PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. QUINCIANO RENDOQUE, SR. Y AMORES, VICTORINO BACUAC Y QUISEL, FELIX ESTRELLADO Y BACUAC, PABLITO RENDOQUE Y ABIO, QUINCIANO REN...

G.R. No. 106282. January 20, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Appellants assail the decision of the Regional Trial Court of Dumaguete City, Branch 36,[1] in Criminal Case No. 8341, convicting them of the crime of murder, imposing upon them the penalty of reclusion perpetua, and ordering them to indemnify the heirs of the victim the amount of P30,000.00, and to pay the costs. Their co-accused Quinciano Rendoque, Sr. y Amores, Victorino Bacuac y Quisel, and Felix Estrellado y Bacuac were acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt.

The facts, as summarized by the Office of the Solicitor General and which we find to be supported by the records, are as follows:[2]

> "On or about 8:00 o'clock in the evening of April 21, 1988, Abundio Sido and the members of his family were resting inside their house at Barangay Basiao, Municipality of San Jose, Negros Oriental. All of a sudden, a group of armed men, six in number, arrived. One of them shouted "Abundio Sido lumabas kayo, mga military kami" (pp. 7-8, tsn, March 1, 1989; p. 5-6, tsn, June 14, 1989). In return, Abundio answered, "you come up, we will talk upstairs" (p. 9, tsn, March 1, 1989). The group however, insisted that he comes (sic) down and so, Abundio instructed his wife Florida to open the door. The latter, accompanied by her daughter Elvie who was holding a kerosene lamp, proceeded towards the door to open it. When the door was opened, Florida and her daughter by the aid of the kerosene lamp were able to recognize the six armed men standing in front of their house wearing fatigue uniforms as Pablito Rendoque, Esperato Salaquin, Quinciano Rendoque, Sr., Quinciano Rendoque, Jr., Victorino Bacuac and Felix Estrellado. With the exception of Quinciano Rendoque, Sr. who was seen carrying a revolver, the rest were all armed with shotguns (pp. 10-11, tsn, March 1, 1989; p. 8, tsn, June 14, 1989).
>
> On that occasion when the door was opened, Pablito Rendoque shouted "fire" to his companions. In obedience to his order, Esperato Salaquin and Quinciano Rendoque, Jr. aimed and fired their respective shotguns towards the direction of the wall inside the house where Abundio was sitting. As a result, the victim was hit at the back and on the left shoulder by pellets which caused his death (pp. 11-12, tsn, March 1, 1989; pp. 9-10, tsn, June 14, 1989). Thereafter, the armed group left leaving Abundio's dead body behind (id.)
>
> Dr. Bienvenida Palongpalong, Municipal Health Officer of San Jose, Negros Oriental, was able to conduct a post-mortem examination of the cadaver of Abundio Sido and it was found that the latter sustained gunshot wounds at the deltoid region and at the back lumber vertebrae which caused severe hemorrhage resulting in his death (p. 10, tsn, May 23, 1990)."

Following police investigation, a criminal complaint for murder[3] was filed against all six (6) accused. At the

preliminary investigation, they waived the filing of counter-affidavits.[4] The Municipal Trial Judge issued a Resolution[5] finding sufficient ground to engender a well-founded belief that a crime cognizable by the Regional Trial Court has been committed and that accused are probably guilty thereof and should be held for trial, and forwarded the records of the case to the Provincial Prosecutor of Dumaguete City, Negros Oriental for the filing of the appropriate Information. The six (6) accused were accused of murder under an Information,[6] which pertinently reads as follows:

> "That on or about the 21st day of April, 1988, at Barangay Basiao, Municipality of San Jose, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-name accused, conspiring and confederating together and mutually helping one another, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously assault, attack and shoot Abundio Sido with the use of home made firearms, thereby inflicting upon the body of Abundio Sido the following injuries, to wit:
>
> '1. Gunshot wounds 8 in number, 1 cm. in diameter, (L) Deltoid region;'
>
> '2. 8 gunshot wounds 1 cm. in diameter x 3 inc depthness, back (not legible) 2nd and 3rd and 4th Lumbar vertebrae'.
>
> which directly caused the death of Abundio Sido immediately thereafter.
>
> Contrary to Article 248 of the Revised Penal Code.
>
> Dumaguete City, Philippines, August 26, 1988."

Upon arraignment, the accused, duly assisted by counsel, entered pleas of "not guilty."[7] Through counsel, they filed a Motion for Consolidation[8] with another criminal case against the same accused, for murder involving the brother of the victim herein, committed on the same night. In its Order dated November 24, 1988,[9] the trial court, however, denied said Motion because the proceedings had already reached different stages.

The prosecution presented the following witnesses: (1) Elvie Sido, the 15 year-old daughter of the victim; (2) Florida Sido, the widow of the victim, both eyewitnesses to the shooting incident; (3) Dra. Bienvenida Palongpalong, Municipal Health Officer of San Jose, Negros Oriental, who conducted the post-mortem examination on the victim and testified that the cause of death was "severe hemorrhage resulting from the (gunshot) wounds of the victim."[10]

Testifying on their behalf, appellants interposed the defenses of denial and alibi. Appellant Pablito Rendoque claimed that on April 21, 1988, from 7 o'clock in the evening until 7:00 the following morning, he was on duty as a security guard at Master Footwear in Dumaguete City.[11] His testimony was supported by the testimonies of several witnesses. Eduardo Dingal, his co-security guard, testified that appellant Pablito Rendoque relieved him from duty at 7:00 P.M. of April 21, 1988.[12] Dingal's wife, also testified that she visited her husband at Master Footwear at 7:00 P.M., and saw appellant Pablito Rendoque take over her husband's post.[13] Ernesto Amistoso, a member of the PNP, San Jose, Negros Oriental, also testified that the day after the incident, he confirmed with Dingal that appellant Pablito Rendoque relieved him from duty the previous night.[14] Aniano Eliseo, Officer-In-Charge of the Sherlock Security Agency, testified that he conducted an inspection of the guards of the agency and saw appellant Pablito Rendoque at his post in Master Footwear at around 7:00 on the night of the incident.[15]

The other five accused testified that on April 21, 1988, from 6 o'clock in the evening until around 8 o'clock the following morning, they were in the house of Placido Despojo at Sto. Niño, San Jose, Negros Oriental to attend an "Anti-Communist Trust In Oriental Negros" (ACTION) seminar, which however, was postponed to the following

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day.[16] Placido Despojo confirmed this fact.[17] Millard Generoso, the District Commander of ACTION, testified that on April 22, 1988, the day after the incident, the five accused, except for appellant Pablito Rendoque, were at his house in Calindagan, Dumaguete City from around 8 o'clock in the morning up to 11 o'clock in the evening attending the seminar.[18]

The defense also presented as its witness Patrolman Fred Redira, who testified that on the night of the incident, one Celso Turtal reported to him that he (Turtal) was requested by the wife of the victim to inform the authorities that the victim was shot by "unidentified men."[19] The defense also presented Patrolman Antonio Ramirez, the Officer-in-Charge of the Police Station,[20] and the custodian of the police logbook containing the aforesaid report. Patrolman Ramirez testified that he prepared the affidavits of Elvie and Florida Sido wherein they stated that the persons who shot the victim were Pablito Rendoque and Esperato Salaquin only. However, Patrolman Ramirez claimed that the Municipal Mayor borrowed the affidavits and never returned them again. He also testified that the affidavits of Elvie and Florida Sido which were presented to him in court for identification were new affidavits, and not the ones which he prepared.[21]

On January 6, 1992, the trial court rendered a decision[22] convicting the three (3) appellants. As already stated, their three (3) co-accused were acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt. The dispositive portion of the decision reads:

> "FOR ALL THE FOREGOING CONSIDERATIONS, this court finds the accused Esperato Salaquin, Quinciano Rendoque, Jr., and Pablito Rendoque guilty beyond doubt of the crime of murder defined and penalized under Article 248 of the Revised Penal Code and sentences each one of them to suffer the penalty of Reclusion Perpetua, to indemnify the heirs of the offended party of the sum of P30,000.00 and to pay the cost. The instruments used if confiscated by the government are deemed forfeited. The accused Quinciano Rendoque, Sr., Victorino Bacuac and Felix Estrellado whose guilt are not established beyond doubt are acquitted.
>
> SO ORDERED."

Hence, the present appeal. In their consolidated brief, appellants assign the following errors:

> "I. THE REGIONAL TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE AND MORE WEIGHT TO THE TESTIMONIES OF PROSECUTION WITNESSES ELVIE SIDO AND FLORIDA SIDO AND DID NOT CONSIDER THE TESTIMONIES OF P/CPL ANTONIO RAMIREZ AND PATROLMAN FRED REDIRA REGARDING THE ENTRY IN THE LOGBOOK ON APRIL 21, 1988, AS REPORTED BY A CERTAIN CELSO TURTAL, EXHIBIT "1" FOR THE DEFENSE WHICH WAS NOT ADMITTED BY THE COURT AND THE VEHEMENT REFUSAL AND OBJECTION OF THE COURT TO ALLOW FLORIDA SIDO TO TESTIFY IN COURT PERTINENT TO EXHIBIT "1", AS A HOSTILE WITNESS, DESPITE THE CONFORMITY OF FISCAL EDUVIGIS VERGARA IN OPEN COURT.
>
> II. THAT THE LOWER COURT COMMITTED A SERIOUS ERROR IN GIVING MORE CREDENCE TO THE TESTIMONIES OF ELVIE SIDO AND FLORIDA SIDO AND TO DISREGARDED (sic) THE ALIBI OF THE ACCUSED PABLITO RENDOQUE, SUPPORTED BY THE TESTIMONIES OF WITNESSES ELISEO ANIANO, OFFICER-IN-CHARGE OF SHERLOCK AGENCY WITH DOCUMENTARY EVIDENCE, ELSAULA DINGAL, EDUARDO DINGAL AND ERNESTO AMISTOSO.
>
> III. THAT THE LOWER COURT ERRED IN NOT GIVING CONSIDERATION OF THE ALIBI OF THE ACCUSED QUINCIANO RENDOQUE, JR., ESPERATO SALAQUIN, ACCUSED-APPELLANTS AND CORROBORATED BY THE REST OF THE ACCUSED AND SUPPORTED BY THE TESTIMONIES OF PLACIDO DESPOJO AND MILLARD GENEROSO."

Appellants' brief contends that the trial court erred in not considering the entry in the police logbook, and the

testimonies of the custodian and the entrant thereof that the victim's wife asked Celso Turtal to report to the authorities that her husband was shot by "unidentified men" while sitting on the porch of their house. Appellants claim that the statement of the widow should have been considered as part of the res gestae under Section 42 of Rule 130 of the Rules of Court. Further, appellants insist that the trial court erred in not considering the Affidavit of Confirmation executed by Celso Turtal regarding the incident. Appellants contend that the trial court erred in not allowing the defense to present Florida Sido as a hostile witness. The foregoing evidence, appellants claim, if properly considered, would destroy the positive identification of appellants and co-accused as the perpetrators of the shooting incident. Appellants also fault the trial court for not giving due credence to the defenses of denial and alibi of appellants considering that these were sufficiently supported by the testimonies of their numerous witnesses.

The Office of the Solicitor General, on the other hand, contends that the issues raised pertain to the credibility of witnesses, the assessment of which is within the province of the trial court. In fact, the defense failed to point any significant flaw in the testimonies of the prosecution witnesses. The OSG further asserts that the entries in the police logbook cannot be correlated to the alleged Affidavit of Confirmation of one Celso Turtal because the latter's affidavit is inadmissible for being hearsay. The OSG also contends that the trial court could not be faulted for denying the request of the defense to make Florida Sido a hostile witness since the defense already cross-examined said witness extensively regarding her identification of the assailants. On the defenses of denial and alibi, the OSG cites the finding of the trial court that the place of work of Pablito Rendoque and the house of Placido Despojo are a mere eight (8) kilometers away from the locus criminis. The OSG likewise prays that the award of death indemnity be increased from P30,000.00 to P50,000.00 pursuant to existing jurisprudence.

The crucial issue raised by appellants, in our view, pertains solely to the credibility of the prosecution witnesses. In particular, we have to consider the positive identification of appellants as the perpetrators of the offense as against their defenses of denial and alibi.

In a long line of cases, the Court has consistently held that the determination of credibility of a witness is properly within the domain of the trial court as it is in the best position to observe his demeanor and bodily movements.[23] Findings of the trial court with respect to the credibility of witnesses and their testimonies are entitled to great respect, and even finality,[24] unless said findings are arbitrary, or facts and circumstances of weight and influence have been overlooked, misunderstood, or misapplied by the trial judge which, if considered, would have affected the case.[25] In the present appeal, after a thorough review of the records, no cogent reason justifies our departure from the aforecited salutory rule. We are constrained not to disturb the factual findings of the trial court.

The two eyewitnesses, Elvie and Florida Sido, positively identified appellants as the perpetrators of the fatal shooting.[26] Both clearly narrated on the witness stand the extent of the appellants' participation in the incident. They categorically testified that appellant Pablito Rendoque gave the order to "fire,"[27] and in obedience to such order, appellants Esperato Salaquin and Quinciano Rendoque, Jr., fired their guns (known locally as 'bali-ontod') against the victim.[28] Witness Elvie Sido said that as the shooting was going on, she was rooted on the spot, looking at the faces of the men firing at her father.[29] Although the incident occurred at nighttime, the house of the victim was sufficiently illuminated by two kerosene lamps (lamparillas), one carried by the daughter of the victim and another located near the victim,[30] which cast enough light for purposes of identification. Numerous cases have held that illumination coming from a kerosene lamp (also called "gasera") is sufficient for purposes of identification of an assailant.[31] Aside from the sufficient lighting, the two eyewitnesses were familiar with the faces of the assailants because they were townmates,[32] and appellants did not even bother to hide their identities by covering their faces.[33]

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Appellants admitted that they could not ascribe any ill-motive against the prosecution witnesses to falsely testify against them.[34] Absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[35] The fact that the witnesses were the daughter and the widow of the deceased could not impair their credibility. Blood or conjugal relationship between a witness and the victim does not per se impair the credibility of the witness. On the contrary, relationship itself could strengthen credibility in a particular case, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit. The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence to blame one who is innocent of the crime.[36]

Failing to demolish the positive testimonies of the prosecution witnesses, appellants now make a belated attempt to impeach their testimonies. Appellants fault the trial court for not considering the Affidavit of Celso Turtal that Florida Sido told him that the assailants were "unidentified men." The trial court correctly disregarded said affidavit for being hearsay since Turtal did not testify in court. An affidavit is generally hearsay, and has no probative value unless the affiant himself is placed on the witness stand to testify thereon.[37] Hence, the trial court correctly rejected the admission of such affidavit in evidence.

As to the police logbook which was presented in evidence to prove the contents thereof, we have held that entries in the police blotter should not be given undue significance or probative value, as they do not constitute conclusive proof of the truth thereof.[38] Entries in police blotters, although regularly done in the course of the performance of official duty, are not conclusive proof of the truth stated in such entries and should not be given undue significance or probative value because they are usually incomplete and inaccurate. Sometimes they are based on partial suggestion or inaccurate reporting and hearsay, untested in the crucible of a trial on the merits.[39]

Appellant Pablito Rendoque’s defenses of denial and alibi, in our view, could not be sustained. Although supported by testimonies of his superior and the guard who relieved him on the night of the incident, as well as the guard’s wife, they do not exculpate him. We have already ruled that for alibi to prosper, it is not enough to prove that appellant was somewhere else when the offense was committed. It must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[40] It should be noted that appellant was seen by said witnesses at his post at 7 o’clock in the evening, while the shooting incident occurred at 8 o’clock in the evening. Appellant failed to prove that it was impossible for him to have been physically present in the locus criminis at the very time of its commission. As to Quinciano Rendoque, Jr. and Esperato Salaquin, the other two appellants, their alibis are equally unavailing. Though the testimony of Placido Despojo sought to support them, their defense is far from persuasive. As observed by the trial court, there is no proof of physical impossibility for these appellants to be present in the locus criminis. Well settled is the doctrine that alibi is a weak defense and should be rejected when the identities of the accused, as in this case, have been sufficiently and positively established by eyewitnesses to the offense.[41] Hence, in the light of the positive identification of appellants by two eyewitnesses as the perpetrators of the crime, their defenses of denial and alibi could not prosper.[42]

As proved, the crime committed by the three appellants is murder, since the killing was qualified by treachery. Treachery attended the killing because at the time of the shooting, the victim was unarmed, sitting inside his house, and was evidently not in a position to defend himself.[43] Further, appellants consciously adopted the particular means, method or form of attack employed by them when they went to the house of the victim armed with shotguns.[44]

The generic aggravating circumstance of abuse of superior strength attended the killing, but is already absorbed in

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treachery.[45] Evident premeditation while alleged in the Information was not sufficiently proven by the prosecution, and therefore cannot be appreciated.

But since the victim was killed inside his house, even though the assailants were outside the house, the aggravating circumstance of dwelling should be appreciated.[46] Dwelling is considered an aggravating circumstance because primarily of the sanctity of privacy the law accords to human abode.[47]

As to the actual participation of appellants in the crime charged, appellant Pablito Rendoque, having given the order to shoot at the victim, is liable as a principal under Article 17, No. 1 and No. 2 of the Revised Penal Code. His participation is direct; at the same time he induced his co-appellants Esperato Salaquin and Quinciano Rendoque, Jr. to commit the offense. These co-appellants obeyed the order by firing their shotguns at the victim, hence they acted as principals by direct participation under Article 17, No. 1 of the Revised Penal Code. The three appellants acted in concert and helped each other accomplish the nefarious deed.

The award of death indemnity in the amount of P30,000.00 should be increased to P50,000.00, pursuant to existing jurisprudence.[48] No moral damages can be awarded since the wife and daughter of the victim did not testify with regard to moral damages. In view of the attendance of an aggravating circumstance, pursuant to Article 2230 of the Civil Code, exemplary damages in the amount of P20,000.00 should be awarded.[49]

WHEREFORE, the decision of the trial court finding appellants PABLITO RENDOQUE, ESPERATO SALAQUIN AND QUINCIANO RENDOQUE, JR. guilty of the crime of MURDER and sentencing them to RECLUSION PERPETUA is AFFIRMED with MODIFICATION as to damages. Appellants are hereby ordered to pay the heirs of the victim the amounts of P50,000.00 as indemnity and P20,000.00 as exemplary damages. Costs against appellants.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Judge Constancio E. Jaugan, presiding. Decision is dated January 6, 1992.

[2] Rollo, p. 85. Quinciano Sr. is the father of Quinciano Jr. and Pablito; the brother-in-law of Victorino Bacuac and Felix Estrellado; and the cousin of Esperato Salaquin.

[3] Records, p. 3-C.

[4] Id. at 14.

[5] Id. at 15.

[6] Id. at 1-2.

[7] Id. at 26.

[8] Id. at 37.

[9] Id. at 40.

[10] TSN, May 28, 1990, p. 10.

[11] TSN, September 23, 1991, p. 6.

[12] TSN, March 21, 1991, pp. 6-8.

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[13] Id. at 5-6.

[14] Id. at 18.

[15] TSN, July 29, 1991, p. 4, 16.

[16] TSN, August 20, 1991, pp. 5-16; TSN, August 21, 1991, p. 7; TSN, September 6, 1991, (Morning Session), pp. 6-8; TSN, September 6, 1991, (Afternoon Session), pp. 5-8; TSN, September 23, 1991, pp. 7-8 (Afternoon session)

[17] TSN, July 30, 1991, p. 15.

[18] TSN, July 29, 1991, pp. 19-26; TSN, July 30, 1991, p. 9.

[19] TSN, August 8, 1990, pp. 11-18.

[20] TSN, August 20, 1991, p. 6.

[21] TSN, September 24, 1990, pp. 3-4; TSN September 25, 1990, p. 6.

[22] Rollo, pp. 34-39.

[23] See People v. Ferrer, 295 SCRA 190, 200 (1998)

[24] People v. Lapay, 298 SCRA 62, 73 (1998); People v. Manuel, 298 SCRA 184, 194 (1998)

[25] People v. Villonez, 298 SCRA 566, 580-581 (1998)

[26] TSN, March 1, 1989, pp. 5-7, 10; TSN, May 22, 1989, pp. 7-8; TSN, June 14, 1989, pp. 4-5; TSN, June 14, 1989, p. 8.

[27] TSN, March 1, 1989, p. 11; TSN, June 14, 1989, p. 9.

[28] Id. at 12.

[29] TSN, May 22, 1989, p. 10.

[30] TSN, March 1, 1989, p. 14.

[31] People v. Belo, 299 SCRA 654, 663 (1998)

[32] TSN, November 15, 1989, pp. 3-6; TSN, August 20, 1991, p. 7 (Afternoon Session); TSN, September 6, 1991, p. 18 (Morning Session)

[33] TSN, May 22, 1989, p. 5; TSN, November 15, 1989, p. 4.

[34] TSN, August 20, 1991, p. 14 (Afternoon Session); TSN, September 6, 1991, p. 18 (Morning Session); TSN, September 23, 1991, pp. 18-19 (Morning Session).

[35] People v. Ebrada, 296 SCRA 353, 365 (1998); People v. Ilao, 296 SCRA 658, 669 (1998)

[36] People v. Realin, G.R. No. 126051, January 21, 1999, p. 11.

[37] People v. Esparas, 292 SCRA 332, 344 (1998)

[38] Santiago v. Court of Appeals, 295 SCRA 334, 354 (1998)

[39] People v. Padlan, 290 SCRA 388, 401 (1998); People v. Paragua, 257 SCRA 118, 124 (1996)

[40] People v. Verde, G.R. No. 119077, February 10, 1999, p. 16.

[41] People v. Grefaldia, 298 SCRA 337, 347 (1998)

[42] People v. Siguin, 299 SCRA 124, 139 (1998); People v. Daraman, 294 SCRA 27, 45 (1998)

[43] People v. Gado, 298 SCRA 466, 477 (1998)

[44] People v. Gutierrez, Jr., G.R No. 116281, February 8, 1999, p. 23.

[45] People v. Lapay, 298 SCRA 62, 81 (1998)

[46] People v. Ompad, 26 SCRA 750, 760 (1969)

[47] People v. Belo, 299 SCRA 654, 667 (1998)

[48] People v. Verde, G.R. No. 119077, February 10, 1999, p. 17; People v. Espanola, 271 SCRA 689, 716 (1997)

[49] People v. Gutierrez, Jr., G.R. No. 116281, February 8, 1999, p. 27.

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