

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR HERBIETO, MAXIMO PACQUIAO, MASSER MARAÑO, JOHN DOE, PETER DOE, WILLIAM DOE, ACCUSED, CESAR HERBIETO, MAXIMO PACQUIAO AND...

G.R. No. 103611. March 13, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Cebu, Branch 28, Mandaue City, finding appellants Cesar Herbieto, Masser Maraño and Maximo Pacquiao guilty beyond reasonable doubt for the murder of Leticio Herbieto, and for two counts of attempted murder on Timoteo Noya and Corsino Durano. The dispositive portion of the decision reads:

"WHEREFORE, foregoing premises considered, Joint Judgment is hereby rendered, to wit:

1) In Criminal Case No. DU-1281 -

Finding the herein accused CESAR HERBIETO, MASSER MARAÑO AND MAXIMO PACQUIAO guilty beyond reasonable doubt for (sic) the crime of Murder, the said accused are hereby sentenced each to undergo the indeterminate penalty by (sic) imprisonment of TWELVE (12) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of reclusion temporal as minimum to reclusion perpetua as maximum with the accessories of the law, to indemnify jointly and severally the legal heirs of the deceased Leticio Herbieto the amount of P30,000.00 without subsidiary imprisonment in case of insolvency and to pay their proportionate share of the cost.

2) In Criminal Case No. DU-1282 -

Finding the herein accused CESAR HERBIETO, MASSER MARAÑO and MAXIMO PACQUIAO guilty beyond reasonable doubt for (sic) the crime of Attempted Murder, the said accused are hereby sentenced each to undergo the indeterminate penalty by (sic) imprisonment of ONE (1) YEAR, SEVEN (7) MONTHS and ELEVEN (11) DAYS of prision correccional as minimum to SIX (6) YEARS, ONE (1) MONTH and ELEVEN (11) DAYS of prision mayor as maximum and to pay their proportionate share of the cost.

3) In Criminal Case No. DU-1283 -

Finding the herein accused CESAR HERBIETO, MASSER MARAÑO and MAXIMO PACQUIAO guilty beyond reasonable doubt for (sic) the crime of Attempted Murder, the said accused are hereby sentenced each to undergo the indeterminate penalty by (sic) imprisonment of ONE (1) YEAR, SEVEN (7) MONTHS and ELEVEN (11) DAYS of prision correccional as minimum to SIX (6) YEARS, ONE (1) MONTH and ELEVEN (11) DAYS of prision mayor as maximum and to pay their proportionate share of the cost.

All accused, being detention prisoners, are credited in the service of their respective sentences full time during which they have undergone preventive imprisonment.

SO ORDERED."[2]

The factual antecedents as found by the trial court, consistent with the prosecution's story, are as follows:

"The spouses Leticio Herbieto and Lilia Noya are residents of Cabangahan, Consolacion, Cebu. On March 1, 1988, Timoteo Noya and Corsino Durano, who have arrived at the place about two weeks ago, slept in the house of the couple. They slept at 9:00 o'clock in the evening, but around 3:00 o'clock in the early morning of March 2, 1988, they were awakened by a shout demanding that the occupants of the house to (sic) wake up and come down. They were awakened but Leticio Herbieto who (sic) assuaged them that there was nothing to be afraid of because it was just Ceasar Herbieto and his boys[.] [S]ince the deceased Leticio Herbieto recognized the person calling them to be his relative Ceasar Herbieto and his boys, x x x, he went down from the house followed by Lilia Herbieto bringing with her a kerosene Lamp who saw Ceasar Herbieto pulled Leticio out and turned him over to Maximo Pacquiao. There were six (6) armed men all in all including Ceasar Herbieto and Maximo Pacquiao. Immediately thereafter, they (Lilia Herbieto, Timoteo Noya and Corsino Durano) heard a gunshot and Timoteo Noya and Corsino Durano hid inside the room of the house. Lilia Herbieto was certain that her husband was hit because she heard him moan in pain.

There was a conversation among the armed men regarding the other male occupants of the house and then Ceasar Herbieto ordered his boys to go up the house and kill them. Timoteo Noya and Corsino Durano volunteered to come out of their hiding places because they were apprehensive [of] what might happen to the wife and children of Leticio. When the two went down, a gun was poked at the side of Corsino Durano by Maximo Pacquiao and Masser Maraño inquired from them about their guns to which Corsino Durano answered that they do not have any guns.

When Leticio, Timoteo and Corsino were already together, Leticio told them to save their lives and run away because Ceasar Herbieto and his boys are going to kill them. As Ceasar Herbieto gave the order to kill them, Timoteo and Corsino ran away in separate direction[s]. Leticio Herbieto was left behind because he can no longer run as a result of the gunshot wound on his thigh. Corsino Durano sustained a gunshot wound on his back (Exhibit "B"). He went to the direction of the bamboo grove and hid there until daylight when he proceeded to the house of the barangay captain who brought him to the hospital. Timoteo, likewise, sustained a gunshot wound on his right foot (Exhibit "C"). On the other hand, Leticio suffered two (2) gunshot wounds and four (4) stab wounds as a result of which he died (Exhibit "A").[3]

Appellants' defenses are alibi and denial. In addition to their testimonies, they presented five (5) other witnesses, namely: Asterio Tan, Alejandro Miñoza, Mayor Emmanuel Pepito, Sgt. Antonio Menchavez and Sgt. Jaime Estenzo. The gist of their separate testimonies is reproduced hereunder in seriatim.

Cesar Herbieto,[4] testified that in the evening of March 1, 1988, he single-handedly raided a gambling joint in Cabangahan, upon instructions of the Vice-Mayor. He entrusted for safekeeping the confiscated items to his brother-in-law, Alejandro Miñoza, in whose house he stayed that same night. In the early morning of March 2, 1988, he claimed that he was awakened by Alejandro because there were explosions that took place. They wanted to check where the explosions emanated, but Alejandro's wife prevented them from doing so. Before dawn, Rogelio Awit arrived and informed them that Leticio was shot. They proceeded to and arrived at the place of the incident at around 7:00 o'clock in the morning. Herbieto did not ask Lilia that same morning who were responsible for the crime. He did ask her, however, who the assailants were when he attended the wake, but she answered that she did not know them as they were wearing masks.[5] He attended the wake for three (3) successive nights.[6]

To establish his good relationship with Leticio, Herbieto asked the Vice-Mayor to donate a sack of rice to Leticio's family.[7] On one occasion, he even helped Leticio borrow P200 from the barangay treasurer which amount Leticio allegedly spent for Lilia's hospitalization.[8] Lilia falsely implicated him in the crime merely in retaliation for a scolding she previously took from him.[9]

Alejandro Miñoza, corroborated Herbieto's testimony in its material points.[10] In addition, he testified that on his way to Talamban that same morning, he even saw the bloodied Corsino at the house of his brother, Donald Miñoza, the OIC barangay captain. Alejandro asked Corsino what happened, and the latter replied that he was among those shot at on that fateful night. Alejandro then inquired who shot him, but Corsino failed to identify them because they were allegedly wearing masks.[11] At the crime scene, Alejandro also asked Lilia who killed her husband, but she gave an answer similar to Corsino's.[12]

Masser Maraño who is an active auxiliary of the CAFGU and the mayor's errand man testified that in the evening of March 1, 1988, he slept in the house of Mayor Emmanuel Pepito in Tres de Abril St., Labangon, Cebu City. He was awakened early the following morning by the arrival of the police jeep which brought the Mayor to the airport. Appellant Maraño accompanied the Mayor enroute to the airport and alighted at Banilad. He arrived in Cabangahan at around 8:00 o'clock in the morning, and only then did he know what happened to Leticio. Lilia tagged him as one of the assailants upon the prodding of Donald Miñoza. This Donald Miñoza had an axe to grind against him because firearms were confiscated by the authorities in the former's house upon his information.[13]

Asterio Tan, is the driver of the jeep which brought Mayor Pepito to the airport. He corroborated Maraño's testimony. In addition, he claimed to have proceeded to the crime scene, but denied having seen any of the appellants thereat.[14] When he arrived at Mayor Pepito's house at around 4:30 in the morning, he also denied having seen appellant Maraño there.[15]

Emmanuel Pepito, is the Mayor of Consolacion, Cebu. On March 1, 1988, Maraño was with him in the Municipal Hall and thereafter stayed and slept in his house until the next day, March 2.[16]

Maximo Pacquiao, testified that in the morning of March 2, 1988, he learned of Leticio's death from people fetching water at the artesian well.[17] After breakfast, he went to Leticio's house where he met Alejandro Miñoza and Rogelio Awit.[18] Pacquiao allegedly learned from Rogelio that Leticio's assailants were unknown. He had no misunderstanding with Leticio and similar to appellant Maraño's claim, he believed that Lilia implicated him in the crime upon the urging of Donald Miñoza, after he refused Donald's offer for him to become a barangay tanod.[19]

Sgt. Antonio Menchavez, testified that at around 9:30 in the morning of March 2, 1988, after receiving a telephone call from Alejandro Miñoza informing him of the incident, eight (8) policemen (including him) went to the crime scene[20] and found the body of Leticio prostrate on the ground. They recovered three (3) M-16 empty shells and one (1) carbine cal. 30 in the area. Menchavez asked Lilia about the identity of the killers but she replied that she did not know them "because of the darkness."[21] Thereafter, Menchavez executed a spot investigation report.[22]

Sgt. Jaime Estenzo, corroborated Menchavez's testimony that Lilia failed to identify the perpetrators of the crime.[23]

In this appeal, appellants claim that the trial court erred in: (a) convicting them despite the failure of the prosecution to prove their guilt beyond reasonable doubt; (b) not giving credence to their testimonies and the testimonies of their witnesses; (c) convicting appellant Masser Maraño despite the absence of "positive identification by prosecution witnesses that he was among the assailants;" and (d) promulgating judgment "in defiance of the Rules of Court." [24]

The first three interrelated errors shall be discussed jointly as they zero in on the issue of credibility. Appellants point out that prosecution witnesses Timoteo and Lilia lied on the identity of the culprits because both told the police that they could not identify the assailants who were wearing masks, while Corsino made conflicting statements that undermined his credibility. We are not persuaded.

The alleged prevarication of Timoteo and Lilia has been sufficiently explained. They admitted having told the

police that the assailants wore masks for fear that they would be the next targets of physical harm. Thus, Timoteo testified that he was afraid appellant Herbiesto's group might liquidate him at the hospital.[25] Lilia essentially harbored the same apprehension for Herbiesto would kill her and her children once she discloses appellant Herbiesto's identity. She further explained that while she trusted the policemen, she was "very much afraid" of appellant Herbiesto as the latter failed in convincing her husband to join the Alsa Masa.[26] Their delay in disclosing the true identities of the malefactors until trial proper is not uncommon. Fear for one's life is a valid explanation for a witness' failure to immediately notify the authorities of what transpired when the crime was committed.[27] In fact, the failure of a witness to declare or disclose at once the identity of the malefactor(s) does not necessarily affect, much less, impair the credibility of a witness.[28]

Moreover, the trial court which observed the demeanors of the witnesses gave more credence to the prosecution's witnesses. This Court generally upholds and respects such appraisal as appellate courts do not deal with live witnesses but only with the cold pages of a written record.[29] In this case, our careful review of the records reveals that appellants' guilt has been duly established. Indeed, appellants have been positively identified as the perpetrators of the crime thereby rendering their defense of alibi and denial unworthy of credit.[30] Likewise, their professed relationships with Leticio (appellant Herbiesto claiming blood ties, while appellants Maraño and Pacquiao asserting friendship) can not bail them out of culpability. Friendship or even relationship is not a deterrent to the commission of a crime.[31] Lilia clearly saw appellants Herbiesto and Pacquiao when she, holding a kerosene lamp, followed Leticio as he went out of their room.[32] For his part, Corsino vividly recounted appellants' respective participation in the crime in this wise:

"Q - While you were hiding inside the house of Eli Herbiesto, what happened next?

A- Cesar Herbiesto said in the mixture of dialects `Mga kasama, sasakain ang balay at papatayin.' (which if translated in english means `companions, you go up the house and kill them.')[33]

xxx xxx xxx

Q - After you went down from the house, what happened next?

A - When I went down from the house and I was already downstairs a gun was poked at me by Maximo Pacquiao on my side (witness pointing his right lower side) and he told me to go to my companions.[34]

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Q - After the three of you were there, what happened?

A - We were asked by Mr. Maraño where were our arms.

Q - By the way, before that incident were you able to meet Mr. Maraño?

A - We met once.

Q - Where?

A - Near the bamboo grove at the cemetery." (Underscoring supplied.)[35]

Timoteo Noya, on the other hand, testified as to how he was able to identify appellant Herbiesto, as well as appellants Pacquiao and Maraño. Thus:

"Q - Where was Cesar Herbiesto situated when he arose you from sleep?

A - He was behind a coconut tree.

Q - How did you know that Cesar Herbiesto was behind a coconut tree?

A - Because I recognized him.

Q - How far is this coconut tree from the house where you were sleeping?

A - To my estimate it is around five meters that coconut tree from the house (sic).

Q - Was there a light coming from any source that could help you in identifying Cesar Herbieto from that coconut tree?

A - Yes.

Q - What was that source?

A - The moon was full at that time."[36]

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"Q - During that night were you able to see his (Cesar's) face?

A - Yes.

Q - So also with the other companions, Maximo Pacquiao and Masser Maraño, you saw their faces clearly?

A - Yes."[37]

The defense also attempted to discredit the prosecution's case by attributing ill motive upon Lilia Herbieto in testifying against appellants. Granting that Lilia was so enraged by appellant Herbieto's alleged scolding due to her infidelity, the defense, nonetheless, failed to prove ill motive on the part of the other principal prosecution witnesses, Timoteo and Corsino.

To further bolster their bid to exonerate themselves, appellants pointed to the following inconsistencies of Corsino, to wit: (a) in his sworn statement, Corsino stated that he and Timoteo were from Lanao del Norte, while on the witness stand, he claimed that he came from Cagayan, Mindanao and from Irang-irang, Quezon, Bukidnon; (b) he stated in his sworn statement that only appellants Herbieto and Pacquiao were carrying firearms, while in court, he testified that all six men were armed; and (c) he stated in his sworn statement that he was a laborer yet he testified that he was a farmer who worked as a carpenter helper.[38]

These, to our mind, are minor inconsistencies which do not impair the credibility of witnesses[39] Moreover, since an extra-judicial statement or affidavit is generally not prepared by the affiant himself but by another person who uses his own language, omissions and misunderstandings by the writer usually result.[40] And in case of discrepancy between the sworn statement and those made by the affiant on the witness stand, the latter deserved full faith and credit.[41]

As to the fourth assigned error, appellants argue that "the marked disparity between the language used in the narration of facts and the body of the decision proper" indicates that "two or more persons other than the trial judge wrote the decision," and therefore violative of Rule 36, Section 1 of the Rules of Court which mandates that judgments should be "personally and directly prepared by the judge." [42] We have perused the decision in question and found no such variance. Even assuming that a disparity indeed existed, it does not ipso facto prove that the decision was not prepared by the trial judge himself, for he, or any judge for that matter, is at liberty to employ different styles in presenting his decision. Moreover, the judge has in his favor the presumption of regularity in the performance of official duty.[43] It certainly takes more than a perceived variety of writing techniques utilized in the decision to overcome this presumption.

The trial court, however, erred in appreciating the qualifying circumstance of treachery in Criminal Case No. DU-1281 for the killing of Leticio. Treachery can not be considered because the prosecution failed to definitely establish the manner in which the initial assault or even the fatal blows were inflicted on Leticio.[44] Nevertheless, the crime is still murder in view of the presence of the qualifying circumstance of abuse of superior strength. As appellants and their other three companions who remain at large were all armed, there was clearly a notorious inequality of forces between Leticio and appellants' group, thus assuming a situation of superiority of strength notoriously taken advantage of by them in the commission of the crime.[45]

Treachery cannot also be appreciated in Criminal Cases Nos. DU-1282 and 1283 where appellants were separately found guilty of attempted murder for wounding Timoteo and Corsino, respectively, it appearing that the latter victims have been forewarned of the attack.[46] The crimes, however, are attempted murders due to the presence of the qualifying circumstance of abuse of superior strength, for the same reasons we stated in Criminal Case No. DU-1281. The felonies were merely attempted since appellants, in concert, had commenced the commission of the crime by the overt act of shooting the victims but failed to produce the felony by reason of some cause or accident other than the appellants' own spontaneous desistance.[47]

We now go to the imposable penalties. Under Article 248 of the Revised Penal Code, murder is punished by reclusion temporal maximum to death. In Criminal Case No. DU - 1281, there being no ordinary aggravating or mitigating circumstance attendant to the killing of Leticio, the proper penalty to be imposed on appellants is the medium period,[48] i.e., reclusion perpetua[49]. The Indeterminate Sentence Law should not have been applied, as what the trial court obviously did when it imposed the lower penalty of twelve (12) years, five (5) months and eleven (11) days of reclusion temporal as minimum to reclusion perpetua as maximum, inasmuch as reclusion perpetua is an indivisible penalty.[50]

With respect to Criminal Cases No. DU- 1282 and 1283, we find the penalties imposed therein to be in order considering the rightful application of the Indeterminate Sentence Law.

WHEREFORE, save for the following modifications that: (a) appellants CESAR HERBIETO, MAXIMO PACQUIAO and MASSER MARAÑO shall each suffer the penalty of reclusion perpetua in Criminal Case No. D.U 1281, and (b) the indemnity awarded by the trial court for the death of Leticio Herbieto is increased to P50,000.00 in accordance with existing jurisprudence,[51] the assailed "joint decision" is hereby AFFIRMED in all other respects.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ.

[1] Captioned "Joint Judgment," RTC Decision, dated March 26, 1991, penned by Judge Mercedes Gozo-Dadole.

[2] RTC Decision, pp. 18-19.

[3] RTC Decision, pp. 3-4.

[4] He appears to be related to Letecio because their fathers are second cousins. See TSN, January 29, 1991, p. 26.

[5] TSN, January 24, 1991, p. 13.

[6] Ibid., p.14.

[7] Ibid., p. 15.

[8] Ibid., pp. 5-6.

[9] Ibid., p. 18.

[10] TSN. January 23, 1991, pp. 23-33.

[11] Ibid., pp. 27- 28.

[12] Ibid., p. 30.

[13] TSN, January 30, 1991, pp. 23-24.

- [14] TSN, January 23, 1991, p. 8.
- [15] TSN, January 23, 1991, p. 14.
- [16] TSN, January 31, 1991, pp. 5-7.
- [17] TSN, January 31, 1991, p. 19.
- [18] Ibid, pp. 19-20.
- [19] Ibid., pp. 22-23.
- [20] TSN, January 22, 1991, pp. 3-5.
- [21] Ibid., p. 6.
- [22] Ibid., p. 9.
- [23] Ibid., p. 22.
- [24] Appellants' Brief, p. 23.
- [25] TSN, December 11, 1990, p. 18.
- [26] TSN, December 12, 1990, p. 24.
- [27] *People v. Baduya*, 182 SCRA 57, 64 (1990).
- [28] *People v. Jimenez*, 250 SCRA 349, 357 (1995).
- [29] *People v. Panlilio*, 255 SCRA 503, 512 (1996), citing *People v. Macasling, Jr.*, 222 SCRA 630 (1993).
- [30] *People v. Ferrer*, 255 SCRA 19, 35 (1996), citing *People v. Pija*, 245 SCRA 80 (1995); See *People v. Abrenica*, 252 SCRA 54.
- [31] *People v. Bicog*, 187 SCRA 556, 564 (1990).
- [32] TSN, December 12, 1990, p. 12-13.
- [33] TSN, August 2, 1990, p. 7.
- [34] Ibid., p. 8.
- [35] Ibid., p. 27.
- [36] TSN, December 11, 1990, pp. 4-6.
- [37] Ibid., p. 15.
- [38] Appellants' Brief, pp. 25-26.
- [39] *People v. Compil*, 244 SCRA 135 (1995).
- [40] *People v. Reyes*, 245 SCRA 785, 794 (1995).
- [41] *People v. Lazaro*, 249 SCRA 234, 241 citing *People v. Loveria*, 187 SCRA 47, 59 (1990).
- [42] Appellant's Brief, p. 29.
- [43] Rule 131, Section 5 (m), Rules of Court.

[44] *People v. Porras, et. al.*, G.R. No. 114263-64, March 29, 1996.

[45] See *People v. Daquipil*, 240 SCRA 312 (1995).

[46] *People v. Hubilla, Jr.*, supra at p. 482 citing *People v. Estrellanes, Jr.*, 239 SCRA 235 (1994).

[47] Revised Penal Code, Article 6.

[48] Revised Penal Code, Article 64 paragraph (1).

[49] *People v. Amigo*, 252 SCRA 43 (1996), citing *People v. Parojinog*, 203 SCRA 673 (1991) and *People v. De la Cruz*, 216 SCRA 476 (1992).

[50] *Serrano v. Court of Appeals*, 247 SCRA 203, 211 (1995), citing *People v. Bahuyan*, 238 SCRA 330 (1994).

[51] *People v. Escandor*, G.R. 95049, December 9, 1996, citing *People v. Maturgo, Sr.*, 248 SCRA 519 (1995) and *People v. Ocaña*, 229 SCRA 341, 349 (1994).

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