

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BIENVENIDO OMBROG Y MAGDARAOG, RESPONDENT-APPELLANT.**

G.R. No. 104666. February 12, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Convicted of murder by the trial court, Accused Bienvenido Ombrog y Magdaraog interposes the easy-to-fabricate but difficult-to-prove defenses of denial and alibi. As these defenses rest essentially on the issue of credibility of witnesses which doctrinally is best left to the discretion of the trial judge, his appeal must thus fail, particularly because the prosecution has established his identity and amply proven his presence at the crime scene.

The Information[1] dated September 18, 1990, filed by Assistant Prosecutor Moises S. Aquino before the Regional Trial Court of Manila, Branch 49,[2] charging accused-appellant with the crime of murder under Article 248 of the Revised Penal Code, reads:

“That on or about August 17, 1990, in the evening, purposely sought to better accomplish his criminal designs in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously with intent to kill with treachery and evident premeditation (sic), attack, assault and use personal violence upon ARNEL QUILANG Y NARAG by then and there stabbing him with a bladed weapon, thereby inflicting upon the said ARNEL QUILANG Y NARAG mortal wounds which were the direct and immediate cause of his death.”

On arraignment, the accused, assisted by counsel de oficio, pleaded not guilty. After due trial, the trial court convicted him of the crime charged in a Decision[3] promulgated on August 15, 1991, the decretal portion of which states:

“WHEREFORE, judgment is hereby rendered finding the Accused guilty beyond reasonable doubt of the crime of ‘Murder’ defined in and penalized by Article 248 of the Revised Penal Code, qualified by treachery, and hereby metes on him the penalty of RECLUSION PERPETUA, with all the accessory penalties of the law and hereby condemns the Accused to pay the Heirs of Arnel Quilang indemnity in the amount of P50,000.00.

The period during which the Accused was detained at the City Jail of Manila shall be credited to him in full provided that he agreed in writing to abide by and comply strictly with the rules and regulations of the City Jail of Manila. With costs against the Accused.”

The Facts

Version of the Prosecution

The prosecution presented a total of five (5) witnesses: (1) Dr. Marcial Ceñido, the medico-legal officer who conducted the post-mortem examination of the body of the victim, Arnel Quilang; (2) Pat. David Tuazon, the police officer who conducted the investigation of the incident leading to the death of Quilang; (3) Ronald

Bordallo, lone prosecution eyewitness to the murder; (4) Dr. Jeffrey I. Rosuman, the physician who attended to the victim after he was brought to the Jose Reyes Memorial Medical Center (JRMMC) immediately after being stabbed; and (5) Mrs. Concepcion C. Gahol, records custodian of JRMMC who presented the tip of a knife (Exhibit “K-3”) extracted by Dr. Rosuman from the body of the victim.

The prosecution’s version of the facts, which was adopted by the trial court, relied heavily on the testimony of eyewitness Ronald Bordallo, a 13-year old first year high school student residing at Area D, Parola, Tondo, Manila. According to said eyewitness, on August 17, 1990, at around 11:30 in the evening, he, together with Arnel Quilang, Arnold Saluib, defense witness Jonathan Adriano and accused-appellant were having a drinking spree at a store inside the house of Arnold, a nephew of the accused, in Parola, Tondo, Manila. The victim, Arnel Quilang, was seated on top of a table. The accused was on Arnel’s left side, while he (eyewitness) was seated more or less one meter away in front of Arnel, and the other two were beside him. They were drinking for about half an hour when the accused, whose house was only four houses away, left without a word and then came back after about a minute. The accused then approached Quilang from behind and suddenly stabbed him with a household knife about six to seven inches long, after which he ran from the premises. The witness and Arnold brought the victim to the Mary Johnston Hospital which, however, did not admit him but instead had him brought to the Jose Reyes Memorial Medical Center.

Asked by the public prosecutor to identify the person who stabbed Arnel Quilang, the witness pointed to a person who, when asked, stated his name as Bienvenido Ombrog, the accused-appellant. The witness further testified that the accused was known in their place as “Pedring.”[4]

Arnold Quilang was confined at the JRMMC until he expired on August 31, 1990. His death was caused by a “(s)tab wound, back, with terminal pneumonia.”[5]

Version of the Defense

Defenses of accused-appellant consisted of denial and alibi. He presented two witnesses to corroborate his testimony -- Jonathan Adriano and Cresencio Angolo, the accused’s employer.

Adriano’s testimony was very similar to that of prosecution witness Ronald Bordallo except that the fifth person in their group that night was allegedly a certain Pedrito “Pedring” Cabacang instead of accused-appellant; and that it was said Pedring, not the accused, who stabbed Arnel Quilang.[6] Adriano testified further that on August 31, 1990, he and Bordallo were summoned to the Western Police District (WPD) office where the statement of Bordallo, relating the stabbing incident that had taken place on August 17, 1990, was taken; Adriano’s own statement was not taken, however, because allegedly it would have only corroborated Bordallo’s. According to Adriano, Bordallo stated to the police that it was Pedring Cabacang who had stabbed Arnel Quilang.[7] On September 17, 1990, both were again summoned to the WPD where they were asked to look at Bienvenido Ombrog and to identify him. Adriano told the police that the person shown was not the assailant Pedring, and that he had heard Bordallo say the same thing.[8]

Accused-appellant for himself claimed that he was in Mindoro from August 14 to 20, 1990, together with his employer to gather calamansi, which his employer sold in Manila. He denied knowing or having met the victim. He claimed that he was a resident of Bagong Silang, Caloocan, and not four houses away from the place where the stabbing incident took place.[9] He admitted he donned several tattoos on his body which, with the permission of the court, were shown as follows: on his left arm below the shoulder was the name “Mally”; on the right side of his body near the scapula read “Boy” and in a rectangle, the word “Mamaw”; on the lower portion of his back read “Bobby 3W2”; and on his right arm was another tattoo depicting a dragon.[10] He had other tattoos in the lower portion of his body. On cross examination, he denied having known Ronald Bordallo prior to his

appearance in court, and knew of no reason why the latter would testify against him and point to him as the one who killed Arnel Quilang.[11]

The Trial Court's Ruling

Granting full credence and probative weight to the testimony of prosecution witness Ronald Bordallo, the trial court stated:

“The Court belabored to observe keenly the conduct and demeanor of Ronald Bordallo when he testified before the Court, and the court is impressed with and convinced of his sincerity, candidness and the spontaneous and straightforward manner he testified before the Court, bereft of the affectations and artificialities of a perjured and/or rehearsed witness. He remained steadfast despite the probing questions of Counsel of the Accused and of the Court. The Court entertains no doubt whatsoever of the verisimilitude of the charge against his testimony. Truthfulness permeates the entirety of his testimony.”[12]

On the other hand, the trial court found the testimony of defense witness Jonathan Adriano “unreliable and undeserving of credence” thus:

“In the first place, except for the averment of Jonathan Adriano that Pedrito Cabacang was married and had two (2) children, he did not bother to describe to the Court the physical appearance of Pedrito Cabacang. When queried (sic) by the Court if he bothered to accompany the police investigators to the house of Pedrito Cabacang on August 31, 1990, Jonathan Adriano feigned ignorance of the address of Pedrito Cabacang on the pretext that the house of the latter bore no fixed address. x x x

x x x x x x x x

The Court likewise entertained veritable doubts whether Jonathan Adriano ever witnessed the actual stabbing of Arnel Quilang. This is so because, when he testified before the Court, Jonathan Adriano averred that during the two-hour period that he, Arnel Quilang, Pedrito Cabacang, Ronald Bordallo and Arnold Saluib had their drinking spree he did not see Pedrito Cabacang armed with any knife. However, in the same breathe, Jonathan Adriano averred that Pedrito Cabacang stood behind Arnel Quilang and stabbed the latter at the back. Jonathan Adriano did not enlighten the Court how and when Pedrito Cabacang managed to procure a knife with which to stab the deceased.”[13]

The trial court was thoroughly unconvinced of the defense of alibi, thus:

“Indeed, where, as in this case, the Accused was positively, spontaneously and unerringly identified by Ronald Bordallo who had no ill motive to prevaricate his testimony and fabricate the charge against the Accused, the defense of alibi of the Accused loses its luster and dwindles into nothingness.”[14]

Issues

In his brief[15] filed before this Court, accused-appellant assigns the following errors against the trial court:

1. convicting him despite ample evidence pointing to Pedrito “Pedring” Cabacang as the person who fatally stabbed Victim Arnel Quilang;
2. not giving evidentiary weight to the evidence adduced by the defense; and
3. convicting accused-appellant of the crime charged notwithstanding the failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused-appellant insists he was in Mindoro at the time of the stabbing incident and that it was a certain Pedrito “Pedring” Cabacang who was the culprit as attested to by his witness, Jonathan Adriano. In addition, he claims

that prosecution witness Ronald Bordallo initially told the police that the name of the victim's assailant was "Pedring" which was the basis of the Advance Information prepared by Pat. David Tuazon describing the assailant as "Pedrito Cabacang" alias "Pedring" who sported a tattoo mark "Pedring" on his left shoulder. Lastly, accused-appellant submits that his defense of alibi should be given credit since it was corroborated while, on the other hand, the prosecution's evidence was weak.

Concurring with the trial court, the Solicitor General posits the contrary view. He finds no reason to alter the findings and conclusions of the court a quo. He avers that the prosecution eyewitness was credible. Bordallo did not waver in his testimony. Neither did he have any improper motive to testify falsely against the accused. Besides, he positively identified accused-appellant as the assailant.

The Court's Ruling

The appeal is unmeritorious.

Sufficiency and Credibility

of Prosecution Evidence

The errors assigned by the appellant may be condensed into a single issue involving credibility of witnesses and their testimonies, particularly that of prosecution witness Ronald Bordallo vis-à-vis defense witness Jonathan Adriano who both claimed to have witnessed the stabbing of the victim but pointed to two different persons as the culprit. We have ruled time and time again that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies.[16] Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to disbelieve.[17] Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[18] In the instant case, we find no basis to apply the exception. In fact, the court a quo has meticulously and extensively discussed the merits of the case.

Let us compare the two witnesses and their opposing testimonies.

Ronald Bordallo was, at the time of his testimony, a thirteen-year-old first year high school student who was observed by the trial judge to be sincere, candid and spontaneous in his testimony and who remained steadfast despite probing questions propounded by the counsel for the accused and the judge himself. We went over the transcript of his testimony and found it wholly consistent and believable. No proof of strong friendship ties with the victim or confined anger against the accused were offered in court to give even a semblance of basis for concluding that Bordallo testified falsely.

Jonathan Adriano, on the other hand, was nineteen years old, a pahinante working with accused-appellant and a relative of the latter.[19] The trial judge found his testimony unreliable and undeserving of credence; evasive and full of inconsistencies (as for instance, how the alleged assailant Pedrito Cabacang got hold of a knife to stab the victim; the actual residence of Cabacang; and the said witness' activities for the six days he was purportedly in Mindoro).[20]

Moreover, Bordallo made a definitive and positive identification of the assailant. In his sworn statement[21] taken by Pat. David Tuazon on August 31, 1990, prior to the apprehension of the accused, Bordallo gave a graphic

description of the physical features of the assailant as follows:

“Mga 25-30 anyos, mga 5’4”-5’5” ang taas, kayumanggi ang balat, medyo mataba, brush up ang buhok, naka-short lang po ang suot niya at hindi ko napansin ang suot na damit o may damit.”

From a review of the records, the court a quo noted that the accused was 31 years old at the time of the commission of the offense, which is almost within the range given by the witness; weighed 145 pounds; was five feet and five inches tall; and dark-complexioned.[22] Additionally, on cross examination during rebuttal, Bordallo stated that he saw a tattoo with the appearance of a dragon on the right shoulder of the assailant.[23] When ordered by the trial court to bare his shoulders during his direct examination, the accused-appellant indeed had a tattoo depicting a dragon sketched on his left shoulder. The fact that the witness said the tattoo was on the right shoulder is a minor contradiction which does not destroy the credibility of the witness; rather, it indicates that he was telling the truth and was not priorly rehearsed.

Furthermore, on two separate occasions, Bordallo firmly pointed to accused-appellant as the culprit in the fatal stabbing of Arnel Quilang: on September 17, 1990 at the WPD office, among several persons in a police lineup,[24] and in open court when he testified.[25]

Defense of Alibi Ousted by

Positive Identification of Accused

The Court is unswayed by the espoused defense of alibi. Generally, alibi is a weak defense for it is easy to fabricate without much opportunity at checking or rebutting it.[26] Neither could it prevail over the positive and clear identification of the accused as the perpetrator of the crime, more so as no ill motive had been attributed to the prosecution witness who pointed to accused-appellant as the assailant.[27]

Crime Qualified by Treachery

The trial court correctly appreciated treachery as a qualifying circumstance. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim.[28] Arnel Quilang was stabbed at his back without warning. The deliberate, sudden and unexpected attack of accused-appellant upon the totally unarmed victim from the rear, without giving the latter any opportunity to defend himself or repel the assault, was treacherous.[29]

Circumstances of Evident Premeditation

and Nighttime Wanting

As to the qualifying circumstance of evident premeditation, we also affirm the trial court’s finding that it was not present in the commission of the crime. The prosecution did not even attempt to prove the three elements necessary before evident premeditation may be appreciated as a qualifying aggravating circumstance, namely: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) a sufficient lapse of time between such a determination and execution to allow him to reflect upon the consequences of his act.[30] Anyhow, the principal eyewitness was not even aware of any prior incident or possible reason which could have led the accused-appellant to attack the victim.

The Information also alleged, although the trial court did not appreciate, nighttime as an aggravating circumstance. Again, no proof was adduced that the accused had purposely sought the darkness of the night to assure accomplishment of his criminal design. Besides, nocturnity is ordinarily deemed absorbed in treachery.[31]

We have held time and again that “circumstances qualifying or aggravating the act of killing a human being must

be proved in an evident and incontestable manner, mere presumptions or deductions from hypothetical facts not being sufficient to consider them justified.”[32]

WHEREFORE, the appeal is DENIED for lack of merit and the appealed Decision is hereby AFFIRMED in toto. SO ORDERED.

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

[1]Records, p. 1.

[2] Presided by Judge Romeo J. Callejo.

[3] Rollo, pp. 15-32; Criminal Case No. 90-87272.

[4] TSN, December 13, 1990, pp. 3-42.

[5] Records, p. 33.

[6]TSN, March 6, 1991, pp. 15-17.

[7] Ibid., p. 20.

[8] Ibid., pp. 21-22.

[9] TSN, March 19, 1991, pp. 4-8, 18-19.

[10] Ibid., p. 9.

[11] Ibid., pp. 24-25.

[12] Assailed Decision, supra note 3, p. 12.

[13]Ibid., pp. 12-13.

[14] Ibid., p. 16.

[15] Rollo, pp. 57-75.

[16]People vs. Cogonon, G.R. No. 94548, October 4, 1996; People vs. Decena, 235 SCRA 67, August 4, 1994.

[17]People vs. Balisteros, 237 SCRA 499, October 7, 1994.

[18] People vs. Cogonon, supra; People vs. Estrellanes, Jr., 239 SCRA 235, December 15, 1994.

[19] TSN, May 9, 1991, p. 3.

[20] Rollo, pp. 26-28.

[21] Exhibit “E”; records, pp. 36-37.

[22] Assailed Decision, supra note 3, pp. 11-12.

[23] TSN, May 9, 1991, p. 15.

[24] Exhibit “L”; Records, pp. 46-47.

[25] TSN, December 13, 1990, pp. 18-19.

[26]People vs. Matildo, 230 SCRA 635, March 2, 1994; People vs. Apa-ap, Jr., 235 SCRA 468, August 17, 1994.

[27] People vs. Serrano, 170 SCRA 663, February 27, 1989; People vs. Estrellanes, Jr., 239 SCRA 235, December 15, 1994.

[28] People vs. Ponayo, 235 SCRA 226, August 10, 1994, citing People vs. Alcantara, 206 SCRA 662, February 28, 1992; People vs. Cogonon, *supra* note 16.

[29] People vs. Tachado, 170 SCRA 611, February 27, 1989; People vs. Ponayo, *ibid*.

[30] People vs. Estrellanes, Jr., *supra*.

[31] People vs. Ronquillo, 247 SCRA 793, August 31, 1995.

[32] People vs. Almario, 171 SCRA 291, March 16, 1989, citing People vs. Tiongson, 130 SCRA 614, July 25, 1984.

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