

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CORDENCIO CHATTO ALIAS 'DENDEN'; SATURNINO
DAGAYANON, AND SIX (6) OTHER JOHN DOES, ACCUSED,
CORDENCIO CHATTO, ACCUSED-APPELLANT.**

G.R. No. 102704. March 10, 1993

Ponente: NOCON, J.

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NOCON, J.:

Accused-appellant Cordencio Chatto, together with Saturnino Dagayanon and six (6) John Does, were charged with Murder before Branch 1 of the Regional Trial Court in Tagum, Davao, under an information which reads:

"That on or about April 30, 1985, in the Municipality of New Corella, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, accused Cordencio Chatto and Saturnino Dagayanon, conspiring, confederating and mutually helping with six (6) other John Does, who are at large, with treachery and evident premeditation, with intent to kill, armed with hunting knives and a gun, did then and there willfully, unlawfully and feloniously attack, assault, hogtie, stab and shoot one Arnulfo Hinay, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim." [1]

Upon arraignment, appellant and his co-accused Saturnino Dagayanon pleaded not guilty to the crime charged against them.

However, after trial, the lower court found both of them guilty of the crime charged in a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, the guilt of the accused pursuant to Article 248 of the Revised Penal Code of the crime of Murder, having proven beyond reasonable doubt, hereby sentenced CORDENCIO CHATTO alias 'Denden', and SATURNINO DAGAYANON to Reclusion Perpetua to be served at the National Penitentiary at Muntinlupa with the accessory penalties of the law, and to indemnify P30,000.000 jointly and severally, the heirs of the deceased Arnulfo Hinay." [2]

Only the accused-appellant Cordencio Chatto appealed.

The facts of the case as synthesized by the lower court are as follows:

"Prosecution presented Servillena Hinay who testified that she is the spouse of the deceased Arnulfo Hinay. On 30 April 1985 around 1:30 P.M. while preparing food for the fiesta the following day, eight (8) armed men entered her house, asked for her husband. She told them he is in the comfort room. She was ordered to call him, which she complied. Shortly, Arnulfo came and was ordered by the armed men to go with them. Chatto asked her for a rope and she gave it to them. Upon receiving the rope, he pushed her husband to go with them, and his companions followed. She became suspicious of their intention, so she went with them. The armed men prevented her, but she insisted until they reached at their coffee plantation around 100 meters from her house. Upon reaching the place they ordered her husband to kneel and his hands were tied at the back by

Saturnino Dagayanon. Seeing her husband in such situation she embraced him and cried, inquiring from them what is his fault. No answer. They shot her husband at the head, and while he fell to the ground and others stabbed him with their bayonets. After this execution the eight (8) assailants left from the scene of the crime. Her husband died (Exh. A, A-1) of shock, hemorrhage, and gunshot wound at the head.

"During Servillana's testimonies on direct examination, there were eight (8) accused in different cases scheduled for the day, who were sitting on a bench around three (3) meters from the witness stand, placed at the right side, awaiting for their turn. They sat beside each other, some were bent a little forward while others leaned backward.

"When the prosecutor asked her to identify the accused, Cordencio Chatto, she counted from the rightmost person who was sitting and answered that, "No. 6". Prosecutor Aventuredo immediately told her to tap the shoulder of the accused - and she did touch the shoulder of Chatto. She also identified in Court co-accused Saturnino Dagayanon.

"This met the vehement objection from the defense counsel, because the person whom, she identified as the No. 6 from among the accused sitting, when asked for his name, answered Leo Paican, who is the accused in another criminal case.

"Defense pointed out that Servillana Hinay executed her affidavit only on 26 February 1990, when the incident occurred on 30 April 1985.

"The evidence adduced shows that she reported the crime committed to New Corella, Davao police station which was blottered and also about the death of her husband. Her Barangay, San Jose, is about five (5) kilometers away from the poblacion of New Corella. It appears and explains that sometime on 26 February 1990 she was called by the police authorities, and when she was at the municipal jail, she saw accused 'Denden' (Chatto), the one who shot her husband. She executed her affidavit - Exh. I (Dagayanon) at the police station.

"She also positively identified Dagayanon as among the eight (8) assailants, and he was the one who tied her husband. This she told the police and that even before 30 April 1985, she knew Dagayanon because their barrios are neighbors."

After the prosecution rested its case, the defense filed a demurrer to evidence[3] anchored on lack of proper identity of the accused-appellant, which was, however, denied.[4]

Instead of going to trial, the counsel for the defense moved to submit the case for decision and waived their presentation of evidence. As a result, both accused were convicted of the offense charged.

Accused-appellant assails the decision of the lower court and assigned as sole error the appreciation of the testimony of the wife of the victim. Servillana Hinay as credible. Appellant alleges that Servillana Hinay did not identify him with certainty during the trial and hence, her testimony is insufficient to convict. Not only is there a flaw in appellants' identification but Servillana's attitude of smiling or laughing while testifying affected her credibility.

We do not agree.

Thus, a review of Servillana Hinay's testimony shows otherwise.

"Q.

Who is that Denden you are referring to?

A.

Denden Chatto, sir.

Q.

If he is in court can you point to him?

A.

The man wearing a green T-shirt. (Witness pointing to a person who answered that his name is Cordencio Chatto).

COURT:

(To the witness)

Let's see. There are number of persons sitting there.

Q.

Starting from your left what number is he?

A.

The sixth man who is sitting on the bench. (Witness pointing to the sixth man).

A.

Alright, just to be sure you come near.

(At this juncture, the witness is stepping down from the witness stand and went near the bench where the detained persons were sitting)

ATTY. EDIG:

She already pointed the sixth man.

We wish to make of record that the witness pointed to and identified as Denden the person, number six from the left.

PROSECUTION:

There is already an answer, Your Honor.

ATTY. MARANIAN:

We would like to add that manifestation before she answered six she counted one by one beginning from the left side to the right.

PROSECUTOR:

It is clear, Your Honor please, that there is a fellow who could possibly not be seen by the witness because the one at the center purposely evaded and wanted to hide at the back, Your Honor.

ATTY. EDIG:

No, the witness counted.

ATTY. MARANIAN:

In fact, Your Honor, the witness stood up in order to see the person sitting on the bench.

COURT:

Q.

So, who is the number six there?

A.

Seven.

(To the witness)

I want you to be very clear and specific. This involves the liberty of a person and don't be laughing here.

(The sixth person answered that his name is Leo Paican).

Q.

Alright, the one that was tapped by the shoulder, by the witness?

A.

(Witness pointing to a person who when asked answered that his name is Cordencio Chatto)."[5]

Servillana Hinay was able to make a first and accurate identification of the accused-appellant wherein she mentioned of a man wearing a green T-shirt. The man when asked of his name replied. Cordencio Chatto.

The Court made a follow-up on her identification and this was where the confusion began. The witness explained her error in her testimony, thus -

"Q.

In fact when you were asked by the Honorable Presiding Judge to pinpoint the accused by counting from the left of the persons seated on the bench reserved for the accused you pointed to as Denden the person seated on the sixth person from the left, is that right?

A.

Because I have difficulty in counting, sir."[6]

Accused-appellant further contends that his identification by Servillana before the filing of the complaint was improper and irregular or at most as the records will show there was no identification at all. If ever there was, it was at the instance and upon insinuation by the police. The foregoing contention according to accused-appellant can be gleaned from Servillana's testimony. Thus -

"Q.

Before April 30, 1985 you have not known nor have seen accused Cordencio Chatto, is that correct?

A.

Yes.

Q.

You have not known any person by the name of Denden?

A.

He was already in the municipal hall where I came to know him.

Q.

That was his . . . you came to know in the municipal hall about the person whose nickname is Denden when you executed this affidavit, that was on February 26, 1990, is that correct?

A.

Yes.

Q.

In fact you were called by the police?

A.

Yes.

Q.

And the police asked you to sign a certain affidavit?

A.

Yes.

Q.

The nickname Denden and the name Cordencio Chatto was supplied by the police?

A.

Yes, I know him having the name of Denden.

Q.

My question is, you have known him Denden it was an information given to you by the police, is that correct?

A.

Yes.

Q.

When you went to the police station you were asked immediately to file a case against a certain person who was then detained already in the municipal jail, is that right?

A.

Yes, I was told.

Q.

And it was at the instance of the police that you did file and your affidavit was prepared by them, is that right?

A.

Yes.[7]

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Q.

Now, in my previous question you answered that the name Denden and Cordencio Chatto was for the first time mentioned to you on February 26, 1990 when you went to the police station and asked to execute an affidavit, do you remember that?

A.

I know him because I saw him in the municipal hall.

Q.

That was February of 1990 that you saw the accused in the municipal jail?

A.

Yes.

Q.

That was the first time that you saw the accused, is that correct?

A.

Yes.[8]

We do not agree with accused-appellant's contention that the above testimony of Servillana taken out of context with the rest of her testimony shows improper or irregular identification of said accused.

The above testimony of Servillana Hinay was given on cross-examination. All the factual circumstances cited in the exchange were spewed out by the cross-examiner. The witness who testified, the victim's wife, is just a simple barrio woman, probably with limited education. Thus, her answers during cross-examination was confined to her monosyllabic "yes."

The lower court thus said:

"Nevertheless, despite the rigid cross-examinations, and inspite of some minor flaws in some details of her answer, the overall analysis of her testimonies, points firmly that among the eight persons who entered her house on 30 April 1985, brought her husband out, tied, shot, and stabbed him were Cordencio Chatto and Saturnino Dagayanon.

"While there maybe some minor flaws in her testimonies, it does not render it insufficient. The most candid witness may make mistake sometimes but such honest lapses do not necessarily impair their credibility. The testimony of a witness must be considered and calibrated in its entirety and not by truncated or isolated messages."[9] (People vs. Natan, G.R. No. 86640, 25 Jan. 1991)

What Servillana Hinay really wanted to say on cross-examination is that she saw accused-appellant for the second time during the confrontation at the police station. While she first saw the appellant when he and his companions entered their house, took her husband, tied his hands, shot and bayoneted him, she came to know his name only at the police station. There is nothing in her testimony that would make Us conclude that what she meant was, she saw the accused-appellant for the first time at the police station.

Well settled is the rule that appellate courts will generally not disturb the factual findings of the trial court since the latter are in a better position to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying, unless it is found that the trial courts have overlooked certain facts of substance and value that, if considered, might affect the result,[10] which We do not find in the case at

bar.

Accused-appellant further contends that the affidavit of Servillana Hinay was executed on February 26, 1990 while the incident happened April 30, 1985, hence, lacks credibility and reliability.

As aptly found by the lower court:

"The span of time from 1985 to February 26, 1990 when Servillana executed her affidavit narrating about the heinous crime could be due to her fear, that the eight armed persons could just be marauding her barangay and the vicinities.

"With their firearms and the eight persons in the group who committed the crime could not be taken lightly especially in the rural areas where there is no protection of their safety liquidation squad, retribution or rub-out is not farfetched. The present situation becomes of public knowledge, that life now is easily snap out by and through the presence of armed men marauding in the countryside and even in towns and urban areas.

"This abnormal situation, and the propensity of armed men crisscrossing the barangays creates fear and even nervous wreck to some are present in the minds of the people.

"Servillana's ordeal, an eyewitness to the execution of her husband in utter helplessness and despair in the prevailing circumstances, that affects the peace and order condition of the community logically explains the delay in executing her sworn statement.

"The delay does not prove negatively, that the accused did not commit the crime, instead it bolstered her redress for grievances against the assailants, now that the police came to her aid giving her the opportunity to identify them in jail." [11]

WHEREFORE, there being no reversible error in the appealed decision, the same is hereby **AFFIRMED** save the modification that the indemnity to be paid to the heirs of the deceased be increased to P50,000.00. [12]
SO ORDERED.

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

[1] Records, p. 1.

[2] Records, pp. 57-58.

[3] Records, p. 43.

[4] Records, p. 46.

[5] T.S.N., December 5, 1990, pp. 12-15.

[6] Id., at pp. 23-24.

[7] Id., at pp. 20-21.

[8] Id., at pp. 25-26.

[9] Records, p. 56.

[10] *People vs. Tismo*, 204 SCRA 535 (1991).

[11] Rollo, pp. 30-31.

[12] *People vs. Sison*, 189 SCRA 643.

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