

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO ESPINOZA Y ALI, VICTOR ESPINOZA Y ALI AND JULIAN MAGBARIL Y OMBRADOR, ACCUSED-APPELLANTS.

G.R. No. 104596. November 23, 1993

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellants were charged with and convicted of Murder by the Regional Trial Court (Branch 9) of Malaybalay, Bukidnon, for hacking to death a certain Renato Salvar.[1]

The facts are faithfully stated in the decision of the appellate court which affirmed with modifications the conviction of the accused-appellants, viz:

"On August 30, 1988, at around 7:00 o'clock in the evening, prosecution witness Lucesio Croda was in the living room of his house near the crossing of Kisawi and Anlawagan, Barangay Payad, Pangatucan (sic), Bukidnon, when he heard cries for help. As he went down the stairs, he saw the appellants drag the victim away from the road towards his house. At a distance of approximately three fathoms from his house, he positively recognized the victim as Renato Salvar. He also witnessed the accused-appellant Rogelio and Victor Espinoza hack the victim several times with their long bolos while appellant Magbaril (sic) held back the victim who was lying on his back. Overcome with fear, he rushed back to his house. He then assisted his wife who was in near-faint (sic) after witnessing the incident (tsn, April 10, 1989, pp. 4-7, 12-12 [sic]).

"Prosecution witness Charlito Guevarra[2] (sic) testified that on the night of the incident, he was watching the coronation ceremonies of the fiesta queen at the barrio hall when he received information from his brother, Raul, about a hacking incident that took place at the crossing of Anlawagan and Kisawi. He immediately went to that place and there saw Renato Salvar, seriously wounded and on his back. As witness Charlito Guevarra (sic) testified:

"Q. When you saw him on that condition what did you do?

"A. I asked him.

"Q. When you asked him what was your position in relation to Renato Salvar who was lying on the ground?

"INTERPRETER:

"Witness demonstrating by squatting.

"WITNESS:

"A. I went near him and asked him who was responsible for his condition and he answered.

"PROS. RECINA:

"Q. What was his answer?

"A. 'They betrayed me' (unay).

"Q. I want you to quote to the Court what actually Renato Salvar said when you asked him what happened to him?

"xxx xxx xxx

"WITNESS:

"A. He said, "I was betrayed by Rogelio Espinosa (sic), Victor Espinosa (sic) and Julian Magbaril (gui-unay)." (tsn, April 10, 1989, pp. 21-22)

"Simplicio Salvar, Jr. who also proceeded at the crossing of Anlawagan and Kisawi after being informed that his brother, Renato Salvar was the victim of an attack, was able to talk to the latter who was then still conscious and coherent in speech. The victim identified the three accused-appellants as his assailants (tsn, January 16, 1990, pp. 30-32). The pertinent portion of his testimony reads as follows:

"Q. Seeing your brother lying on the ground with some wounds what did you do?

"A. I asked him a question.

"Q. What actually did you ask him?

"A. I asked him who was responsible for his several wounds?

"Q. And did your brother Renato Salvar answer the question?

"A. Yes.

"Q. What was his answer?

"A. That he was waylaid.

"Q. And who waylaid him, do you know?

"ATTY. OKIT:

"There is no basis for that question.

"COURT:

He is asking as to who waylaid his brother because his brother told him that he was waylaid.

"PROS. CHING:

"We will reform the question, Your Honor.

"Q. What else did your brother tell you, if any, as to who was responsible on his injuries?

"A. That the persons responsible were Rogelio Espinosa (sic), Victor Espinosa (sic) and Julian Magbaril." (Ibid., tsn, p. 32)

"On the other hand, all three accused interposed the defense of alibi.

"Victor Espinoza and his brother Rogelio Espinoza alleged that they were both in the house of Julian Magbaril earlier in the evening where they took their supper at approximately 7:30 in the evening. At around 8:30 same evening, both left to return to their respective houses.

"The other accused, Julian Magbaril, testified that he was in his house on the night of the incident. He testified that at around 7:30 in the evening, the other two accused, Victor and Rogelio Espinoza, and another guests

(sic) Basilio Deconlay were in his house in connection with the payment of the fighting cocks, the Espinoza brothers bought from Deconlay. They all ate supper together. Afterwards, at around 8:30 o'clock, Victor and Rogelio Espinoza left for their respective homes while Basilio Deconlay stayed overnight in Julian Magbaril's house."

Simplicio Salvar, Jr., together with his father and other companions who arrived at the scene, boarded Renato Salvar in a truck to seek medical assistance in Don Carlos. Two hours later, while they were on their way to Don Carlos, Renato expired. Upon noticing that Renato had died, the group did not proceed to Don Carlos. Instead, they returned to their house in Payad, Pangantucan, Bukidnon. On September 1, 1988, Renato Salvar was buried.

The appellate court imposed the penalty of reclusion perpetua to the accused-appellants, viz:[3]

"WHEREFORE, the guilt of the accused having been proved beyond reasonable doubt, the appealed decision is hereby AFFIRMED with the modification that the penalty of reclusion perpetua is imposed and that indemnity to the heirs of the victim is hereby increased to fifty thousand pesos (P50,000.00) in line with the recent pronouncement of the Supreme Court (People vs. Sison, G.R. No. 86455, September 14, 1990). Cost against the appellants.

"SO ORDERED."

In this appeal, accused-appellants raise the following:

"ASSIGNMENT OF ERRORS

"FIRST ERROR: The Trial Court and the Court of Appeals erred in giving credence to the testimony of the lone alleged eye-witness Lucesio Croda (sic);

"SECOND ERROR: The Trial Court and the Court of Appeals erred in not acquitting all the appellants based on the ground that the prosecution failed to prove their guilt beyond a (sic) reasonable doubt."

We find no cogent reason to reverse the ruling of the appellate court.

Eyewitness Lucesio Croda, positively identified Rogelio Espinoza, Victor Espinoza and Julian Magbaril as the assailants of Renato Salvar. It is un rebutted that Lucesio's house is located at least three (3) fathoms[4] away from the scene of the crime. Moreover, during the hacking incident, the place was illuminated by the moon. (TSN of Lucesio Croda, April 10, 1989, pp. 12-13). In *People vs. Jacolo, et al.*, we held: Where conditions of visibility are favorable, and the witness does not appear to be biased, his assertion as to the identity of the malefactor should normally be accepted.[5] This is particularly true, in this case, where the defense failed to impute any improper motive on the part of Lucesio for testifying against the appellants.[6]

The accused himself, Rogelio Espinoza, admitted on cross-examination that prosecution witnesses Lucesio Croda and Charlito Gualderama, both residents of Payad, Pangantucan, Bukidnon, are his friends and he could not think of any reason why they testified against him (TSN, June 26, 1990, pp. 59-60).

In addition, Lucesio testified in detail how the accused-appellants, taking advantage of their superior strength, hacked to death the victim. He testified as follows:

PROS. RECINA:

Q: When you heard Renato Salvar call for help what did you do?

LUCRESIO CRODA:

A: I went downstairs and I met the person who was asking for help.

Q: When you went down and you said you went to the person asking for help what did you do?

A: I saw Victor Espinosa (sic), Julian Magbaril and Boy Espinosa (sic).

Q: When you said Boy Espinosa (sic) you are referring to Rogelio Espinosa (sic)?

A: Yes, Sir.

Q: When you saw them when you went down from your house how far were they?

A: Three fathoms, more or less.

Q: What did the three accused do when you saw them?

A: They were hacking.

Q: Who were they hacking?

A: Renato Salvar.

Q: What did Rogelio Salvar use to hack Renato Salvar?

A: A long bolo.

xxx xxx xxx

Q: What did Victor Espinosa use to hack Renato Salvar?

A: Also a long bolo.

xxx xxx xxx

Q: How about Julian Magbaril what did he use?

A: He was not using any weapon he was just holding.

Q: Who was he holding?

A: Renato Salvar.

Q: When Rogelio Espinosa (sic), according to you, hacked Renato Salvar, what was the position of Renato Salvar?

A: Lying on his back.

Q: How about when Victor Espinosa (sic) hacked Renato Salvar what was the position of Renato Salvar?

A: I was not able to see his position because he was blocked by the grasses, what I knew is he was already on the ground lying.

(TSN, April 10, 1989, pp. 5-7)

The testimony of a witness, mentioning the minutiae of an incident that could not easily be concocted, such as the murder in case at bar, deserves credence for it indicates sincerity and truthfulness in the narration of events.[7]

The trial court correctly gave great weight to the testimony of Lucesio Croda. The probability that he committed a mistake as to the identity of the appellants whom he had known for six (6) years is nil. (TSN, April 10, 1989, p. 15). The credible testimony of a lone witness can provide a rational basis for conviction. The fight for truth is not necessarily won by the party with the more numerous witnesses. It is the quality and not the quantity of witnesses

that counts in assessing their credence.

In an attempt to discredit Lucresio as a witness, accused-appellants assert that he did not volunteer as a witness immediately after the crime was discovered that same fateful evening.[8] According to Lucresio, after witnessing the incident he rushed back to his house for fear of his life and opted to attend to his wife who had just given birth.

We take judicial notice of the fact that people usually shy away from any involvement in criminal cases due to its inconvenience, if not the danger that it poses to their lives. The fact, therefore, that it takes them a long time to decide whether or not to testify should not necessarily erode their credibility. In this case, Lucresio had just witnessed a gruesome, hacking incident. There is no standard form of behavior when one is confronted with a shocking incident.[9] Lucresio's initial hesitation to report the crime to the authorities due to the shocking experience should not be counted against his credibility.[10]

The failure of the prosecution to present the "bolos" which were used in the commission of the crime did not weaken the evidence against accused-appellants. We note that there was no showing that the "bolos" were recovered from the scene of the crime. It is not remote that these "bolos" were disposed by the assailants to conceal the instruments of the crime. But even without the "bolos" as evidence, there can be no doubt that the victim died due to hacking by means of "bolos" on the part of accused-appellants Victor and Rogelio Espinoza. This was the testimony of Lucresio, viz:

LUCRESIO CRODA:

Q: What did the three accused do when you saw them?

A: They were hacking.

Q: Who were they hacking?

A: Renato Salvar.

Q: What did Rogelio Salvar use to hack Renato Salvar?

A: A long bolo.

Q: How long was this bolo?

A: Like this.

INTERPRETER:

Witness indicating a length of two feet.

PROS. RECINA:

Q: What did Victor Espinosa use to hack Renato Salvar?

A: Also a long bolo.

Q: How long was that bolo you demonstrate?

A: Just the same length.

(TSN, April 10, 1989, pp. 5-6)

It cannot also be doubted that the numerous wounds suffered by the victim were due to hacking by means of sharp bladed instruments.

Appellants' participation in the merciless killing of Renato Salvar is further buttressed by the fact that before the victim died, he disclosed to witnesses GHARLITO GUALDERAMA AND SIMPLICIO SALVAR, JR. the name of his assailants (TSN, April 10, 1989, pp. 21-22; TSN, January 16, 1990, p. 32). Utterances made immediately after a startling occurrence and before the declarant had an opportunity to fabricate a false statement can be considered as part of the *res gestae* pursuant to Section 42[11] of the Revised Rules of Evidence.[12]

Accused-appellants would like us to disbelieve the testimonies of Charlito and Simplicio, Jr. on the ground that they are relatives of the victim. This is a trite argument. We have ruled that relationship of the witnesses to the victim *per se* does not affect their credibility.[13]

Accused-appellants' defense consists of alibi. It is established that the defense of alibi cannot prevail over the positive identification by an eyewitness who had no improper motive to falsely testify.[14]

Finally, as between the positive declarations of the prosecution witnesses and the negative statements of the appellants, the former deserve more credence and weight than the latter.[15] In this case, we give full credit to the factual findings of the trial court considering that it is in the best position to weigh conflicting declarations of witnesses as it was able to observe their demeanor and conduct while giving their testimonies.[16]

The penalty Murder under Article 248 of the Revised Penal Code is reclusion temporal in its maximum period to death. The ruling case law is that in the absence of any mitigating or aggravating circumstance, the proper penalty for murder is reclusion perpetua (the medium period of the penalty).[17]

Also, in conformity with the prevailing decisions of this Court, the proper indemnity for the heirs of the deceased should be fifty thousand pesos (P50,000.00).[18]

PREMISES CONSIDERED, the decision of the appellate court finding accused-appellants ROGELIO ESPINOZA, VICTOR ESPINOZA and JULIAN MAGBARIL guilty beyond reasonable doubt of Murder is hereby AFFIRMED. Accordingly, they are sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of Renato Salvar an indemnity of fifty thousand pesos (P50,000.00).

SO ORDERED.

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

[1] The Information against the accused-appellants reads:

"That on or about the 30th day of August, 1988, in the evening, at crossing Anlawagan and Kisawi, barangay Payad, municipality of Pangantucan, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill by means of treachery and taking advantage of their bladed weapons (bolos), did then and there willfully, unlawfully and criminally attack, assault, hack and stab Renato Salvar, inflicting upon his person mortal wounds, which caused his death thereafter, to the damage and prejudice of the legal heirs of Renato Salvar in such amount as may be allowed by law.

"Contrary to and in violation of Article 248 of the Revised Penal Code."

[2] Charlito Gualderama

[3] The sentence modified the Decision of the trial court which imposed the penalty of 12 years of prision mayor to 18 years of reclusion temporal and payment of indemnity of P30,000.00.

[4] Fathom implies a measuring in fathoms (units of six feet); see Webster's New Dictionary of Synonyms, 1978 ed, p. 327.

[5] G.R. No. 94470, December 16, 1992, 216 SCRA 631; People vs. Bernat, G.R. No. 55176, February 28, 1983 120 SCRA 918.

[6] People vs. Wenceslao, G.R. No. 95583, August 12, 1992, 212 SCRA 560.

[7] People vs. Bañez, G.R. No. 95456, September 18, 1992, 214 SCRA 109.

[8] Appellant's Brief, p. 15.

[9] People vs. Danico, G.R. No. 95554, May 7, 1992, 208 SCRA 472.

[10] People vs. Manansala, G.R. No. 88752, July 3, 1992, 211 SCRA 66.

[11] Section 42, Rule 130, Revised Rule of Court provides:

Part of the res gestae. - Statement made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae (30a).

[12] People vs. Pajarit, G.R. No. 82770, October 19, 1992, 214 SCRA 678.

[13] People vs. Claudio, G.R. No. 100880, December 16, 1992, 216 SCRA 647.

[14] People vs. Camahalan, G.R. No. 73535, December 18, 1992, 216 SCRA 687; People vs. Pomentel, G.R. No. 87781, December 11, 1992, 216 SCRA 375;

[15] People vs. Arcega, G.R. No. 96319, March 31, 1992, 207 SCRA 681.

[16] People vs. Moreno, Jr., G.R. No. 97408-09, September 2, 1992, 213 SCRA 450.

[17] People vs. De La Cruz, G.R. No. 100386, December 11, 1992, 216 SCRA 476, People vs. Pletado, G.R. No. 98432, July 1, 1992, 210 SCRA 634; People vs. Sabornido, G.R. No. 102141, September 18, 1992; Muñoz, et al. vs. People, G.R. Nos. L-38968-70, February 9, 1989, 170 SCRA 107.

[18] People vs. Serdan, G.R. No. 87318, September 2, 1992; People vs. Pletado, G.R. No. 98432, July 1, 1992, 210 SCRA 634.

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