

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BIENVENIDO RAFOLS Y TEODORO (DECEASED) AND CESAR
MARIANO Y RUBIO, ACCUSED-APPELLANTS.**

G.R. No. 105122. December 10, 1993

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

Bienvenido Rafols y Teodoro and Cesar Mariano y Rubio were convicted by the Regional Trial Court of Caloocan City[1] of “the crime of murder defined and penalized under Article 248 of the Revised Penal Code and ** sentenced ** to suffer the penalty of LIFE IMPRISONMENT (Reclusion Perpetua)[2] (and) to indemnify the offended party, jointly and severally, (in) the amount of P100,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.”[3]

The verdict rests primarily on the testimony of an eyewitness, Rolando Fernandez. His story is simple and quickly retold. Fernandez declared that at about one o’clock in the morning of August 5, 1986, as he was walking home from Dagatdagatan, he came upon several persons at the corner of Bagong Silang and Marcela Streets, Caloocan City, engaged in the deadly business of disposing of his cousin, Arturo Balete. While Arturo was being held by the arms by two men -- Bienvenido Rafols and another whom Fernandez knew as Boy Javier -- a third man, Cesar Mariano, who was standing behind Arturo, shot the latter in the head and killed him.[4] Frightened by what he had seen, Fernandez thereupon reported the shooting to his uncle, the victim’s father.[5] Some months afterwards, Fernandez identified and pointed to Rafols and Mariano, who were then already in custody at the police station, as the perpetrators of the killing.[6] Fernandez’s testimony, at least as regards the fact that the victim was shot in the head from behind by someone, was corroborated by the evidence given by the NBI medico-legal examiner, Dr. Orlando Salvador.

For some reason, Rafols and Mariano were not indicted until a year later. The information for murder against them, together with two (2) others identified only as Peter Doe and Charles Doe, was filed on August 29, 1987, and accused them of the slaying of Arturo Balete y Banagale, as co-conspirators, and “with treachery and ** the use of superior strength.”[7]

Trial proceeded against Rafols and Mariano after issues were joined by their plea of innocent entered on arraignment. Aside from Fernandez and Dr. Salvador, above mentioned, six (6) other persons gave evidence for the state.[8]

Rafols and Mariano testified in their behalf, their testimony being summarized by the Trial Court as follows:[9]

“ * * That on the night of the shooting incident, ** Bienvenido Rafols was at home sleeping together with his family and it was only at 9:00 o’clock in the morning of August 6, 1986 when he woke up and in between said time, he never left his house.

“ * * Cesar Mariano on that particular night was allegedly at the chapel where the body of his dead nephew

was lying in state. Cesar Mariano was at that time very busy entertaining his aunt when suddenly they heard a gun shot. When they rushed to the place where the shot came from, they saw Arturo Balete already dead and lying on the ground.”

The Trial Court rejected the proffered alibis of the defendants and, deeming the evidence of the prosecution to have established their guilt beyond reasonable doubt, convicted them of the crime charged, as above stated. The judgment was promulgated in absentia, in view of the failure of both accused to appear on the date appointed therefor despite due notice, one of them, Rafols, having in fact absconded even while trial was still going on, as observed by the Trial Judge in his decision dated June 22, 1990..[10]

Bienvenido Rafols himself came to a violent end, some nine months after his conviction. He was stabbed and killed on March 27, 1991.[11] Consequently the Court resolved that “the criminal, as distinguished from the civil, liability of said appellant Rafols, is extinguished, and the appeal at bar shall proceed only with respect to the decedent’s co-accused, Cesar Mariano.”[12]

In his brief, Mariano specifies several circumstances warranting reversal of his conviction, namely: (1) the “(u)nexplained delay in reporting the crime to police authorities,” Fernandez having executed his sworn statement of the killing of August 5, 1986 only fifty-five (55) days later, on September 20, 1986, despite the fact that the victim was his first cousin, he has a brother who is a patrolman in the Caloocan Police Force, and he knows the assailant Cesar Mariano as well as his place of residence; (2) Fernandez lied when he said he was investigated the following day, August 6, 1986; (3) Fernandez was too far away from the killing (30-35 meters away) to make an accurate perception of the details thereof; and (4) he made no outcry, no attempt to rescue the victim.

The delay in the execution by the eyewitness, Fernandez, of a written statement before the police is not attributable to his vacillation, hesitation or reluctance to reveal what he knows of the crime. The fact is that he had immediately communicated to his uncle, the victim’s father, what he had seen; and if the latter had not immediately arranged to have the police take his sworn statement, the delay cannot be ascribed to any doubts plaguing the eyewitness about his perception of the events of that fatal day, much less to any concoction of stories. The delay in the giving of the written statement may not reasonably be considered a factor in assessment of the witness’ credibility. And while it is true that the victim was the witness’ own first cousin, since he had already reported what he had seen to the latter’s father, he must have felt, not unreasonably, that he had done all that was needful under the circumstances, and that, as the familiar Spanish maxim goes, he could not be more “papista” than the victim’s own parent by pressing for the prosecution of the murderers.

The appellant’s challenge of Fernandez’s identification of the culprits, there being between them a distance of some thirty meters, cannot detract from the latter’s credibility. The street corner where the killing took place was well-lighted; there were no other persons around except the murderers and their prey; the malefactors were known to Fernandez; and the event -- the killing of the witness’s own cousin -- was certainly of such a character as exceptionally to commend itself to the observer’s perceptions and recollection. There is thus no reason why a positive identification made under these circumstances may not be relied on.

That Fernandez made no outcry, and exerted no effort to help the victim, does not make his testimony unbelievable. In truth, it would have been foolhardy and foolish for him to attempt intervention in the premises. He was unarmed, and there were four (4) men, one armed with pistol, who were clearly acting in deadly earnest, and had just shot his cousin.

The fact is, Fernandez did everything that might reasonably be expected of him in light of the facts. He lost no time in reporting the killing to the victim’s father; he later executed a sworn statement before the police narrating what he had seen, and he picked out and identified the malefactors at the police station. The Trial Court’s accord

of full faith and credit to his testimony was not at all misplaced.

The Court must, before closing, draw attention once again to the egregious error here committed of equating the penalty of reclusion perpetua with that of life imprisonment. While in nowise affecting the verdict of guilt, it must be corrected. As this Court has been repeatedly stressing, these penalties are not the same; they are not identical; they are distinct and different from each other.[13] In the case at bar, the appropriate penalty is reclusion perpetua, not life imprisonment.

WHEREFORE, the judgment of the Trial Court in Criminal Case No. 27609 dated June 22, 1990, subject of the appeal at bar, is **AFFIRMED** with the modification that the penalty imposed on the appellant for the felony of which he has been convicted should be reclusion perpetua, and not “life imprisonment (reclusion perpetua).”

SO ORDERED.

Padilla, Regalado, Nocon, and Puno, JJ., concur.

[1] Branch 125, presided over by Hon. Geronimo S. Mangay, the case having been commenced by information dated August 29, 1987 and docketed as Crim. Case No. 27609

[2] Despite this Court’s insistent reminders in several decisions, and its explicit instruction in its Circular No. 6-A-92 dated June 21, 1993, the error persists of life imprisonment being equated with reclusion perpetua although the two (2) are palpably distinct from each other.

[3] Decision dated June 22, 1990 (Rollo, pp. 12-18). The verdict was promulgated in absentia in view of the failure of both the accused, Rafols and Mariano, to appear for promulgation of judgment scheduled on July 17, 1990 despite notice (Order, July 17, 1990, Rollo, p. 27). According to the Court, Mariano in fact “jumped bail” during the trial which consequently “proceeded in his absence” (Rollo, p. 13). Mariano was subsequently apprehended and committed to the New Bilibid Prisons at Muntinlupa, by Order of Judge Mangay dated August 3, 1990 (Rollo, p. 31).

[4] TSN, Nov. 11, 1987, p. 28

[5] Id., p. 32

[6] Id., p. 36

[7] Rollo, p. 12; SEE footnote 1, supra

[8] Irene Balete, Pat. Paulino Bateria, Pat. Marcelo Mariano, Pat. Reynaldo Valdez, Teodoro Ibarra, Brandies Flores

[9] Rollo, p. 14

[10] SEE footnote 3, supra

[11] SEE Rollo, pp 60-61, 72

[12] Resolution, August 9, 1993 (Rollo, p. 87)

[13] SEE footnote 2, supra; Peo. v. Penillos, 205 SCRA 546; Peo. v. Catubig, 205 SCRA 643; Peo. v. Samillano, 207 SCRA 50; Peo. v. Carpio, 207 SCRA 569; Peo. v. Baguio, 196 SCRA 459; Peo. v. Pilonas, 84 SCRA 167; Peo. v. Mobe, 81 Phil. 58

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