

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO CENTENO ALIAS "PANCHITO", JUAN CENTENO ALIAS "TOTOK", AND MANUEL CENTENO ALIAS "IYAO", DEFENDANTS-APPELLANTS.

G.R. No. L-48744. June 29, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The accused-appellants, Francisco Centeno alias "Panchito", Juan Centeno alias "Totok" and Manuel Centeno alias "Iyao", were charged with the crime of murder in an information filed on July 10, 1972 with the Court of First Instance of Iloilo, 11th Judicial District. The information alleged that the three (3) accused, cons-piring and working together, armed with firearms and with treachery and evident premeditation inflicted wounds on Nestor Asistido which caused his death.

On April 18, 1974, the trial court found the accused-appellants guilty beyond reasonable doubt of the crime of homicide with the aggravating circumstance of their having taken advantage of superior strength which was offset by the mitigating circumstance of voluntary surrender and sentenced each of them to suffer imprisonment of not less than six (6) years, eight (8) months and one (1) day of prision mayor, as minimum, to not more than fifteen (15) years, six (6) months and twenty-one (21) days of reclusion temporal, as maximum, with all the accessory penalties provided for by law, to indemnify the heirs of the deceased the sum of Twelve Thousand Pesos (P12,000.00) for the death of Nestor Asistido, and in addition thereto the sum of Thirty-three Thousand Six Hundred Ninety-six Pesos (P33,696.00) for loss of income, plus Ten Thousand Pesos (P10,000.00) for moral damages, and to pay the costs.

The decision of the trial court was appealed to the then Court of Appeals.

On July 14, 1978, in a decision penned by Associate Justice Ameurfina A. Melencio-Herrera and concurred in by Associate Justices Lorenzo Relova and Simeon M. Gopengco, the Court of Appeals found from the records that the circumstances of treachery and evident premeditation were clearly attendant to the commission of the crime and, therefore, found the accused-appellants guilty of murder as charged in the information. According to the appellate court, the penalty prescribed by Article 248 of the Revised Penal Code for the crime of murder is reclusion temporal in its maximum period to death. Following Section 34 of the Judiciary Act and Section 12 of Rule 124 of the Rules of Court, however, the Court of Appeals refrained from entering judgment and certified the case to this Court for final determination.

On October 30, 1981, this Court after discussing the guidelines in *People v. Daniel* (86 SCRA 511) on the preliminary issue therein promulgated a resolution which, inter alia, reads:

"Accordingly, We refrain from passing on the correctness of the assessment of the evidence by the Court of Appeals which We find to be sufficiently thorough and exhaustive, and let said Court determine for itself what the proper penalty should be under its own analysis of the evidence, in accordance with the aforecited ruling of

People v. Daniel, supra.

"WHEREFORE, let this case be returned to the Court of Appeals for proper action as above indicated."

We have carefully reviewed the entire records of this appeal. We find correct the factual findings and conclusions of law in the amended decision penned by Associate Justice Rodolfo A. Nocon and concurred in by Associate Justices Juan A. Sison and Federico B. Alfonso of the Intermediate Appellate Court. We, therefore, adopt the said decision in its entirety and append it as an integral part of this decision. The award for actual and moral damages, being supported by evidence, is affirmed.

Following the precedent set in People v. de la Fuente (126 SCRA 518) wherein this Court increased the civil liability awarded by the trial court to Thirty Thousand Pesos (P30,000.00), the award of Twelve Thousand Pesos (P12,000.00) as indemnification for the death of Nestor Asistido is increased to Thirty Thousand Pesos (P30,000.00).

WHEREFORE, this Court finds the accused-appellants Francisco Centeno alias "Panchito", Juan Centeno alias "Totok" and Manuel Centeno alias "Iyao" guilty beyond reasonable doubt of the crime of Murder. The sentence of imprisonment imposed by the trial court on each of the accused-appellants is MODIFIED to RECLUSION PERPETUA and the Twelve Thousand Pesos (P12,000.00) awarded as indemnification is increased to THIRTY THOUSAND PESOS (P30,000.00). In all other respects, the judgment of the trial court is AFFIRMED.

SO ORDERED.

Teehankee, (Chairman), Plana, Escolin, and De La Fuente, JJ., concur.

Melencio-Herrera and Relova, JJ., no part, having participated in the Court of Appeals' decision.

"ANNEX "A"

REPUBLIC OF THE PHILIPPINES
INTERMEDIATE APPELLATE COURT
MANILA

[AC-G.R. CR NO. 17144]

SECOND CRIMINAL CASES DIVISION

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO CENTENO, JUAN CENTENO ALIAS TOTOK AND MANUEL CENTENO ALIAS IYAO ACCUSED-APPELLANTS.

The accused Francisco Centeno alias "Panchito," Juan Centeno alias "Totok," and Manuel Centeno alias "Iyao" were originally charged with the crime of Murder in an information filed by the Provincial Fiscal of Iloilo on 10 July 1972. After trial, the Court of First Instance of Iloilo, Branch IV, found them guilty of Homicide, hence this appeal.

The evidence for the prosecution is as follows:

The three accused, FRANCISCO Centeno, JUAN Centeno and MANUEL Centeno are brothers. They are all residents of Barrio Maiayuan, Ajuy, Iloilo. FRANCISCO, the eldest, was the Barrio Captain of the place having held the position for four terms. They had another brother, Florentino, who was married to one Ester Causing with whom he had two children. This couple converted a portion of the seashore of Barrio Malayuan into a docking place for a motor boat named Evelyn HI owned by Serafin Opinion, Jr, This boat used to ferry passengers and cargo from Barrio Malayuan, Ajuy to Victorias, Negros Occidental, and back. The spouses Florentino Centeno

and Ester Causing operated this motor boat, receiving commissions for every passenger and cargo carried. A commission of P2.00 each was also being paid to the accused, FRANCISCO, JUAN, MANUEL and another brother, use, for helping in the operation of the motor boat. The couple had an errand boy named Nestor Asistido, who was also being paid a commission of P2.00.

On 4 November 1971, Florentino Centeno was murdered in Sara, Iloilo. His wife, Ester Causing received an indemnity of P60,000.00 as the beneficiary of his life insurance policy. The persons who were responsible for the crime were not prosecuted, and the three accused blamed the widow for this. A feeling of enmity developed between them particularly because both parties sought to gain control of the management of the boat. Nestor Asistido, however, remained loyal to the widow, who promised to see him through school, which fact the accused inwardly resented.

In the afternoon of 21 November 1971, the father of Nestor, Arsenio Asistido, was warned by accused MANUEL Centeno that if he (Arsenio) would allow Nestor to stay with Ester, their sister-in-law, they would kill him (Nestor) in less than six days. Arsenio told his son about MANUEL's threat. Nestor, however, informed his father that if Ester could withdraw the proceeds of the life insurance of her husband, she would transfer her family to Manila and would also send Nestor to school there. That same afternoon, Arsenio went to see Ester and related what MANUEL had threatened to do. Ester gave him a letter for the Mayor of Ajuy and he was informed afterwards that the matter was already settled at a conference before Police Sergeant Vicente Alamon which was attended by MANUEL and JUAN, on the one hand, and Arsenio Asistido, on the other, where the Sgt. succeeded in making them shake hands.

Notwithstanding, the following day, 12 November 1971, Arsenio Asistido met accused FRANCISCO Centeno, and the latter told him, "Tay Arsing last night your house where your son is living and your house in the seashore was being guarded." The next day, Arsenio and FRANCISCO met again in the house of Augusto Leonides, the Secretary of the Mayor, and FRANCISCO said to him, "Tay Arsing, you were fortunate last night that you did not come out of your house."

At noon of 1 December 1971, Nestor was in the house of his parents at Barrio Malayuan. He set the table for his father, who, after taking his lunch, left immediately for school where he was serving as janitor. Between 1:00 to 2:00 o'clock that afternoon, Nestor went to the house of Capid (Inocencia Basa) and Esteban Matulac alias "Tiban" which was near the beach of Malayuan where the M/V Evelyn HI was docked. He played bingo with Jesus Artesilla, Capid and her two sons and Rodel Sariya. Not long after, the three accused arrived, FRANCISCO was armed with a shot gun, JUAN Centeno, with a .38 caliber pistol, and MANUEL, with a greasegun. They called Nestor, and when the latter did not come out, MANUEL and JUAN went up the house while FRANCISCO remained downstairs. Thuds were heard and Nestor cried out, "Manong Totok I am not going to fight back." The people inside the house jumped out except Jesus Artesilla. The brothers, JUAN and MANUEL dragged Nestor to the door and pushed him towards the stairs. As they did so, FRANCISCO Centeno fired his gun at Nestor; the latter was hit and fell to the ground. Then JUAN and MANUEL fired their guns at him. FRANCISCO then turned to the people around and threatened them not to reveal to anyone what had happened. Eyewitnesses to the incident in the house were Jesus Artesilla, who was one of the bingo players, and a tuba gatherer of JUAN, Teofisto Domegillo, a fish vendor, who happened to be in the vicinity to buy fish (t.s.n., p. 4, Tauro) Pedro Nobleza, who was also there to sail for Negros in the M/V Evelyn III, (t.s.n., p. 27, CM. Tauro) and Bienvenido Brabo who had a house nearby. Scared, all of them left after the occurrence.

JUAN and MANUEL thereafter dragged the body of Nestor towards a place where tall grasses grew near the house of Bienvenido Bravo. At about 5:00 o'clock that same afternoon, Jesus Artesilla, while atop a coconut tree gathering 'tuba' saw the body of Nestor Asistido in a supine position. He went down the tree and approached the

body and saw that it was already lifeless. He even closed the eyes of Nestor. Panfilo Besana also saw the body of the victim at about 5:30 that same afternoon when he went to the cogon grasses to answer a call of nature.

At about 8:00 o'clock in the evening, the three accused together with Jesus Artesilla and Bienvenido Brabo moved the body of Nestor Asistido from the tall grasses. The accused ordered Artesilla and Bravo to wrap the body in a fishing net owned by Bravo. Then JUAN and MANUEL loaded the body in a banca and peddled towards the sea. They returned to shore about 4:00 o'clock the following morning without the body of Nestor, which was never recovered.

The respective defense of the accused is alibi. FRANCISCO maintained that from 30 November 1971 to 3 December 1971, he contracted the services of 14 laborers to pull grasses, transplant seedling and clean the canals of his farm, which is in sitio Tigbao Centeno, two kilometres away from Barrio Malayuan. He alleged that he and his hired laborers worked in the farm from 7:30 in the morning to 4:00 o'clock in the afternoon on 1 December 1971, and that he never left the field. In fact, they had their lunch there, which was prepared by his wife and another woman.

In his turn, JUAN claimed that from 26 November 1971 he plowed his field which is situated at Sitio Bitac, one kilometer away from Barrio Malayuan. He stated that, on the day of the incident or 1 December 1971, he was at his ricefield managing the transplanting of the rice seedlings, and that he never left the field until 5:00 o'clock in the afternoon of that day.

Accused MANUEL, for his part, claimed that on 1 December 1971 he painted the motorboat M/V Evelyn III which was docked about 350 meters from the house of Esteban Matulac where the incident occurred, from 7:00 o'clock in the morning to 4:00 o'clock in the afternoon. He likewise alleged that he never left his job because they were being watched by Custodio Flores, who was in charge of the repair of the boat.

The three accused likewise contended that the witnesses for the prosecution testified for monetary considerations and upon instigation of their sister-in-law Ester Causing. Their testimonies as to their respective alibi were corroborated by Rafael Sumatra and Florenio Gonzales for FRANCISCO, by Rolando Gisangro for JUAN, and by Custodio Flores for MANUEL.

After trial on the merits, the lower court ruled out treachery and evident premeditation and held the accused guilty, not of Murder, but of Homicide, in a judgment, the dispositive portion of which reads:

"x x x WHEREFORE, the Court finds the accused Francisco Centeno, Juan Centeno and Manuel Centeno guilty beyond reasonable doubt of homicide defined and penalized in Art. 249 of the Revised Penal Code, with the aggravating circumstance that advantage was taken of superior strength which is offset by the mitigating circumstance of voluntary surrender, and applying the provisions of the Indeterminate Sentence Law hereby sentences each of them to suffer an imprisonment of not less than SIX (6) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of prision mayor as minimum, to not more than FIFTEEN (15) YEARS, SIX (6) MONTHS and TWENTY ONE (21) DAYS of reclusion temporal, as maximum, with all the accessory penalties provided by law, to indemnify Arsenio Asistido and Nenita C. Asistido, the heirs of the deceased, the sum of P12,000.00 for the death of Nestor Asistido and in addition thereto the sum of P33,696.00 for the loss of income, plus P10,000.00 for moral damages and to pay the costs."

From said decision, the three accused have interposed this appeal on the following Assignments of Error:

" 1. The trial Court erred into believing the testimonies of witnesses characterized by queerness and incredibility as they are and narration of witnesses who came out to testify against the accused-appellants eight months after the alleged incident and erred to assume by probabilities and accused-appellants were responsible for the death of Nestor Asistido.

"2. The trial Court erred in finding the accused-appellants guilty of the crime charged despite improbabilities and the absence of corpus delicti."

From the facts established, We find this appeal without merit.

In all crimes against persons in which the death of the victim is an element of the offense, there must be satisfactory evidence of the fact of death and the identity of the victim. That a crime has been committed, which is what corpus delicti really means, (*People v. Sanchez*, 89 Phil. 423[1951] and there is evidence linking the accused to the crime, has been dearly and positively established by the testimonies of four eyewitnesses to its commission. That it was committed at the place testified to by those witnesses is substantiated by the findings of Capt. Balaois, who conducted an investigation, showing the pool of blood inside the house of Inocencia Basa; the traces of blood leading to a bigger pool of blood at the foot of the stairs (Exhibits B, B-1 to B-5); and the blood trails which showed that the body of the victim was dragged through rice paddies and coconut grove until the trail was finally lost. Corpus delicti, therefore, has been dearly established. The failure of the prosecution to produce the body of the victim does not imply the absence of corpus delicti (*People v. Mones*, 58 Phil. 46 (1933) for the term does not refer to the body of the murdered person (*People v. Taruc, et als.*, G.R. No. L-183 08, April 30, 1966, 16SCRA834).

The appellants, however, assail the credibility of prosecution witnesses in that they testified against them eight months after the incident. Notwithstanding, this factor will not assist the defense any for it has been held that the initial reluctance of witnesses 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 (*People v. Estocada*, 75 SCRA 295[1977]). Moreover, there is evidence on record showing that prosecution witnesses were being threatened by the appellants, one of whom is a Barrio Captain, consequently, they were afraid to report to the authorities what they knew about the incident. Witness Jesus Artesilla even transferred his residence to Carlos, Iloilo, for fear of his life. It was only after the declaration of martial law that he summoned courage to reveal what he had seen (T.s.n., February 13, 1973, pp. 4 and 25). Witness Teofisto Demegillo also admitted that he was afraid of the Centeno brothers.

In fact, the mother of the victim, Nenita Asistido, had to seek the assistance of the Philippine Constabulary to get the witnesses and to prevent the appellants from threatening them (Exhibit "G"), so much so that the latter had to be kept in the PC stockade for a time.

Nonetheless, eyewitness Pedro Nobleza informed the victim's mother of the occurrence so that in the same afternoon of December 1, 1971, the father, Arsenio, reported to the Mayor that the three accused had killed his son; while on December 3, 1971, the mother, Nenita, reported to the police that the accused had shot their son to death (Exhibit "3").

The defense challenges the credibility of eyewitness Teofisto Demegillo on the ground that he is a relative of the deceased. It is well-settled, however, that relationship per se does not necessarily render the testimony of a witness incredible. Besides, the same witness testified that the appellants are his godbrothers (ts.n., October 17, 1972, p. 21). In fact, he even called them "Igsoon" meaning "brother."

Eyewitness Pedro Nobleza's testimony is also assailed as a mere reiteration of Teofisto Demegillo. However, each of them happened to be at the scene of the crime under different circumstances. Demegillo, as a fish vendor, had to buy fish. While Nobleza intended to take the boat and sail for Negros. Their testimonies are corroborative of the other, and are further strengthened by those of Jesus Artesilla and Bienvenido Bravo, two other eyewitnesses.

Panfilo Besana's testimony is also denounced as inconsistent when he said that the incident "happened a long time ago but up to the present it is not known." However, that was followed immediately by his statement "I told them

that one time when I went to answer the call of nature, I saw the cadaver (t.s.n., December 26, 1972, p. 42). The witness must have been referring, therefore, to knowledge by the community, but as to himself, he knew about the crime because he actually saw the cadaver when he went to answer the call of nature.

And as to the presence of rocks or spades in the banca, all that Jesus Artesilla declared was that he did not see any, but not that accused JUAN and MANUEL did not carry any rocks or spades in their banca when they took the body of the victim with them out to sea.

The fact that Capt. Balaois testified that he was not sure that the trail of blood was human blood will not serve to destroy his credibility, but on the contrary enhances it for he truthfully said that he was not an expert on that.

And while it may be that when the father of the victim, Arsenio, Asistido, went to the scene of the crime in the afternoon of December 1, 1972, he did not find his son's body, this may be explained by the fact that it was almost dark when he and his party went so that there was little chance of locating the victim's body; which was hidden among tall cogon grasses. It was only the investigation the next day by Capt. Balaois that disclosed the traces of blood (Exhibits B, B-1, B-6).

In the last analysis, the conclusions reached by a trial Court on the question of credibility is entitled to great weight, and should ordinarily be respected as it is in a better position to determine such matters, unless a fact or circumstance of weight or influence has been overlooked and its significance misinterpreted (*People v. Monteverde*, L-31177, July 15, 1976, 72 SCRA 69). We find the required exceptions absent herein. The testimonies of prosecution; witnesses are straight forward and consistent on material points, the 'contradictions and inconsistencies pointed out by the defense trivial and insignificant, such that we can see no reason to disturb the conclusions reached by the trial Court in so far as their credibility is concerned.

The defense of each the appellants in this case is that of alibi. It is fundamental that this must be supported by clear and convincing evidence to be given full faith and credence. Alibi is not credible when there appears no physical impossibility on the part of those invoking it to have been at the scene of the crime (*People v. Estocado*, 75 SCRA 295[1977]). In this case, appellant FRANCISCO was only two kilometers away from the situs of the incident, JUAN, one kilometer, and MANUEL, 350 meters away.

It was not impossible for them, therefore, to have left their alleged places of work or activity and to have gone to the house where they committed the offense. Besides, the rule is also well-settled that alibi cannot prevail over the positive identification of the accused by competent witnesses whose credibility is unassailable.

We come now to the nature of the crime committed. The trial Court categorized it as Homicide. We disagree. As aptly pointed out by the Solicitor General, whose views we hereby adopt, the circumstances of treachery and evident premeditation are clearly attendant herein. Thus,

"The Information charging the accused of Murder notes the attendance of two qualifying circumstances - treachery and evident premeditation. According to the Revised Penal Code, there is treachery 'when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make' (Article 14, par. 6, Revised Penal Code). In short, two conditions must concur: (1) the employment of means, method or manner of execution which would insure the offenders' safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to do so (*People v. Casalme*, 17 SCRA 717[1966]); and (2) that such means, method, or manner of execution was deliberately or consciously chosen (*People v. Dadis* 18 SCRA 699[1966])

.

"In the case at bar, the treacherous manner in which the victim was killed is manifest from the record. Nestor

Asistido was mauled by Juan Centeno and Manuel Centeno inside Basa's house, despite his protestations that he was not going to fight back. When he was already weak, bloodied, and unable to defend himself, he was dragged to the door. Juan and Manuel Centeno held him on both hands. While he was being pushed down the stairs, Francisco Centeno fired his gun at him. It should further be noted that the victim was unarmed, in contrast to the accused who were each armed with firearms. Nestor Asistido was a young man of nineteen (19) years. He was no match for three robust men like the accused. The fact that the accused went to the place of Basa fully armed, is an indication that the means of execution they employed was deliberate or consciously chosen. After Francisco fired his gun at the victim the latter fell to the ground. Yet, Juan and Manuel Centeno still fired their guns at the fallen victim. All the earmarks of alevosia are present in this case. We cannot see how anyone else can arrived at a different conclusion.

"We also submit that the aggravating circumstance of evident premeditation has been proven in this case. The plan of the accused to kill Nestor Asistido made itself manifest as early as November 21, 1971. On said date Manuel Centeno informed Arsenio Asistido that if he would allow his son Nestor to stay with Ester Causing, they would kill Nestor in less than six (6) days. (pp. 5-6. tsn., October 17, 1972). It is true that the Mayor of Ajuy tried to settle matters between the Asistido's on the one hand and the accused Centeno's on the other hand. The accused Juan and Manuel Centeno appeared cordial during their confrontation, but the subsequent events that followed show that the accused have not desisted from their original plan to kill Nestor. The following day, when Arsenio Asistido met Francisco Centeno, the latter expressed their original threat, (pp. 6-7, tsa, October 17, 1972). The same threat was reiterated once more by Francisco Centeno on November 23, 1971. On December 1, 1971, the accused went to the house of Inocencia Basa, fully armed. There is no showing that they went to this place for any reason other than to kill Nestor Asistido. The continuity of these events, buttressed further by the treachery employed to kill the victim, show the persistence of the accused to carry out the criminal intent they had originally hatched. (People v. Tapitan, 27 SCRA 959). Sufficient time had lapsed from November 21, 1971, when the intent of the accused to kill made itself manifest for the first time, until December 1, 1971, when the crime was committed. This had given the accused sufficient opportunity to reflect and deliberate upon the consequences of their act. All these characterize the aggravating circumstance of evident premeditation." (Appellee's Brief, pp. 18-20)

Treachery being present, the aggravating circumstance of abuse of superior strength appreciated by the trial Court can no longer be considered as a separate generic aggravating circumstance since it must be deemed absorbed in treachery.

As to the mitigating circumstance of voluntary surrender, the same is not home out by the evidence. By their own admission, appellants were arrested by the authorities (t.s.n., June 19, 1973, p. 75, November 5, 1973, p. 54). They never made any attempt to give themselves up prior to their arrest nor to save the authorities from any trouble in their search and capture. On the contrary, FRANCISCO and JUAN even tried to evade the processes issued to them to secure their presence during the preliminary investigation conducted by the Special Counsel (Exhibits A, A-1, 1-A). With respect to MANUEL, who was studying in Manila, the records show that the prosecution had already presented its evidence against FRANCISCO and JUAN before MANUEL was allegedly informed by his lawyer of this criminal charge against him such that prosecution witnesses had to be recalled to the stand to testify on his participation in the commission of the offense.[1] Therefore, the crime committed was that of murder and in the absence of any mitigating aggravating circumstance the penalty which should be imposed is reclusion perpetua.

"Accordingly, this Court finds accused-appellants Francisco Centeno, Juan Centeno alias Totok and Manuel Centeno alias Iyao guilty beyond reasonable doubt of the crime of murder and hereby sentences each to suffer the penalty of reclusion perpetua, to jointly and severally indemnify the heirs of the victim Nestor Asistido the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. In view of the penalty thus imposed and pursuant to the guidelines laid down in People v. Daniel, G.R. No. L-40330,

November 20, 1978, let this case be certified to the Supreme Court for review."

SO ORDERED.

Sison and Alfonso, Jr., JJ., concur.

[1] Lifted from the original decision dated July 14, 1978 penned by then Court of Appeals Associate Justice Ameurfina Melencio-Herrera.

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