

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICASIO GORNES, RAUL VILAR AND JOHN DOES, ACCUSED. NICASIO GORNES, ACCUSED-APPELLANT.

G.R. No. 104869. February 23, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Nicasio Gornes, Raul Vilar, and several John Does were charged with murder in a criminal complaint[1] filed by the Chief of Police of Pamplona on 21 May 1991 with the Municipal Circuit Trial Court of Pamplona, Amlan, and San Jose, in Negros Oriental. Only Nicasio Gornes was arrested. Raul Vilar remains at large while the others have not been identified. Nicasio Gornes waived his right to a preliminary investigation,[2] and the court then forwarded the records of the case to the Office of the Provincial Prosecutor.[3]

On 12 July 1991, the Office of the Provincial Prosecutor of Negros Oriental filed with the Regional Trial Court of Dumaguete City an information[4] in Criminal Case No. 9820[5] charging the accused with murder, committed as follows:

"That on or about November 19, 1988 at 5:00 o'clock in the morning, more or less, in Sitio Naga, Barangay Sta. Agueda, Pamplona, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with abuse of superior strength and evident premeditation, did then and there, wilfully, unlawfully and feloniously, assault, attack, stab and shoot one EUGENIA LASTIMOSO, in gross disregard of her sex and age, with the use of a hunting knife and a long firearm with which accused were then armed and provided, thus inflicting multiple stab and gunshot wounds on different parts of victim's body, which injuries caused victim's death immediately thereafter."

Accused Nicasio Gornes pleaded not guilty upon his arraignment on 5 August 1991.[6]

During the trial, the prosecution presented two eyewitnesses, namely, Pacita Veriña (Verinia) and Teresita Lastimoso, twin daughters of the victim. According to them, Nicasio Gornes is their first cousin because Nicasio's mother and their mother are sisters.[7] At about five o'clock in the morning of 19 November 1988, Nicasio Gornes, Raul Vilar, and about twenty other persons whom they did not recognize, came to their house in sitio Naga, barrio of Santa Agueda, Pamplona, Negros Oriental. They were in their house with their mother, Eugenia Lastimoso, their brother Danilo, and their sisters Merced, Myrna, and Gemma. Their mother opened the door and Nicasio Gornes greeted her. Nicasio and Raul went upstairs to the porch of the house. The twenty other John Does, about five of whom were carrying firearms, stayed downstairs. Their mother and Nicasio sat side by side on a bench at the porch and conversed with each other while Raul Vilar stood in front of them.[8] After about five minutes, Nicasio suddenly stabbed their mother several times on the chest with a hunting knife.[9] Their mother ran downstairs away from Nicasio. When she was about ten to eleven meters away from the house, Nicasio shot her at the back. Their mother fell on the ground, face down. Thereupon, Raul Vilar went near her and shot her on the head.[10] She died instantly. The twenty other John Does merely watched as these events happened.[11]

Pacita and Teresita further testified that their mother was killed because she was suspected of being a military informer;[12] that no post-mortem examination was conducted on the body of the victim; and that the killing was not immediately reported to the authorities because they were threatened by the appellant and Raul Vilar.[13]

On cross-examination Pacita testified that at least three times in the past, several men, rumored to be members of the New People's Army (NPA), visited their mother and asked for rice. Nicasio Gornes was with the group during one of these occasions.[14]

The defense presented Nicasio Gornes and his sister, Loreta Vallega. Nicasio denied that he killed his aunt Eugenia Lastimoso and claimed that on 19 November 1988, starting at six o'clock in the morning, he was doing farm work with his father and sisters in sitio Tolong, a barrio of Enrique Villanueva, municipality of Sibulan, Negros Oriental. Tolong may be reached on foot from Santa Agueda in five hours,[15] although Santa Agueda and Enrique Villanueva are separated by only one barrio.[16] He learned of the death of his aunt only when he was arrested by the military authorities on 8 May 1991[17] on suspicion that he was a member of the NPA. His cousins testified against him because he was suspected of being an NPA member and his aunt was killed by NPA members.[18] He denied, however, being a member of the NPA.[19] His alibi was corroborated by his sister who declared that Tolong could be reached on foot from Santa Agueda in eleven hours.[20]

After trial, the court a quo promulgated on 15 January 1992 its decision[21] finding accused Nicasio Gornes guilty beyond reasonable doubt of the crime of murder. The conviction is based on its findings that both parties admitted the fact of death of Eugenia Lastimoso; that the witnesses for the prosecution positively identified Nicasio Gornes as the person who stabbed and shot the victim; that the prosecution had established the motive of the assailants; and that the alibi of Nicasio is weak. The dispositive portion of the decision[22] reads:

"FOR ALL THE FOREGOING CONSIDERATIONS, this Court finds the accused, Nicasio Gornes, guilty beyond reasonable doubt [of] the crime of Murder defined and penalized under Article 248 of the Revised Penal Code and sentences him to suffer the penalty of Reclusion Perpetua, to indemnify the heirs of the offended party Eugenia Lastimoso in the sum of P40,000.00 and to pay the cost. The weapons used if confiscated shall be forfeited in favor of the government. The accused is fully credited of his detention if any while awaiting trial.

SO ORDERED."

Nicasio Gornes appealed from the decision and in his brief urges us to reverse the decision and to acquit him because "[t]he trial court erred in giving full faith and credence [to] the testimony of the prosecution which is loaded with inconsistencies." [23] In support thereof, he contends that: the prosecution witnesses' claim that Eugenia Lastimoso was still able to run despite being stabbed several times is a fabrication because it is against human experience that she, a woman of no extraordinary strength, could still do so; the witnesses for the prosecution implicated him because they suspected him of being a member of the NPA and he was made a tool to avenge the death of their mother in the hands of the NPA; the crime was not reported to the authorities on the date it happened or at a reasonable time thereafter and that this case was filed only on 14 May 1991 or more than three years after the commission of the crime; and the claim of the prosecution witnesses that they were threatened is so easy to make as there is no way of ascertaining its veracity.

On the other hand, the appellee prays for the affirmance of the challenged decision because the assigned error, which hinges on the credibility of the prosecution witnesses, is inherently weak when raised on appeal; there is nothing incredible about the victim being able to run despite the wounds inflicted on her since she was then only 42 years old and was not suffering from any physical disability and her determination to escape from her attackers was a natural reaction; the prosecution witnesses would not falsely testify against the appellant considering their

relationship; and the delay in reporting the crime was justified by the fact that the appellant and his companions are not ordinary criminals but are NPA members who frequently visited the town of the witnesses and exacted money and supplies from the townsfolk.

We find no merit in the appeal.

At the bottom of the assigned error is the issue of credibility. It is settled that when the issue of credibility is concerned, the appellate court will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial, unless certain facts of substance and value had been plainly overlooked which, if considered, might affect the result of the case.[24] We have carefully examined the records in this case and read the transcripts of the testimonies of the witnesses. We find nothing therein which would justify a departure from the above rule. Nicasio Gornes was positively identified by the prosecution witnesses as the person who repeatedly stabbed and shot their mother, Eugenia Lastimoso. There is no doubt on such positive identification. Pacita Veriña testified on direct as follows:

"Q Mrs. Verinia, can you remember where were you on November 19, 1988 at about 5:00 o'clock in the morning?

A In the house.

x x x

Q While you were in your house on November 19, 1988 and while you were in your house cooking, was there any unusual thing that happened?

A Yes, there was.

x x x

Q According to you awhile ago you were in your house in that morning and date November 19, 1988 when something unusual happened. What happened?

A Early in the morning Nicasio Gornes went to the house and greeted my mother.

Q After Nicasio Gornes greeted your mother, what did you do?

A My mother opened the door and this Nicasio Gornes and my mother were talking [with] each other and after that he stabbed my mother at the breast.

x x x

Q While Nicasio Gornes and your mother were conversing, where were you?

A I was by the window.

Q How far is that from where you were where Nicasio Gornes and your mother were sitting?

A From here I am now sitting to that door. (witness referring from the chair where she is sitting on the witness stand to the door of the courtroom which is a distance of 5 to 6 meters)

Q Did you hear what Nicasio Gornes and your mother were talking about?

A No.

Q For how long did your mother and Nicasio Gornes were conversing?

A Around five (5) minutes.

Q After five (5) minutes what happened?

A He stabbed my mother.

Q Who stabbed your mother?

A Nicasio Gornes

Q And how many times did he stab your mother?

A Many times.

x x x

Q What weapon?

A Hunting knife.

x x x

Q And after Nicasio Gornes stabbed and hit your mother, what did your mother do?

A My mother ran.

Q By the way, what was the position of Nicasio Gornes when he stabbed your mother many times?

A (Witness demonstrating by thrusting his right hand).

Q And according to you, you testified that after Nicasio stabbed and hit your mother many times, your mother stood up and ran away. Where did she go?

A She ran to Santa Agueda.

Q You mean she went down your house?

A Yes.

Q Did she eventually arrive at Santa Agueda?

A No.

Q Why?

A Because she was shot by Nicasio Gornes.

x x x

Q And you testified that your mother was shot by Nicasio Gornes and was hit at the back. What weapon was used by Nicasio Gornes in shooting your mother?

A A long firearm."[25]

Teresita Lastimoso likewise testified on direct as follows:

"Q While you were in the house in the morning of November 19, 1988 with your mother and your brother and sisters, can you remember what then happened?

A On that date Nicasio Gornes was in our house greeted my mother and while they were conversing with each other upstairs in the house Nicasio Gornes suddenly stabbed my mother.

x x x

Q And according to you, you saw Nicasio Gornes and your mother conversing, how far were you from them?

A I was at a distance because they were in the porch and I was in the window upstairs and did not hear what they were talking about.

Q From the place you are now sitting, please point to any objection [sic] inside this courtroom as your distance to them while your mother and Nicasio were conversing with each other?

A (Witness pointing to the door of the courtroom which is a distance of five (5) to six (6) meters by agreement of the parties).

x x x

Q You said you saw Nicasio Gornes stabbed your mother. How many times?

A I have not counted how many times my mother was stabbed but I can say many times.

Q What did Nicasio Gornes use in stabbing your mother?

A Hunting knife, it is about this length [sic]. (five to 6 inches by agreement of both parties)

x x x

Q And then after he stabbed your mother many times, what happened to your mother?

A She run [sic] away going downstairs.

x x x

Q When your mother went downstairs, what did Nicasio Gornes do?

A He followed my mother and fired his gun to [sic] to my mother.

Q How many times Nicasio Gornes fired his gun against [sic] your mother?

A Only once but after he shot my mother feel [sic] to the ground and Raul Gornes [should be Vilar] shot the head of my mother.

Q You testified that Nicasio Gornes shot your mother, was she hit?

A Yes.

Q Where was your mother hit by the shot of Nicasio Gornes?

A At the back.[26]

The cross-examination of both witnesses dealt with the details of their story and only served to strengthen the prosecution's evidence. At one point, the trial court candidly told the defense counsel that he was "helping ... the prosecution in establishing facts." [27]

The allegation of Nicasio Gornes that the motive of the prosecution witnesses in implicating him was to avenge the death of his aunt in the hands of the NPA, of which he was suspected to be a member, is not supported by any evidence other than his self-serving declaration. It is hard to believe that prosecution witnesses Pacita and Teresita, who are his first cousins, would implicate him just because he was suspected of being an NPA member and their mother was allegedly killed by the NPA's. If an accused had really nothing to do with the crime, it is against the natural order of events and of human nature and against the presumption of good faith that the

prosecution witnesses would falsely testify against the former.[28] The prosecution witnesses had no reason to falsely testify against Nicasio Gornes. The latter even openly declared that he and the prosecution witnesses are close relatives and that he has no ill-feelings, resentments, or quarrels against his aunt or his cousins.[29]

There is, as well, no basis to the claim that it was impossible for Eugenia Lastimoso to have run after she was stabbed several times. No post-mortem examination was conducted in this case; the gravity therefore of the stab wounds inflicted on the victim cannot be speculated upon to justify the accused's conclusion. Although the victim was stabbed in the chest, this did not necessarily render her completely incapable of any movement. Wounds of the big blood vessels, like the carotid, jugular, or even the aorta, do not prevent a person from exercising voluntary acts or even from running a certain distance.[30]

It is true that the charge against the appellant was initiated only three and a half years after the commission of the crime. However, the fact of delay alone does not work against the witnesses. In *People vs. Rostata*,[31] this Court held:

"Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of the witness if such delay is satisfactorily explained. The law on prescription of crimes would be meaningless if we were to yield to the proposition that delay in the prosecution of crimes would be fatal to the state and to the offended parties. In fixing the different prescriptive periods on the basis of the gravity of the penalty prescribed therefor, the law takes into account or allows reasonable delays in the prosecution thereof."

We find the delay in this case to be sufficiently and satisfactorily explained. The victim's family, which included the two prosecution witnesses, were threatened by Raul Vilar and the accused himself[32] after their mother was killed. Fear of reprisal compelled them to hold their tongues. In fact, had not the appellant been arrested, these witnesses might have kept their silence forever. It should be noted that the crime was committed when members of the NPA were still very active in their town and the family of the victim was then residing in an isolated mountainous place easily accessible to the said group. The fear which prevented them from complaining against their own cousin is well-founded. These witnesses were emboldened to come out and to seek justice for the death of their mother only after the accused was arrested on 8 May 1991. Pacita Veriña executed her affidavit accusing the appellant six days after or on 14 May 1991.

As against his positive identification by the prosecution witnesses, the appellant's alibi must fail.[33] Alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable, but also because it is easily fabricated.[34]

The conviction then of the accused must be sustained. However, the indemnity must be increased from P40,000.00 to P50,000.00 in accordance with the current policy of this Court.[35]

WHEREFORE, the decision of the Regional Trial Court of Dumaguete City, Branch 36, in Criminal Case No. 9820 is **AFFIRMED** subject to the above modification of the indemnity.

Costs against the accused-appellant Nicasio Gornes.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Original Records (OR), 5.

[2] *Id.*, 14.

[3] Id., 15.

[4] OR, 1; Rollo, 5.

[5] The case was raffled off to Branch 36 of the said court.

[6] OR, 21.

[7] TSN, 21 October 1991, morning session, 9; afternoon session, 8.

[8] TSN, 21 October 1991, morning session, 5; afternoon session, 4.

[9] Id., morning session, 6; afternoon session, 4.

[10] Id., morning session, 8; afternoon session, 6-7.

[11] Id., afternoon session, 23.

[12] Id., morning session, 9; afternoon session, 8.

[13] Id., morning session, 10; afternoon session, 8-9.

[14] TSN, 21 October 1991, morning session, 14-15.

[15] TSN, 3 December 1991, 5.

[16] Id., 21.

[17] Id., 6.

[18] Id., 13-14.

[19] Id., 15.

[20] TSN, 4 December 1991, 6.

[21] OR, 53-56; Rollo, 11-14. Per Judge Constancio E. Jaugan.

[22] Id., 56; Id., 14.

[23] Rollo, 36.

[24] People vs. Taneo, 218 SCRA 494 [1992].

[25] TSN, 21 October 1991, morning session, 3-7.

[26] TSN, 21 October 1991, afternoon session, 2-5.

[27] TSN, 21 October 1991, afternoon session, 22.

[28] People vs. Kyamko, G.R. No. 103805, 17 May 1993.

[29] TSN, 3 December 1991, 12-13.

[30] PEDRO SOLIS, LEGAL MEDICINE 296 (1987 rev. ed.).

[31] 218 SCRA 657, 673 [1993] (citations omitted).

[32] TSN, 21 October 1991, morning session, 10; afternoon session, 9.

[33] *People vs. Penillos*, 205 SCRA 546 [1992]; *People vs. Buka*, 205 SCRA 567 [1992]; *People vs. Dela Cruz*, 207 SCRA 632 [1992]; *People vs. Devaras*, 205 SCRA 676 [1992]; *People vs. Casinillo*, 213 SCRA 777 [1992]; *People vs. Florida*, 214 SCRA 227 [1992].

[34] *People vs. Devaras*, *supra*.

[35] *People vs. Narit*, 197 SCRA 334 [1991]; *People vs. Dapitan*, 197 SCRA 378 [1991]; *People vs. Tiozon*, 198 SCRA 368 [1991]; *People vs. Lubreo*, 200 SCRA 11 [1991]; *People vs. Barba*, 203 SCRA 436 [1991].

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