

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PRUDENCIO DOMINGUEZ AND RODOLFO MACALISANG,
ACCUSED-APPELLANTS.**

G.R. No. 100199. January 18, 1993

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PER CURIAM:

Prudencio Dominguez and Rodolfo Macalisang, along with Roger C. Dominguez, were charged with the murders of Regional Trial Court Judge Purita A. Boligor and of her brother Luther Avanceña. Prudencio and Rodolfo were found guilty and sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of Judge Purita A. Boligor in the amount of P30,000.00 and the heirs of Luther Avanceña of another P30,000.00, jointly and severally. At the same time, the trial court dismissed the charges against Roger C. Dominguez for lack of sufficient evidence.

In their brief, accused-appellants assigned the following as errors allegedly committed by the trial court:

"First error -- the trial court gravely erred in giving credence to the prosecution's evidence, particularly the testimony of Oscar Cagod, and basing its judgment of conviction thereon.

Second error -- the trial court gravely erred in refusing to give credence to the evidence of the accused-appellants.

Third error -- the trial court gravely erred in not acquitting the accused-appellants and declaring them innocent of the charge against them."[1]

The facts as found by the trial court may be summarized in the following manner. Sometime after 8:00 o'clock in the evening of 6 February 1986, that is, on the eve of the "snap" presidential election held on 7 February 1986, appellant Prudencio Dominguez then Mayor of the Municipality of Sinacaban, Misamis Occidental and his brother Roger C. Dominguez went to visit their second cousin, Judge Purita A. Boligor. Judge Boligor, according to the defense, was promoting the candidacy of Mrs. Corazon C. Aquino, the opposition candidate in the presidential race. Mayor Dominguez was affiliated with the "Kilusan ng Bagong Lipunan" ("KBL") and was at that time working for the re-election of former President Marcos. Mayor Dominguez and Roger arrived at Judge Boligor's house in Sinacaban in an Integrated National Police ("INP") jeep driven by Felix Am-is, a police officer detailed as security man of Mayor Dominguez. Rodolfo Macalisang, brother-in-law of Mayor Dominguez, emerged on the left side of the jeep, spoke briefly with the Mayor, then stepped aside and stayed under the shadow of a citrus (calamansi) tree. The Mayor and his brother Roger proceeded towards Judge Boligor's house and entered that house. There they met with Judge Boligor and her brother Luther Avanceña who was then the UNIDO Chairman in Sinacaban, Misamis Occidental. About ten (10) minutes later, Rodolfo Macalisang entered Judge Boligor's house with an M-16 armalite automatic rifle and bursts of gunfire were heard. Shortly thereafter, Mayor Dominguez and Roger ran out of the house, got into the jeep which had been waiting for them and sped away. Macalisang then came out of the house and disappeared into the darkness. Judge Boligor and Luther were found inside the house, with multiple bullet wounds in vital parts of their bodies which caused their instantaneous

death.

The prosecution's case rested mainly on the testimony of Oscar Cagod who witnessed the above sequence of events from a store across the street. The defense, for its part, attacked the credibility and the testimony of Oscar Cagod on the following grounds:

First, Cagod was not a disinterested witness, having lived in the house of Judge Boligor for eighteen (18) to nineteen (19) years and having treated the Judge like his own mother;

Second, Cagod waited for four (4) months after the slaying of Judge Boligor and Luther Avanceña before he executed his sworn statement;

Third, Cagod, according to the defense, executed his sworn statement only after the police authorities had arrested him and promised him immunity from prosecution. His testimony therefore came from a polluted source and should be received only with utmost caution.

Fourth, Cagod had been convicted, when he was twelve (12) years old, of murder, a crime involving moral turpitude and accordingly his testimony deserved no credence.

Last, the defense assailed the testimony of Cagod as being incredible in itself.

We consider the above objections seriatim. We must note initially, however, that Oscar Cagod, the prosecution star witness, was slain not long after he had testified on direct examination and on cross-examination. So far as the record here is concerned, the killer or killers of witness Oscar Cagod remain unknown. Another prosecution witness, Diosdado Avanceña brother of the two (2) deceased victims, mysteriously disappeared after his direct examination. He could not be recalled to testify on cross-examination and his testimony was stricken from the records by the trial judge upon motion of the defense.

We find the first contention of appellants to be without merit. In a long line of cases, the Court has consistently held that the relationship of a witness to a party to a case does not, by itself, impair the credibility of the witness.[2] In the instant case, assuming that Cagod had indeed treated the deceased victim Judge Boligor like his own mother, that circumstance would only add to the weight of his testimony, since he would then be most interested in seeing the real killers brought to justice rather than in falsely implicating innocent persons. In *People v. Uy, et al.*, [3] the Court explained:

"x x mere relationship to the victim need not automatically tarnish the testimony of the witness. When there is no showing of improper motive on the part of the witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. On the contrary, their natural interest in securing the conviction of the guilty would prevent them from implicating persons other than the culprits, for otherwise, the latter would thereby gain immunity." [4] (Underscoring supplied)

In its second argument, the defense assails witness Cagod's credibility since he waited four (4) months after the slaying before executing his sworn statement. The sworn statement was allegedly made by Cagod after he had been arrested by Philippine Constabulary-Criminal Investigation Service ("PC-CIS") operatives and placed under detention. The defense complains that prior thereto, Cagod had not informed anyone about what he saw on the night of the slaying. It is settled, however, that delay on the part of witnesses in informing the authorities of what they know about the occurrence of a crime will not, by itself, affect their credibility, where such delay is satisfactorily explained.[5] We consider that the delay of four (4) months before prosecution witness Cagod executed his sworn statement should not affect the credibility of his testimony. Cagod had understandable reasons for hesitating to report to the authorities what he had seen. The accused in the instant case were clearly powerful

and influential persons in Sinacaban. Prudencio Dominguez, as already noted, was Mayor of Sinacaban and Roger Dominguez was his brother. As Mayor, appellant Dominguez had armed men as personal bodyguards and otherwise at his command. Appellant Rodolfo V. Macalisang was a PC Sergeant and Civilian Home Defense Force ("CHDF") Supervisor. An alleged co-conspirator, Isidro Macalisang, was a Lieutenant of the Armed Forces of the Philippines ("AFP"), while Josue Vente also an alleged co-conspirator, was a Police Sergeant and Police Station Commander of Sinacaban. Cagod had been warned by Alfeo Lucing, a CHDF member and a follower of Mayor Dominguez, and by appellant Macalisang himself, not to talk about the shooting, upon pain of dire consequences.[6] In *People v. Bustarde, et al.*, [7] the Court stated that the

"failure of the witness to go to the police immediately after the killing because she feared for her life, is a factor which is entirely human and quite understandable, and should not detract from her testimonial credit." [8]

In *People v. Marmita, Jr.*, [9] the Court likewise sustained the credibility of the witness after the latter's delay in identifying the accused was explained to have been due to fear of reprisal from the accused who was known to be a powerful and influential person. In *People v. Baring*, [10] a witness explained that her silence immediately after the slaying of her father was due to the fact that previous killings in the barrio had not been given proper attention by the police authorities, and this Court ruled that her silence was understandable and did not affect her credibility. The natural reluctance of most people to get involved in a criminal case, and to volunteer information about a criminal case, is a matter of judicial notice.[11] We therefore, agree with the trial judge when she rejected this argument of the defense, saying:

"Cagod's credibility also comes under fire for the reason that it took him four months before he executed a statement revealing what he had witnessed on February 6, 1986. As the defense would have it, he should have gone straight-away to Boligor's son or to any member of the Boligor household with his story. The defense points out that instead of doing so, Cagod went away to the ABC Hall to sleep until morning. This Court, however, notes that it was not so, for Cagod related that he rushed away to inform a cousin of Boligor, Mrs. Candelaria Gamotin, and that before he reached her house, Alfeo Lucing, one of the Mayor's men, followed him warning him not to tell other stories except that Boligor was dead.

That defense makes much of Cagod's conduct after the shooting of Boligor. Why did he remain silent when everyone wanted to know who the malefactors were? Why indeed? The defense forgets that the malefactors were not just any Tom, Dick and Harry -- they were, perhaps, the most powerful and influential men in the Municipality of Sinacaban. Alfeo Lucing, who had shadowed Cagod, had already given stern warning. Cagod's fears later took concrete shape when Macalisang (whose name, oddly enough, translates as 'terrifying') threatened him at gun point with dire consequences if he as much as breathe a word of the incident. Was Cagod's conduct after the shooting natural, conforming to normal behavior? This Court believes that his conduct was as normal as that of Mrs. Gamotin who, upon learning of Boligor's death, is not shown to have roused up family, relatives and neighbors to succor the Boligors -- the record only shows that 'they cried.' Cagod's conduct was as normal as that of Dionisio Burlat, Engracia Avanceña and Diosdado Avanceña who fled the Boligor house and remained holed up in a neighbor's house till the following morning. Cagod's conduct was as normal as that of neighbors who refused to succor the Boligor household." [12]

As to the third contention of the defense that Cagod's testimony came from a "polluted source" because the sworn statement had been given after his arrest and after he had been promised immunity from prosecution, the Court notes that there was no showing that the prosecuting authorities would have included him in the criminal information. In other words, the record is bereft of any indication that Cagod was a participant or co-conspirator in the carrying out of the crimes. Neither was there any showing that Cagod had been promised or granted immunity from prosecution in consideration of his executing the affidavit in question. Even if he had been

promised or granted immunity, that in itself is no indication of lack of truth or credibility in his testimony, considering that a person already charged in court may be discharged from the information and utilized as a state witness under certain conditions.[13] The defense also assails a supplemental affidavit executed by witness Cagod on 31 July 1986 as baseless and untrue and designed merely to reinforce the prosecution's theory. Cagod's first affidavit lacked certain details which Cagod later supplied in a supplemental affidavit after more clarificatory questions had been asked of him. In *People v. Salvilla*, [14] the Court held that the failure of a prosecution witness to mention the taking, an essential element of the crime of robbery, in her sworn statement did not militate against her credibility, considering that "an affidavit is almost always incomplete and inaccurate and does not disclose the complete facts for want of inquiries and suggestions."

In its fourth contention, the defense stresses that Oscar Cagod had been convicted of murder when he was twelve (12) years old and insists that, therefore, Cagod's testimony "deserves no credence and must be considered with extreme caution.[15] Initially, we note that Rule 130 of the Revised Rules of Court provides as follows:

"Sec. 20. Witnesses; their qualifications. -- Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

x x x [C]onviction of a crime unless otherwise provided by law, shall not be a ground for disqualification."
(Underscoring supplied)

In *Cordial v. People*, [16] this Court echoed the above cited provision of law stating that

"even convicted criminals are not excluded from testifying in court so long as, having organs of sense, they 'can perceive and perceiving can make known their perceptions to others.'"[17]

The fact of prior criminal conviction alone does not suffice to discredit a witness; the testimony of such a witness must be assayed and scrutinized in exactly the same way the testimony of other witnesses must be examined for its relevance and credibility. None of the cases cited by the appellants militates against this proposition.[18]

Oscar Cagod did not dispute his prior conviction for murder when he was only twelve (12) years old. Because of his minority, instead of being imprisoned, he was placed under the custody of Judge Boligor and her late husband, who was then Chief of Police of Sinacaban. Cagod lived with them for eighteen (18) or nineteen (19) years until Judge Boligor was slain. During that period of time, Cagod had no record of any bad or socially destructive behavior. He had in fact been of much help around the Boligors' house and had in fact worked for appellant Mayor Dominguez himself as a motorcar driver.[19] His testimony was not in favor of an accused "comrade," [20] and Oscar Cagod, moreover, was obviously not a hardened criminal.[21] Taking account of these circumstances, the Court considers that Oscar Cagod's credibility was not put in doubt by reason alone of conviction of a crime when he was twelve (12) years old.

In their final contention concerning the credibility of Oscar Cagod as a witness, the defense insists that the testimony of Cagod was incredible in itself.

Cagod had testified that he was in the store across the street from Judge Boligor's house on the night of the killing, because he had been about to get sample ballots of candidate Corazon C. Aquino from Judge Boligor; but when he arrived at the latter's house, Judge Boligor told him to stay across the street considering that Mayor Dominguez was coming to her house. And so Cagod was there across the street from the Boligors' home and had an unobstructed view of the events as they unfolded outside the Boligor house which events culminated in gunfire inside the house and the Mayor and Roger speeding away from the Boligor house on the jeep which had waited for them and appellant Macalisang coming out of Judge Boligor's house and fading away into the darkness while she and her brother Luther lay dead in her house.

In addition, Oscar Cagod had testified that on the afternoon of that same day, while he was at the market place in Sinacaban, Roger Dominguez (the Mayor's brother), Josue Vente (the Police Station Commander of Sinacaban), Lt. Isidro Macalisang of AFP and the Mayor were on the terrace of the Mayor's house fronting the Sinacaban Public Market. Josue Vente summoned him (Cagod), and so he went up the stairs to the terrace. As he stepped on the terrace, he heard Mayor Dominguez saying angrily: "I gave money to Purita [A. Boligor] and Luther [Avanceña] so they will not work during election, they are hard-headed, better that these persons are taken care of." Cagod further testified that Josue Vente ordered him to buy a pack of cigarettes and that when he returned to the terrace with the cigarettes, he heard Mayor Dominguez say: "This is our agreement." Later, Mayor Dominguez ordered his men to go to Barangay Sinonok to continue their election campaign efforts and they left in four (4) motorcycles. Cagod stated that he heard the Mayor telling Roger over an hand-held radio to follow Judge Purita Boligor and to apprise him (the Mayor) of her whereabouts periodically.[22]

The defense expended a great deal of effort assailing the above testimony of Oscar Cagod concerning the goings-on on the terrace of the Mayor's house, the basic contention being that if the accused-appellants were indeed to plan a conspiracy, they would not have been so "stupid" as to hatch it in broad day light within public view and within hearing distance of strangers, when they could have very well gone inside the Mayor's house. It does not seem necessary for the Court to consider in detail the arguments of the defense in this connection. For the trial court did not interpret the above testimony of Oscar Cagod as showing conspiracy being hatched by the appellants and their associates while on the Mayor's terrace. For the trial court ruled that:

"x x x The Mayor at that precise time [need] not have been plotting a dastardly deed. He could have been merely expressing his disgust or anger with Boligor and Luther x x x nevertheless, x x x this Court is convinced that he (Cagod) was telling the facts as he had actually heard and seen them. He had no motive to testify falsely." [23]

The evidence of the defense included ballistics reports (Exhibits "16" and "16-A") concerning twenty-seven (27) empty cartridges retrieved from the scene of the crime. These twenty-seven (27) empty cartridges or shells were, according to this ballistics report, examined and compared with twenty-four (24) test cartridges submitted by the accused appellant and said to have been fired from eight (8) M-16 armalite rifles in the armory of the Sinacaban Police Force, including an M-16 rifle with Serial No. 162705 which allegedly was taken by appellant Macalisang from Wilfredo Daluz, a police officer and prosecution witness. In those reports, PC T/Sgt. Rodolfo C. Burgos, a ballistic technician who had conducted the examination, concluded that the twenty-seven (27) empty shells retrieved from the scene of the crime had not been fired from any of the weapons from which the twenty-four (24) test cartridges had been fired.[24] According to the letter of PC Capt. Bonfilio Dacoco, Commanding Officer of the 466th Philippine Constabulary Company, Ozamis City, dated 21 February 1986, which Sgt. Burgos read into the record during the trial, the twenty-one (21) test shells had been fired from eight (8) long firearms of the Sinacaban Police Force.[25] The trial court, however, did not give much weight to this ballistic report saying:

"x x x Cagod's testimony that he had seen Macalisang enter and exit from the house of the Boligor's moments before and after the shooting remains unshaken by Burgos's testimony, especially when taken with the defense story." [26]

We agree with the trial court's appraisal that the testimony of Ballistic Technician Burgos did not have the effect of overturning the testimony of Oscar Cagod. We note that the defense had not shown that appellant Macalisang had no access to any M-16 rifle other than the eight (8) rifles of the Sinacaban Police Force from which the twenty-one (21) test bullets were said to have been fired. The negative allegation that Macalisang did not use any of the eight (8) M-16 rifles, particularly the rifle with Serial No. 162705, does not logically lead to the conclusion that Macalisang could not have used any other weapon nor does it prove that he was not the assailant. All that the

testimony of Sgt. Burgos tended to show was that the murder weapon was not among the eight (8) rifles of the Sinacaban Police Force from which the test shells were said to have been fired.

In addition to denying and assailing the testimony of the now deceased witness Oscar Cagod, the appellants' raised the defense of alibi. In a long line of cases, this Court has held that for the defense of alibi to prosper, it is not enough to show that the accused was somewhere else when the crime was committed, but that the accused must further demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of the commission thereof.[27] In the instant case, the Mayor's argument was that when the shooting occurred, he was already outside the house of Judge Boligor. Clearly, therefore, it was not impossible for him to have been at the scene of the crime. In fact, he was only a few steps away, according to his own testimony, when Judge Boligor and her brother were felled by automatic fire. Appellant Rodolfo Macalisang, the latter's Chief Security Officer, and as already noted, Police Supervisor of the CHDF of Sinacaban, said that he had slept the whole night of 6 February 1986 (the eve of the "snap" presidential election) and that he knew nothing of the murder until the next morning.[28] This alibi was obviously a very weak one, considering that Macalisang's house was not only in the same municipality but was indeed only "about 120 meters" away from Judge Boligor's house.[29]

The applicable doctrine is that the defense of "alibi is worthless in the face of positive identification by the prosecution witnesses." [30] In *People v. Plandez*, [31] the Court stressed that:

"x x x [A]libi -- the much abused sanctuary of felons and which is considered as an argument with a bad reputation, cannot prevail over positive testimonies of the prosecution witnesses. It is, to say the least, the weakest defense and must be taken with caution being easily fabricated." (Underscoring supplied)

In the instant case, Cagod did not, of course, see appellant Macalisang actually shooting Judge Boligor and her brother inside her house. But Cagod did see Macalisang enter the Boligor house with a firearm, hear automatic gunfire and later saw him leave the same house with a firearm and melt away in the night. We hold that in the circumstances of this case, the testimony of prosecution witness Cagod was sufficient to produce moral certainty of guilt on the part of both appellants. Clearly, here as in most criminal cases, the issues before this Court relate to the credibility of the witnesses, particularly of Oscar Cagod and of accused-appellants. It is true that the trial judge who wrote the decision, Judge Ma. Nimfa Penaco-Sitaca, was not presiding over the trial court when Oscar Cagod rendered his testimony on direct and on cross-examination. At the same time, it was before Judge Penaco-Sitaca that the prosecution presented additional witnesses and before whom the defense presented all its evidence, both testimonial and documentary and rested its case. Thus, Judge Penaco-Sitaca had observed the deportment of the defense witnesses and their manner of testifying during the trial. The doctrine is firmly settled that the trial court's conclusion on issues of credibility is accorded with highest respect by appellate courts.[32] We have examined carefully the record of this case before the trial court and the briefs of both the appellants and the People and we have found nothing to justify overturning the conclusions reached by Judge Penaco-Sitaca.

In its decision, the trial court found the presence of treachery as well as the generic aggravating circumstances of dwelling and abuse of superior strength. The trial court said:

"x x x [The mayor] had the motive. He called the shots. He occupied a position of ascendancy over his brother-in-law and personal security officer, Macalisang, who, on his own, would have no motive nor criminal design against the victims. x x x Macalisang's armed entry into the house, immediately followed by the burst of gunfire, x x x constituted a sudden, unexpected, treacherous attack of the victims who could not have had the slightest opportunity to defend themselves. Just as treacherous was the Mayor's entry into the house under cover of civility and mirthful conversation."

It is very difficult to disagree with this finding of the trial court. We agree, further, that the aggravating

circumstance of dwelling was present, but believe that the circumstance of abuse of superior strength is properly deemed absorbed by the qualifying circumstance of treachery. This modification, however, has no effect upon the penalty properly imposable upon accused-appellants.

WHEREFORE, for all the foregoing, the decision of the trial court dated 10 May 1991 is hereby AFFIRMED, except that the element of abuse of superior strength is properly disregarded, and except that the indemnity imposable is hereby, in accord with current jurisprudence, RAISED to P50,000.00 for the killing of Judge Purita A. Boligor and another P50,000.00 for the slaying of Luther Avanceña. Costs against appellants.
SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, Nocon, and Campos, Jr., JJ., concur.

[1] Appellants' Brief, pp. 14-15; Rollo, p. 94.

[2] E.g., *People v. Galendez, et al.*, G.R. No. 56465-66, 26 June 1992; *People v. Bocatcat, Sr., et al.*, 188 SCRA 186 (1990); *People v. Sabado*, 168 SCRA 688 (1988); *People v. Aguinaldo*, 165 SCRA 687 (1988).

[3] 206 SCRA 270 (1992).

[4] 206 SCRA at 280.

[5] *People v. Pugal, et al.*, G.R. No. 90637, 29 October 1992; *People v. Valdez*, 159 SCRA 152 (1988); *People v. Mandapat*, 196 SCRA 157 (1991).

[6] TSN, 10 October 1986, pp. 27 and 29.

[7] 182 SCRA 554 (1990).

[8] 182 SCRA at 558.

[9] 180 SCRA 723 (1989).

[10] 187 SCRA 629 (1990).

[11] *People v. Aguinaldo*, 165 SCRA 686 (1988); *People v. Coronado*, 145 SCRA 257 (1986); *People v. Rosario*, 134 SCRA 496 (1985); *People v. Pacabes*, 137 SCRA 158 (1985).

[12] Appellee's Brief, pp. 20-22; Trial Court Decision, pp. 12-13.

[13] Section 9, Rule 119 of the Revised Rules of Court.

[14] 184 SCRA 678 (1990).

[15] Appellants' Brief, p. 19.

[16] 166 SCRA 17 (1988).

[17] 166 SCRA at 26.

[18] E.g., the testimony of one Narciso Villegas in *People v. Carillo* (85 Phil. 632 [1950]) was found inherently incredible by this Court because of the robbery conviction of said witness coupled with other factors such as the improbability of his statement that while he was imprisoned in an isolation cell he was entrusted with the prison

keys, and the physical examination he underwent. In *People v. Aquino* (G.R. No. L-1657, promulgated May 23, 1951), the witnesses were ex-convicts, detainees or indictees for treason. This Court found their testimonies valueless with respect to statements made in favor of their "comrade." In *People v. Bayubay* (3 SCRA 24 [1961]), the witness whose testimony this Court found "unworthy of belief" was a convict who had "practically nothing to lose but plenty to gain by allowing himself to be an instrument of other criminals in order that the latter may save themselves."

[19] TSN, 12 November 1986, p. 20.

[20] Cf. *People v. Aquino*, *supra*.

[21] Cf. *People v. Bayubay*, *supra*.

[22] TSN, 10 October 1986, pp. 12-13.

[23] Rollo, pp. 38-39.

[24] Trial Court Decision, Rollo, p. 32.

[25] TSN, 29 October 1990, pp. 12-13.

[26] *Id.*, Rollo, p. 40.

[27] E.g. *People v. Sabornido*, G.R. No. 102141, 18 September 1992; *People v. Talla*, 181 SCRA 133 (1990); *People v. Ornoza*, 151 SCRA 495 (1987); *People v. Coronado*, 145 SCRA 255 (1986); *People v. Cruz*, 142 SCRA 576 (1986).

[28] TSN, 19 December 1990, pp. 39-40

[29] TSN, 20 December 1990, p. 20.

[30] *People v. Picardal*, 151 SCRA 170 (1987).

[31] 132 SCRA 70 (1984).

[32] *People v. Veloso*, 148 SCRA 60 (1987); *People v. Aboga*, 147 SCRA 404 (1987); *People v. Tan, Jr.*, 145 SCRA 614 (1986); *People v. Bautista*, 142 SCRA 649 (1986).

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