

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HECTOR DOMINGO, JOSELITO DOMINGO, JUAN DOMINGO AND VICENTE DOMINGO, ACCUSED-APPELLANTS.

G.R. No. 104955. August 17, 1999

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Jose Teober Ricafort was to be married to Susana Loterte on January 7, 1987. Preparations were already underway but, unfortunately, they were all put to naught by the untimely demise of Jose on December 28, 1986.

These facts stand out in the records:

On December 28, 1986 at around 11:00 o'clock in the morning, Jose and Susana were preparing to take a bath in a nearby well around 100 meters away from the house of the latter at barangay Guiron, Pilar, Sorsogon. Jose went ahead as Susana still had to prepare their things. After a short while, Susana followed. When she was barely 20 meters away from the well, Susana saw Jose being surrounded by accused-appellants Hector, Joselito, Juan and Vicente, all surnamed Domingo. After saying "Hayop ka, ikaw an nagsaksak san tugang ko!" (You are an animal, you were the one who stabbed my brother!) Hector immediately lunged towards Jose with a fish spear hitting the latter on the chest. With the fish spear embedded in his chest, Jose ran towards Susana but fell to the ground after negotiating 5 meters. The four accused then pounced on him hacking and hitting him on different parts of his body. Susana could not do anything but shout for help. Julian Loterte, upon hearing the cries of Susana, immediately went to the well. When he arrived, the assailants had already scampered away. Julian then saw Jose lying face down on the ground while Susana was holding his severed hand. Julian turned over the body of Jose and saw that the latter had suffered several hack wounds, his hand severed, his neck almost cut off from his body and a fish spear embedded on his chest.

Julian immediately ordered Susana to summon help. The latter first reported the incident to barangay kagawad Rosalina Macayan who in turn informed the barangay captain. Susana likewise notified Rogelio Ricafort, the uncle of the victim.

On December 29, 1986 the police authorities arrested Hector in front of the municipal building of Pilar while Juan was apprehended at barangay Sapa of the same municipality. At the time of his arrest, Hector's t-shirt was bloodied and he had a bolo in his possession.

Due to the Christmas holiday, no case could immediately be filed against the four assailants. Consequently, Hector and Juan were both released from custody.

Nonetheless, after the holidays, an information^[1] was filed against Hector, Juan, Joselito and Vicente, all surnamed Domingo, charging them with murder. Said information charges, thus:

"That on or about the 28th day of December, 1986, at around 11:00 o'clock in the morning, at Barangay Guiron, Municipality of Pilar, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable

Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with a spear, bolo and a knife, did then and there, willfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, assault, attack, hack and stab one Jose Teober Ricafort in the different parts of his body, inflicting upon the latter the following injuries, to wit:

- Hack wound - across parieto-occipital bones; 8 inches deep, cutting skull bones exposing and cutting brain;
- Hack wound - 6 inches long by 4 inches deep, base, neck, rt.;
- Body and Chest - punctured wound with "spear" still intact 2 inches deep; .5 inch point of entrance; about 5 fingers below nipple, right;
- Hack wound - 6 inches long 1 ½ inches deep, superior border, scapula, right;
- Hack wound - 7 inches by 2 inches, superior border, scapula, left.;
- Hack wound - 5 inches by one inch across lumbar region;
- Upper Extremities - Hand cut off from wrist left;
- Hack wound - cutting almost half of hand from medial aspect wrist up to 3rd tarsal bones right;
- Hack wound - 3.5 inches by 2.5 across mid-arm right;
- Lower extremities - Lacerated wound - 8 inches by 3 inches lateral aspect, thigh, right;
- Lacerated wound - 6 inches by 3 inches medial aspect, thigh, left;
- Lacerated wound - 4 inches by 1 inch above-knee, right;
- Lacerated wound - 5 inches by 3 inches lower leg, cutting off Achilles tendon left.

thereby causing the immediate death of said Jose Teober Ricafort, to the damage and prejudice of his legal heirs."

During arraignment they pleaded "not guilty" to the charge. They all denied participation in the crime and interposed instead the defense of alibi.

For his part, Vicente alleged that he was at Tingco, Inapugan, Pilar from December 26, 1986 up to December 30, 1986 repairing the motorboat of one Wilson Matamorosa. He also alleged that Sapa could be reached from Tingco by sea in one-half hour by motorboat. Matamorosa corroborated the testimony of Vicente.

According to Matamorosa, he engaged the services of Vicente on December 26, 1986. From that day on until December 30, 1986, Vicente had been staying in his house at Tingco, Inapugan, Pilar. On December 29, 1986 he and Vicente went to Donsol to buy wood for the base of his banca. On their way back to Tingco, they were fired at by policemen at sea. When they docked, the police officers held Vicente for questioning while Matamorosa was allowed to go home. He did not inquire from the policemen the reason why Vicente was being held in custody but he knew the latter was suspected of killing somebody. He proceeded to Tingco leaving Vicente in the company of the policemen. Upon reaching Tingco, he watched "entre cuatro" which is a kind of gambling at the house of their barangay captain starting at 2:00 o'clock and went home only at around 5:00 o'clock in the afternoon. When he arrived home, he saw Vicente already working on his motorboat.

As regards Juan, he asserted that he was at the pier of Aroroy, Masbate together with his wife Mary Jane on December 28, 1986 at around 11:00 o'clock in the morning. They were waiting for a boat that would take them to Pilar as they would visit his brothers. It normally takes 5 hours by boat to negotiate the distance between Aroroy

and Pilar. Juan insisted having gone on a leave of absence for 19 days when he went to Pilar, Sorsogon to visit his family. Juan and his wife allegedly arrived at Pilar, Sorsogon only at 5:00 o'clock in the afternoon of December 28, 1986. Nemia Cardeno, a neighbor, and Jerry Bermejo, machine operator of M/V Salvacion, corroborated the testimony of Juan.

Cardeno narrated that she was at the pier of Aroroy, Masbate on December 28, 1986 to send off her cousin. That day, she remembered seeing Juan Domingo and his wife Mary Jane at the pier waiting for M/V Salvacion that would take them to Pilar, Sorsogon. Cardeno claimed to have clearly recalled their meeting, however, she could not readily recall the time when she testified before the court. She could not even recall when her best friend, Mary Jane, got married to accused-appellant Juan.

On the other hand, Bermejo testified that he saw Juan and his wife at the pier of Aroroy, Masbate on December 28, 1986. He claimed he always saw Juan everytime the latter travelled from Aroroy to Pilar and vice-versa. Notably, when asked for other instances and dates wherein he likewise supposedly saw Juan, he failed to specify a single one.

For his part, Hector maintained he was at the cockpit of Apad, Pilar, Sorsogon from 7:00 o'clock in the morning up to late in the afternoon of December 28, 1986. He was allegedly selling fish together with his business partner, Mario Lomboy. He claimed to have left the area only when he took his lunch at the house of a certain Mrs. Tagle.

Mario Lomboy, a 59-year-old fisherman, was presented to corroborate his testimony. He testified that he and the accused Hector were partners in buying and selling fish. He narrated that at 7:00 o'clock in the morning of December 28, 1986 up to 12:00 o'clock noon, he and Hector were at the cockpit in Apad, Pilar, Sorsogon selling a bañera of fish. They finished selling at 12:00 noon and ate their lunch at the house of Mrs. Tagle. After lunch, they returned to the cockpit to watch the cockfights.

Joselito alias Diokno lived at Naspi, Pilar, Sorsogon. He denied participation in the killing of Jose Ricafort at barangay Guiron, Pilar, Sorsogon on December 28, 1986. On that day and time, he was allegedly in barangay Naspi, Pilar, Sorsogon at the house of his mother. Nobody corroborated his testimony. He denied his name was Joselito and instead claimed being known as Diokno.

On February 9, 1990, the trial court rendered a decision^[2] finding Hector, Vicente, Juan and Joselito guilty of homicide and correspondingly sentenced them to suffer the indeterminate penalty of 12 years and 1 day as minimum to 20 years as maximum of reclusion temporal, to pay the heirs of the victim P30,000.00 as death indemnity, P10,000.00 for burial expenses, P20,000.00 as moral damages and to pay the costs of the suit.

The case was elevated to the Court of Appeals on the following assignment of errors:

- THE COURT ERRED IN CONVICTING THE ACCUSED AND BRUSHING ASIDE THEIR DEFENSE OF ALIBI ALTHOUGH WELL SUPPORTED BY TESTIMONIES OF CREDIBLE WITNESSES; AND
- THE COURT ERRED IN GIVING FULL CREDIT TO THE ISOLATED AND DOUBTFUL TESTIMONY OF SUSANA LOTERTE PARTICULARLY IN ALLEGEDLY HAVING WITNESSED THE INCIDENT AND RECOGNIZED THE CULPRITS WHO DID NOT LIFT A FINGER TO SILENCE NOR HARM HER.

The defense claims the lower court should not have lent credence to the testimony of prosecution eyewitness, Susana Loterte. It argues that had Susana actually witnessed the killing, then, the assailants would not have hesitated to finish her off. The defense opines that since Susana became hysterical when she witnessed the killing then she is not capable of keen perception of what happened around her. The defense concluded that since Susana's testimony was of doubtful credibility, then the testimony of Rogelio Ricafort was likewise not credible as he only sourced his information from Susana. Likewise, after the suspects were initially apprehended, they

were immediately released from custody for lack of positive identification from the prosecution witnesses. In fact, nine days had elapsed before the police officers were able to secure supporting affidavits from witnesses.

The appellate court was unconvinced. It found the protestations of the accused-appellants, particularly on the credibility of prosecution witness Susana to be mere speculations and conjectures. It accorded great weight and respect to the factual findings of the trial court relying particularly on the lone testimony of Susana which served as primary basis for the conviction of the four accused. It found no error on the part of the court a quo in its appreciation of all the evidence submitted before it.

Also, the Court of Appeals was satisfied with the explanation given by the prosecution as to why accused-appellants were initially released from detention, and why it took the police officers nine days to secure supporting affidavits. As found by the trial court, the accused-appellants were initially released from detention for failure of the prosecution to immediately file an information considering that the incident took place during the Christmas holidays. The delay of nine days in procuring affidavits was understandable considering the natural reticence of Filipinos to participate in criminal trial proceedings.

The appellate court discarded the alibi of the four accused-appellants considering that such cannot prevail over the positive identification made by eyewitness Susana Loterte.

The Court of Appeals found that treachery attended the commission of the crime. Although it also appreciated the presence of abuse of superior strength and band, it ruled that these circumstances were absorbed in treachery. Accordingly, it found the four accused-appellants guilty of murder and not just homicide. Correspondingly, the appellate court sentenced the accused-appellants to suffer the penalty of reclusion perpetua and increased the indemnity for death from P30,000.00 to P50,000.00.

Pursuant to Sec. 13, Rule 124 of the Rules on Criminal Procedure, the case was certified and elevated to this Court for review.

Essentially, accused-appellants claim that their defense of alibi was erroneously discarded both by the trial court and the Court of Appeals. Secondly, they alleged that the appellate court erred in finding the presence of treachery in the commission of the crime.

The first contention of the defense is without merit. Basically, it raises questions of facts which is traditionally within the province of the trial court. After a thorough perusal of the records, this Court finds no reason to disturb the factual findings of the court below, especially since it has been affirmed by the appellate court. The trial court, after a clinical assessment of all the pieces of evidence submitted before it, ruled that the alibi of the accused-appellants would not in any way prevail over the positive identification by the prosecution eyewitness. We quote with approval the following observations of the trial court:

"This Court knows that the testimony of Wilson Matamorosa, the person who attempted to establish the alibi of the accused, Juan Domingo, is built in some such shaky foundation. He vacillated so much in answering not only the questions of the cross examiner but including that of the Court. He tried to evade direct answers to simple questions. He even failed to tell the Court how Vicente Domingo was able to go to Tingco after he left him at the seashore of Sapa with the policemen in the afternoon of December 29, 1986. Yet, he said that he just noticed Vicente Domingo there already when he returned to his house at 5:00 o'clock in the afternoon from the house of the barangay captain.

"The testimony of Nemia Cardeno when she tried to establish the alibi of Juan Domingo that at the time of the incident, Juan Domingo was still at the pier of Aroroy, Masbate, does not ring true. Her entire testimony seems too unnatural to inspire belief. If she was asked to be a witness in this case, it would be very natural that he who asked her to be a witness should spend for her fare and everything. She is jobless and yet she would spend

her own money for fares in coming to this Court and not the person in whose favor she is going to testify. Moreover, she testified that she learned that she will be a witness in this case in September of 1988, or almost two years after the incident in question. When she could remember the date when she saw the accused, Juan Domingo, at the pier of Aroroy, Masbate, she could not remember when she was asked by Juan Domingo to testify in this case sometime in September, 1988. She even told the Court that from December 28, 1986, up to September 1988 she saw the accused, Juan Domingo, everyday. This definitely could not have been true because Juan Domingo left Aroroy, Masbate, on December 26, 1986, and stayed in Pilar, Sorsogon for 19 days according to Juan Domingo. This assertion by Nemia Cardeño leaves much to be desired. Moreover, she even told the Court that she was not apprised of what she was supposed to testify in Court. This Court cannot just simply believe this, for nobody would call her to the witness stand unless the one calling her knows the nature of her testimony. She could not even also remember the date when she last saw the accused at Aroroy when they left for Pilar to testify in this case which is not even more than a month before she testified. How could she have remembered she saw the accused, Juan Domingo, at the pier of Aroroy, Masbate, on December 28, 1986? This is a long shot declaration.

"The testimony of Jerry Bermejo to corroborate the testimony of Nemia Cardeño regarding the voyage on December 28, 1986, which the spouses Juan Domingo and his wife Mary Jane Domingo, took from Aroroy to Pilar is not also worthy of credence. First, because of the numerous trips he made from Aroroy to Pilar and vice-versa he could not remember a single day and date when these were made, but he could specifically remember that date of December 28, 1986. Second, he first stated that he was asked to be a witness in January of 1986, then he changed it to January 1989. And yet he could not also exactly tell the date when he was asked to be a witness. He also categorically stated that he could not remember any other day when he saw the accused, Juan Domingo, rode or took his vessel. The testimony therefore, of this witness is replete with badges of falsehood.

"The testimony of Mario Lomboy who tried to establish the alibi of the accused, Hector Domingo, as well as the testimony of the said accused do not inspire belief. Lomboy and Hector testified that they started selling fish in the cockpit at Apad, Pilar, Sorsogon, from 7:00 o'clock in the morning to 12:00 o'clock noon. This simply is not what usually happened in the cockpit in the Philippines especially in the town, for fish vendors usually go to the cockpits to sell their fish in the afternoon when the aficionados are about to go home. No cockfight aficionado or anybody who goes to the cockpit buys fish in the morning. The testimony, therefore, on this point by both Lomboy and Hector Domingo is too flimsy to be believed. This Court takes notice of the fact that the cockpit at Apad, Pilar, Sorsogon, is not far from the poblacion where the market place is. Residents of Apad would rather go to the poblacion to buy their needs as the poblacion or market place is just near the cockpit.

"The alibi of Diokno, alias Joselito Domingo, that he was at Naspi on the day Jose Teober Ricafort was killed is a non-corroborated assertion unworthy of belief. Even the manner by which Diokno testified shows he is not telling the truth because of his wavering attitude in answering simple questions." [3]

Based on the foregoing, this Court sees no reason to depart from the well-entrenched doctrine that findings of facts of the lower court are accorded due respect and weight unless it has overlooked material and relevant points that would have led it to rule otherwise. "(T)he time-honored rule is that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between truth and falsehood. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be clearly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case." [4] Notably, accused-appellants attack the credibility of the prosecution witnesses but they failed to point out any discrepancy, material or otherwise, in their testimonies. This Court is therefore not

inclined to depart from the factual findings of the lower court nor to disturb the credence accorded to it.

On another point, this Court agrees with the trial court and the appellate court in disregarding the alibi advanced by each of the four accused-appellants. "The defense of alibi requires an accused to prove his presence in another place at the time of the perpetration of the offense and to demonstrate that it would thus be physically impossible for him to be at the scene of the crime. For alibi therefore to prosper, two (2) elements must concur: (a) the accused was in another place at the time the crime was committed and, (b) it would be physically impossible for the accused to be at the scene of the crime at the time it was committed." [5] In the case at bar, accused-appellants only attempted to satisfy the first element of alibi. They endeavoured to prove that they were in another place at the time the crime was committed. Unfortunately, even this attempt proved too lame and unsubstantiated. In the case of Juan, he could have bolstered his claim by presenting his approved leave of absence or his boat ticket.

As to the second element, all four accused-appellants completely failed to show it would be physically impossible for them to be at the crime scene at the time it was committed. Accused-appellants were all from Sapa, Pilar, Sorsogon. In Rogelio Ricafort's cross-examination, he testified that in his estimate, the distance from Sapa, Pilar, Sorsogon to the place of the incident in Giron, Pilar, Sorsogon is more or less three (3) kilometers. He added that by walking, he could traverse said distance in one and a half hours. [6] Alibi is an inherently weak defense, and it becomes weaker in the face of the positive identification made by the prosecution witness. Besides, no ill-motive was imputed to Susana or to any of the prosecution witnesses to testify against any of the four accused-appellants. Absent any ill-motive, the evidence for the prosecution gains more strength and credibility.

Anent the other alleged error, this Court disagrees with the appellate court that treachery attended the commission of the crime. "Treachery may be considered as a qualifying circumstance when the following two conditions are present: (a) the employment of means, methods or manner of execution to ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, and (b) the deliberate adoption by the offender of such means, methods or manner of execution. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked." [7] "It is present when the attack comes without warning, is sudden and unexpected and the unsuspecting victim is not in a position to parry the assault." [8] "It cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself." [9]

The aforesaid elements are unavailing in the instant case. The records show that Susana had no knowledge how the attack started. She did not know the manner by which the assailants made known their presence to Jose. When she arrived at the crime scene, she saw Jose already surrounded by his attackers. They did not attack him instantly although they left no doubt in the mind of their victim of their intent to attack as their bolos were already unsheathed and in full view of their victim when they confronted him. More importantly, there was warning from the accused-appellants themselves of the impending attack as when Hector pronounced "Hayop ka, ikaw an nagsaksak san tugang ko!" In effect, they have forewarned their victim of the attack. The attack therefore became expected rather than unexpected. As proof, Jose even tried to parry some of the blows coming from his assailants as shown by the location of the wounds he suffered. When he parried the blow, his left hand was hit and was completely severed from his body. At this juncture, it bears repeating that treachery is never to be presumed. Just like the elements of a crime, it must be satisfactorily proved beyond reasonable doubt. Besides, superiority in number does not make the attack treacherous.

Abuse of superior strength could be appreciated, however, not having been alleged in the Information, it could only be considered as a generic aggravating circumstance. Accused-appellants enjoyed superiority not only in number but also in arms consisting of bolos and spear. They took advantage of their combined strength to perpetrate the crime with no harm forthcoming to themselves.

The felony of homicide carries with it the penalty of reclusion temporal.[10] There being one aggravating circumstance and no mitigating circumstance, the penalty shall be imposed in its maximum period.[11] Therefore, accused-appellants are sentenced to an indeterminate penalty, the minimum term of which shall be within the range of prision mayor, the penalty next lower.[12] Considering the manner and circumstances in which the crime was committed as well as the gravity of the offense, which are factors to be considered in the determination of the minimum term,[13] the accused-appellants are hereby sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum.

By way of civil liability, accused-appellants must be ordered to pay, jointly and severally, the heirs of Jose Teober Ricafort the sum of P50,000.00 as death indemnity and P20,000.00 as moral damages. The award by the trial court for actual expenses is, however, deleted for lack of factual basis.[14]

WHEREFORE, in view of the foregoing, accused-appellants Hector Domingo, Joselito Domingo, Juan Domingo and Vicente Domingo are hereby found GUILTY of homicide and accordingly sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum, and to pay jointly and severally the heirs of Jose Teober Ricafort the sum of P50,000.00 as death indemnity and P20,000.00 as moral damages. The award for actual expenses is DELETED for lack of factual basis. Costs against accused-appellants.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Records, p. 1.

[2] Penned by Judge Jose A. Madrilejos, Jr.

[3] Decision of the Court of Appeals, pp. 11-12; CA Rollo, p. 33, references to TSN omitted.

[4] People v. Edgardo (Egay) Ebrada, G.R. No. 122774, September 25, 1998.

[5] People v. Brando Ravanos y Battad, 284 SCRA 638-639 [1998].

[6] TSN, May 22, 1989, p. 24.

[7] People v. Loreto Noay, G.R. No. 122102, September 25, 1998.

[8] People v. Orlando Pallarco, 288 SCRA 153 [1998].

[9] People v. Nonoy Felix, et al., G.R. No. 126914, October 1, 1998.

[10] Revised Penal Code, Art. 249.

[11] Revised Penal Code, Art. 64(3).

[12] Act No. 4103, as amended by Act No. 4225, Sec. 1.

[13] People v. Oñate, 78 SCRA 43, at 51 (1977).

[14] People v. Rolly Obello y Proquito, 284 SCRA 81 [1998].

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