shot and then met Carmelino Gevero who was

running and Gevero told him to run away also as he said, "I shot the barrio captain"; that he ran away and went home. On cross-examination, this witness said that Gevero "died about the last week of November 1970."

Jose Advincula testified that on November 6, 1970, the day after Escala was killed, "Carmelino Gevero came to our house and told me which I quote, 'Maninoy, I was the one who shot Federico Escala;'" that he instructed Carmelino to surrender to the PC but the latter said, "Just keep silent because I am going to escape."

The trial court correctly brushed away the stories of Laurilla and Advincula when it said:

"1. The court cannot believe the assertion of Benjamin Laurilla that Carmelino Gevero, without having been asked, would tell him that he had just shot Federico Escala. And even if asked, it was doubtful that Carmelino Gevero would have confessed to Benjamin Laurilla that he had killed a man. Criminals do not easily confess their deeds, unless faced with insurmountable forces. On the contrary, they would keep them away from detection and discovery in consonance with that primordial instinct of self-preservation.

The obedience of Benjamin Laurilla to the command of Carmelino Gevero to run away because he had just shot Federico Escala shows the puerility of his evidence. Why should he run away when he had nothing to do with the killing? It would have been more in keeping with natural human behavior had he proceeded to inform the family of Federico Escala as to the identity of his assailant, or, even just for the sake of curiosity, to find out what was happening in the house of Federico Escala and offer help if needed. Thus, the testimonies of the two witnesses for the defense that after seeing the incident in question where a man was killed, they returned to their beds and after commenting lightly on the incident they saw, they slept, was properly discredited by the court because such behavior is not humanly natural, if what they related was true. (People vs. Navarro, et al., No. L-20860, November 28, 1964, 12 SCRA 530).

"2. The court cannot give credit to the testimony of Jose Advincula considering that it proceeded from the mouth of a person who could have been prosecuted as an accessory after the fact. Had he, on the very same day that Carmelino Gevero admitted to him the commission of this felony, reported the matter to the police authorities, justice would have triumphed. His failure to immediately report the culpability of his godson, Carmelino Gevero, to the authorities perhaps was due to his desire to allow the latter's effective escape. In effect, he had trifled with the cause of justice, and for him to seek it now is to mock it. His testimony should be rejected." (Expediente, pp. 202-203.)

The information alleges the qualifying circumstances of evident premeditation and treachery.

There is no proof of evident premeditation. There is no proof of the following: (1) the conception of the crime; (2) sufficient reflection on the consequences thereof; and (3) persistence resulting in the execution of the criminal act.

There was treachery because the appellant shot the deceased from under the latter's house without risk to himself and at the same time ensuring the success of the dastardly deed. Alevosia absorbs nocturnity.

The deceased was killed in his house without provocation, hence the aggravating circumstance of morada should be considered.

The trial court correctly sentenced the appellant to suffer the death penalty but it cannot be affirmed for lack of the necessary votes in this Court.

WHEREFORE, the judgment of the trial court is modified: the appellant is hereby sentenced to suffer the penalty of reclusion perpetua; to indemnify the heirs of the deceased in the amount of Thirty Thousand (P30,000.00) Pesos; and to pay the costs.

SO ORDERED.

Makasiar, Acting C.J., Aquino, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin and Relova, JJ., concur.

Gutierrez, Jr., J., no part.

Fernando, C.J., and Teehankee, J., on leave (abroad).

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