

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.IGNACIO ZUMIL, ACCUSED-APPELLANT.

G.R. No. 105284. July 08, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

The facts of this case as succinctly summarized by the Solicitor General and which we hereunder reproduced with approval are as follows:

“At about 3:00 o’clock x x x [in the] afternoon [of September 23, 1990], Rosita Emperio and her son Leopoldo, Jr., were watching television in their house with some neighbors. Momentarily, they were surprised to see her husband Leopoldo Emperio, Sr. home from work that early. Leopoldo, Sr. had earlier been informed that Rosita got into a quarrel. However, after he learned that the information was false, he set out to return to work. But before he could step out, Nicolas Oliver barged into the house armed with a hunting knife, and without warning, tried to stab Leopoldo. Sensing the peril he was in, Leopoldo backtracked to evade the thrust. He lost his balance and fell down on the floor. However, he managed to get hold of a bolo which he used effectively to stave off Oliver’s attack. Oliver ran out of the house pursued by Leopoldo. As soon as Leopoldo stepped out of his house, appellant attacked from the right side and struck Leopoldo’s right eye with a bamboo pole. The blow caused Leopoldo to fall from the makeshift bridge where he stood (tsn, Nov. 6, 1991, pp. 4-8; 23-25).

“Herminigildo Magsalay, a neighbor, tried to help Leopoldo, but, he too was attacked and struck by appellant at the back. Seeing his advantage, Oliver also pounced on the hapless Magsalay and stabbed him several times. Thereafter, Oliver moved over to where Leopoldo lay unconscious and, mercilessly, stabbed him. Both Leopoldo and Magsalay died on the spot (ibid., pp. 8-9; 26-29).”

On the bases of the separate sworn statements executed by Rosita Emperio, Arlyn Extension and Gener Diabordo, appellant Ignacio Zumil and Nicolas Oliver were charged with murder[1] for the death of Leopoldo, Sr.. When arraigned, Oliver pleaded guilty to a lesser offense of homicide and was accordingly sentenced by the trial court.[2] Appellant, on the other hand, entered a plea of not guilty. Full dress trial thereafter ensued against appellant culminating in this assailed verdict of conviction sentencing him “to suffer reclusion perpetua x x x and x x x pay the heirs of Leopoldo Emperio [the sum of] P50,000.00 as death indemnity.”[3]

Appellant is now before us contending that:

“1. The Lower Court erred in finding the Prosecution to have established beyond question that the environmental circumstances recited in the information had indeed taken place;

“2. The Lower Court erred in giving credence to the testimonies of the widow of the deceased victim, Leopoldo Emperio and of the boy-witness, Gener Diabordo, while, in the same breathe, it discredits the testimonies of the same said widow’s very own son, the other boy-witness, Leopoldo Emperio, Jr.;

“3. The Lower Court erred in finding that there is any judicial admission by the defense witness that the improbable did happen;

“4. The Lower Court erred in finding that the accused-appellant treacherously struck the victim, Leopoldo Emperio, while the latter was engaged in a death struggle with Nicolas Oliver y Dumanjug;

“5. The Lower Court erred in finding that the accused-appellant had incapacitated the other deceased Magsalay from helping the deceased, Leopoldo Emperio, by striking also Magsalay treacherously;

“6. The Lower Court erred in concluding that the leaving by the accused-appellant, after the killings, his residence for Pagadian City is a sign of guilty.”[4]

It is indubitable that the trial court’s judgment of conviction was based principally on Rosita and Gener’s[5] testimony narrating appellant’s actual participation in the commission of the crime. Claiming that Rosita has “an entirely different version” of the incident from those of Gener and Leopoldo, Jr., appellant now insists that the testimony of the prosecution witnesses are unworthy of belief.[6] Specifically, appellant cites the following alleged inconsistent portions of their respective testimonies:

Rosita Emperio: Direct Examination

“x x x x x x x x

Q When your husband fell down, what did you notice?

A My husband found a bolo and then he brandished that bolo to Nicolas Oliver in order that Nicolas Oliver will be out.[7]

x x x x x x x x.”

Leopoldo Emperio, Jr.: Direct Examination

“x x x x x x x x

Q While he was stepping backward trying to evade the thrust of Nicolas Oliver, what happened to your father?

A He got a bolo from the kitchen and brandished that bolo.[8]

x x x x x x x x.”

Gener Diabordo: Direct Examination

“x x x x x x x x

Q What did Leopoldo Emperio do while moving backward evading the thrust of Nicolas Oliver?

A He fell down and after that he stood up and got a bolo in the kitchen and brandished that bolo.”[9]
(Underscoring Ours)

While there appears to be an inconsistency between the testimony of Rosita, and of Gener and Leopoldo, Jr., as to how Leopoldo, Sr. was able to get a bolo which he used to repel Oliver’s assault, the same is nonetheless inconsequential. This is so because, referring as it does to only a minor detail of the incident, such inconsistency will not cast serious doubt on witnesses’ credibility,[10] but even suggests that their testimony were unrehearsed.[11] Moreover, we do not expect the testimony of the witnesses regarding the same incident to be consistent all throughout because different persons may have different impressions and recollections of the same incident.[12]

We must stress that appellant has been positively identified by no less than three (3) prosecution eyewitnesses as the one who struck a bamboo pole with a protruding nail[13] upon Leopoldo, Sr.’s face when the latter was chasing Oliver out of his (Leopoldo, Sr.) house.[14] That as a consequence thereof, Leopoldo, Sr. fell from the makeshift bridge, plunged into the water underneath and was finally stabbed to death by Oliver.[15] The trial court, though entertaining its misgivings on Leopoldo Jr.’s credibility,[16] found that Gener passed the “acid test

of cross-examination”,[17] and that Rosita’s testimony “rang with the fervor truth”.[18] We uphold these findings of the trial court considering that its findings on the matter of credibility of witnesses are given weight and the highest degree of respect on appeal.[19] Furthermore, their testimony was corroborated by Dr. Pedrita J. Rosaura -- the Assistant Health Officer of Ozamiz City -- who conducted a post-mortem examination on the cadaver of Leopoldo, Sr. Thus:

Q Upon examination of the body of Leopoldo Emperio, what did you find?

A One stab wound and a lacerated wound at the head and there is a very small puncture wound here.

Q On the right eye?

A Yes, this a stab wound, this is a lacerated wound and this a pinpoint wound.

Q Can you tell the Court what must have caused the wound found above the right eye of the victim?

A I cannot determine exactly. Maybe there was an object used. I cannot determine exactly but somehow the wound was lacerated.”[20]

(Underscoring ours)

On cross-examination, Dr. Rosaura dismissed the possibility that the wound on Leopoldo, Sr’s face was caused by his fall from the makeshift bridge. Hence:

Q Is it possible that the deceased could have been injured as a result of having fallen down earthward, face down?

A According to the characteristics of the wound that is not possible because the wound is linear, if it banged on a stone it will have corrugated edges.

Q Suppose the stone partakes a sharp instrument, is it possible if he hit a stone of that nature?

A If that is caused by a stone it could also be linear and very sharp.”[21]

On the other hand, appellant’s defense of denial which Nicolas Oliver,[22] the self-confessed author of the crime, corroborated is unworthy of belief. As against the testimony of the prosecution witnesses amply demonstrating appellant’s participation in the commission of the crime, his denial cannot prevail.[23] Well entrenched is the rule that positive testimony carries much weight than negative ones.[24]

With respect to appellant’s argument that his flight from Ozamiz City - his family’s residence for over twenty years[25] - immediately after the incident is not indicative of his guilt, the same does not merit our serious consideration. In this jurisdiction, while non-flight is not a conclusive proof of innocence,[26] flight has been invariably considered as an evidence of guilty conscience.[27] No less deserving of scant consideration is his explanation that his stealthy and untimely flight from Ozamiz City was for fear of possible reprisals from the Leopoldo Sr’s clan.[28] Indeed, we see neither rhyme nor reason why appellant would harbor such an apprehension if he was truly innocent. As we have often quoted: “The wicked flee when no man pursueth but the righteous are as bold as the lion.”[29]

Anent the existence of treachery, suffice it to state that we fully subscribe to the following findings of the trial court:

“This Court, therefore, finds that the eyewitness testimonies of Rosita Emperio and Gener Diabordo have sufficiently established that accused treacherously struck the victim, Leopoldo Emperio, from behind or beside him, while the latter was engaged in a death struggle with Nicolas Oliver. In short, Emperio did not see accused’s blow coming and when it landed on him, it knocked him off his feet, totally rendering him impotent to deal with Oliver.”[30]

Moreover, our settled rule is that in order to appreciate treachery in continuous aggression, the same must be

shown present at the inception of the attack.[31] In this case, we note that treachery was already present when Oliver, armed with a hunting knife, suddenly entered the house of Leopoldo, Sr. and continuously stabbed the latter. While Oliver may not have succeeded in his initial thrusts, as in fact, he even retreated when Leopoldo, Sr. parried his blows with a bolo, this nonetheless is quite insignificant because the existence or non-existence of treachery is not dependent on the success of the assault.

We thus believe that the evidence for the prosecution have sufficiently overthrown the presumption of innocence accorded by the Constitution to the appellant. Truly, appellant was not the one who inflicted the fatal thrust on Leopoldo, Sr.. However, his participation therein speaks so well that he conspired with Oliver who, were it not for the latter's timely plea of guilty to the lesser offense of homicide could have similarly been convicted of the crime of murder. Appellant therefore is as equally guilty as Oliver pursuant to the oft-repeated rule in conspiracy that the "act of one is the act of all".[32]

WHEREFORE, the appealed decision convicting appellant IGNACIO ZUMIL of the crime of MURDER is hereby AFFIRMED.

SO ORDERED.

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

[1] The Information filed against them dated October 4, 1990 reads:

"That at or about 3:00 o'clock in the afternoon of September 23, 1990, in Sitio Manabay, Barangay Catadman, City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in a conspiracy, and with intent to kill, did, then and there willfully, unlawfully, feloniously and with the qualifying circumstance of treachery, attack, strike and stab one Leopoldo Emperio with the use of a bamboo post (guod) and a hunting knife, hitting the latter and thereby causing his instantaneous death." (Record, p. 1.)

[2] Regional Trial Court (RTC) of Ozamiz City, Branch 15-A, Decision dated June 24, 1991, penned by Judge Ma. Nimfa Penaco-Sitaca; Record, p. 18.

[3] RTC Decision, Dated February 27, 1992, penned by Judge Ma. Nimfa Penaco-Sitaca, p.5; Rollo, p. 15.

[4] Brief for the Appellant, Filed on March 12, 1993, p. 1; Rollo, p. 36.

[5] A twelve (12) year old neighbor.

[6] Brief for the Appellant, *supra* at p. 38.

[7] TSN, Rosita Emperio, November 6, 1991, p.7.

[8] TSN, Leopoldo Emperio, Jr., November 6, 1991, p. 25.

[9] TSN, Gener Diabordo, November 6, 1991, p. 42.

[10] *People v. Porras*, 255 SCRA 514 (1996) citing *People v. Irene*, 164 SCRA 121 (1988) and *People v. Cariño*, 165 SCRA 664 (1988).

[11] *People v. Acob*, 246 SCRA 715 (1995); *People v. Cajambab*, 240 SCRA 643 (1995).

[12] See *People v. Gazmen*, 247 SCRA 414 (1995).

[13] Exhibit B-1.

[14] TSN, Rosita Emperio, November 6, 1991, pp. 7-8; TSN, Gener Diabordo, November 6, 1991, p. 43-44;

Leopoldo Emperio, Jr., November 6, 1991, pp. 25-27.

[15] Id.

[16] RTC Decision, *supra* at p. 14.

[17] Id.

[18] Id.

[19] *People v. Bondoc*, 232 SCRA 478 (1994); *People v. Nimo*, 227 SCRA 69 (1993); *People v. de la Cruz*, 217 SCRA 283 (1993); *People v. Dominguez*, 217 SCRA 170 (1993); *People v. Caraig*, 202 SCRA 357 (1991); *People v. Sarol*, 139 SCRA 125 (1985). This rule of course admits of certain exceptions, which we find absent herein, namely: (1) when patent inconsistencies in the statements of witnesses are ignored by the trial court, or (2) when the conclusions arrived at are clearly unsupported by the evidence. See *People v. Gumahin*, 21 SCRA 729 (1967); *People v. Secapuri, et. al.*, 16 SCRA 199 (1966).

[20] TSN, Dr. Pedrita J. Rosauero, November 7, 1991, p. 3.

[21] Id., p. 6.

[22] TSN, Nicolas Oliver, December 10, 1991, pp. 6.

[23] *People v. Digno, Jr.*, 250 SCRA 237 (1995); *People v. Escoto*, 244 SCRA 87, (1995); *People v. Ompad, Jr.*, 233 SCRA 62 (1994).

[24] *People v. Antonio*, 233 SCRA 283, 299 (1994); *People v. Mendoza*, 236 SCRA 666 (1994).

[25] TSN, Ignacio Zumil, December 10, 1991, p. 21.

[26] See *People v. Suitos*, 220 SCRA 419, (1993); *People v. Ocampo*, 218 SCRA 609 (1993); *People v. Macalino*, 209 SCRA 788 (1992).

[27] *People v. Dulay*, 217 SCRA 103 (1993); *People v. Melgar*, 157 SCRA 718 (1988); *People v. Reunir*, 157 SCRA 686 (1988).

[28] TSN, Ignacio Zumil, December 10, 1991, p. 16.

[29] *People v. Sarino*, 221 SCRA 234, 247 (1993), quoting Proverbs, 28:1, The Holy Bible King James Version; See also *People v. Landicho, et. al.* G. R. No. 116600, July 3, 1996; *People v. Dulay*, 217 SCRA 103 (1993) citing *People v. Tanchoco*, 76 Phil 463 (1946).

[30] RTC Decision, *supra* at p. 14.

[31] See *People v. Cañete*, 44 Phil. 478 (1923); *U.S. v. Balagtas*, 19 Phil. 164 (1911).

[32] *People v. Porras*, 255 SCRA 514, 530 (1996), citing *People v. Buligon*, 205 SCRA 766 (1992)

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