

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR LAYAGUIN, GORGONIO MARIÑAS, JUVY TABOTABO, ROLANDO BUCOG, FLORENCIO DIONALDO AND GREG LABAYO, ACCUSED-APPELLANTS.

G.R. No. 106536. September 20, 1996

Ponente: ROMERO, J.

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ROMERO, J.:

This is an appeal from the decision of the Regional Trial Court of Cebu City, Branch V, dated August 13, 1991, convicting accused Rizalino Gemina,[1] Edgar Layaguin, Gorgonio Mariñas, Florencio Dionaldo, Juvy Tabotabo and Rolando Bucog of Murder and sentencing them to reclusion perpetua. The facts of the case are narrated below.

The victim was Rosalito Cereño, a twenty-year-old medical canvasser for a pharmaceutical company. He had no known quarrel with any of the accused. Apparently, his father was the real object of hostility for prior to the tragic occurrence, said father, Benito Cereño, a barangay councilman, had twice been attacked and mauled by herein accused-appellants and criminal charges had been filed against the latter.[2]

The evident animosity between the accused-appellants and the elder Cereño made Felisa Cereño, the victim's mother, nervous. She normally arranged for her son Rosalito to be met on his way home. On July 10, 1987, as Mrs. Cereño was told that her son would be coming home, she asked her daughter, Gerarda Villagonzalo, to meet Rosalito on his way home from the provincial road where the bus would stop.

At around five o'clock in the afternoon, while waiting for Rosalito at a nearby farm, Gerarda Villagonzalo heard gunshots. She hid behind a coconut tree but saw clearly what was happening. Her brother Rosalito was staggering and trying to flee from a group of men, all with firearms. Rosalito had fallen to his knees and with arms raised up, pleaded for mercy. The men, numbering seven in all, surrounded Rosalito and did not heed his entreaty. Edgar Layaguin shot him on the left arm. Rizalino Gemina followed and shot Rosalito twice. A third man, Greg Labayo, again shot Rosalito twice. The others merely stood around, with guns aimed at their lone prey.[3]

Gerarda Villagonzalo ran back home, shocked and unable to speak. Only after she was made to drink a glass of water was she able to recount the gruesome incident that her brother suffered in the hands of accused-appellants. At or about midnight, Gerarda Villagonzalo, along with her uncles and other relatives, returned to the crime scene to locate her brother. Rosalito was brought home lifeless.

Dr. Melecio I. Cabatingan, the Rural Health Officer of Alcantara, Cebu who conducted the post-mortem examination, reported five gunshot wounds, on the left upper eyelid, on the left eye, on the left arm, left lateral side of the body,[4] on the left palm and on the abdomen, the first three being fatal. Rosalito's death was reportedly due to cardio-respiratory arrest and multiple gunshot wounds.[5]

The seven men charged with the crime of Murder were Rizalino Gemino, Edgar Layaguin, Gorgonio Mariñas,

Florencio Dionaldo, Juvy Tabotabo, Rolando Bucog and Greg Labayo. An amended information was filed with the Regional Trial Court of Cebu City:

"That on or about the 10th day of July, 1987 at about 5:00 o'clock in the afternoon, more or less, in Barangay Sta. Cruz, Municipality of Ronda, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with treachery, known premeditation and with abuse of superior strength, with deliberate intent to kill one Rosalito Cereño did then and there wilfully, unlawfully and feloniously attack, assault and fire at the said Rosalito Cereño with the use of firearms thus hitting the latter on the different parts of his body causing his death shortly thereafter.

Contrary to law."[6]

Six of the accused were apprehended on various dates[7] and, upon arraignment, pleaded not guilty. Accused Greg Labayo is still at-large and the case archived until jurisdiction on his person is acquired by the trial court.[8]

The prosecution presented Gerarda Villagonzalo as its lone eyewitness to give an account of the events that transpired on July 10, 1987. All the accused gave the defense of alibi, Rizalino Gemina said he was out fishing the whole day with Edgar Layaguin and Juvy Tabotabo. They allegedly returned at seven o'clock in the evening. Gorgonio Mariñas was working at the construction of his grandparents' house up to six o'clock p.m. Florencio Dionaldo and Rolando Bucog were at their respective homes, with the former singing, playing the guitar and going out only to feed their cow, and the latter taking care of his younger brother and sister.

Their alibi proved unavailing. On August 13, 1991, the trial court rendered its judgment convicting all six accused of the crime of murder. Abuse of superior strength, as well as conspiracy, were appreciated. Treachery and evident premeditation were not. The dispositive portion of the decision, sentencing them to reclusion perpetua reads:

"WHEREFORE, all the foregoing considered, this Court finds accused Rizalino Gemina, Gorgonio Mariñas, Juvy Tabotabo, Edgar Layaguin, Florencio Dionaldo and Rolando Bucog guilty beyond reasonable doubt for the crime of murder and absent any modifying circumstances, each of them is sentenced to suffer the penalty of reclusion perpetua and to pay jointly and severally to the heirs of the deceased Rosalito Cereño civil indemnity in the sum of P50,000.00 conformably to the recent jurisprudence raising civil indemnity from P30,000.00 to P50,000.00; with costs against the accused.

Accused in the service of their sentence are entitled to the full credit of the period of their preventive imprisonment, if they had agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise, 4/5 of said period.

It appearing that accused Greg Labayo is still at large, let this case against him be ARCHIVED until the court acquires jurisdiction over his person.

SO ORDERED."[9]

In view of Rizalino Gemina's death, the trial court ordered the dismissal of the case as against him, and his criminal and civil liabilities extinguished.[10] Edgar Layaguin's motion for reconsideration was denied by the court a quo on September 18, 1991.[11]

Appellants contend, in the instant appeal, that the trial court erred in giving credence to the testimony of Gerarda Villagonzalo, which was alleged to be replete with inconsistencies and improbabilities. Considering that the eyewitness account suffers from these infirmities, the alibi of the appellants should be given credence. Finally, appellants maintain that it was error for the lower court to hold that the qualifying circumstance of abuse of superior strength was present.

The first assignment of error made by appellants relates to the credibility of Gerarda Villagonzalo as an eyewitness. Appellants cite several circumstances which point to the falsity of her testimony.

They contend that it is improbable that Villagonzalo really witnessed the incident because she didn't react, run to her brother's aid or call for help. It is allegedly very unnatural for a sister to just "lameely observe the killing" of her brother.[12]

The Court does not find it unlikely that a witness such as Villagonzalo was too shocked to scream or run for help, she being a twenty-four year old barrio woman confronted with such a traumatic incident. It must be borne in mind that there were seven men, all possessing firearms, who did not hesitate to shoot her brother despite his pleas. How could a lone unarmed woman stand up to such killers? Moreover, these men had previously harmed her father. It is not unnatural for Villagonzalo to freeze at the sight of several men assaulting her brother. The Solicitor General, in seeking the information of appellants' conviction, correctly pointed out that there is no standard behavior for persons confronted with a shocking incident[13] and that the workings of the human mind, when placed under emotional stress, are unpredictable and cause different reactions in men.[14]

It is also implausible, according to the appellants, that Villagonzalo was only eleven meters away, hidden behind a narrow coconut tree. Situated so close to the assailants, she herself would have been killed. We do not agree. It is very possible that the appellants were so preoccupied with their murderous deed that they did not see her or bother to look out for witnesses.

Villagonzalo testified that she could not tell in what direction the assailants fled after killing Rosalito because "they were already away when I saw." (sic)[15] Appellants claim that it is unlikely for her not to know where the attackers fled after the killing if she was really present at the scene of the crime. While we can only deduce the reason she failed to notice the appellants as they took to their heels, we consider this a matter of minor importance which does not detract at all from the credibility of her testimony.

Appellants further add that when Villagonzalo testified that her brother was staggering, this necessarily means that he had already been shot or wounded. This contradicts her earlier statement, as confirmed by the doctor, that Rosalito was shot only five times. Appellants are in error. Villagonzalo did not testify that her brother was staggering because he was already wounded.[16] She made no such statement despite persistent cross-examination. The fact that the victim was staggering does not necessarily mean that he was wounded. He may have been severely beaten or just confused and in a state of panic.

Another inconsistency noted by appellants relates to the number of times that Villagonzalo met her brother on his way home. Felisa Cereño testified that there have been three previous incidences. Villagonzalo said it was her first time to fetch her brother. Again, the Court finds this matter to be of relatively slight importance which does not affect her trustworthiness.[17]

It is also improbable, appellants maintain, that the Cereño family would let Rosalito's dead body lie in the crime scene for seven hours before they returned to retrieve it. While not necessarily the best thing that could have been done under the circumstances it does not appear as improbable as the appellants claim. Considering that Rosalito's attackers were all armed, the Cereño family would have been understandably afraid or at least hesitant to charge in to the crime scene without support or companions. When they returned to claim Rosalito's body, they had already asked their relatives to go with them.[18]

Appellants also make much of the fact that Villagonzalo is the victim's sister. They claim that her relationship to the deceased renders her testimony doubtful. More than once, we have ruled that mere relationship does not necessarily impair the credibility of a witness,[19] particularly a prosecution witness. In fact, a relative such as

Villagonzalo who was the victim's older sister, would have a natural interest in securing the conviction of the true guilty party and not let the latter get away.[20]

Finally, appellants contend that the wounds on the victim's body were not conclusively proved to be gunshot wounds and that the cause of death was not sufficiently established.[21] The Court upholds the trial court which found the testimony and findings of Dr. Melecio Cabatingan sufficient to prove the number and kind of wounds sustained by the victim, as well as the cause of his death.[22]

According to appellants, the aforementioned circumstances reflect an infirm eyewitness testimony and only shows that the family merely speculated that appellants are the assailants because of the enmity between them and the victim's father. After a close study of the records and transcripts of stenographic notes, we rule that the clarity of Villagonzalo's testimony proves their guilt beyond reasonable doubt. The witness' testimony was spontaneous, convincing and unshaken, as held by the trial court.[23]

The second assignment of error concerns the alibi of the appellants which allegedly deserves credence considering the improbabilities they pointed out.

We find no error in the factual findings of the trial court, particularly in disbelieving the alibi proffered by appellants.

Rizalino Gemina, Edgar Layaguin and Juvy Tabotabo claimed they were fishing at a nearby island the whole day up to five o'clock p.m. but came to shore only at seven o'clock p.m.[24] These young men were fishing the whole day, leaving at seven o'clock a.m. and coming back twelve hours later. Yet they were not fishermen by occupation, nor did they do this often. Layaguin and Tabotabo testified that they were farmers. Tabotabo presented Federico Dalubay as a witness to testify that both Tabotabo and Layaguin were at the Cereño residence at ten o'clock p.m. on the night of the killing, to condole with the family. This is incredible after considering that Gerarda Villagonzalo testified that they only got to Rosalito's body around midnight. Dalubay admitted that he was asked to testify by Tabotabo's father and that actually, Juvy Tabotabo is his wife's first cousin.[25] These facts contribute to the doubtful veracity of this witness' testimony.

Gorgonio Mariñas testified that he was working at his grandparents' house on July 10, 1987, from eight o'clock in the morning up to five o'clock in the afternoon and that he went home at six o'clock in the evening.[26] Like the victim's family and the rest of the appellants, he lives in Barangay Sta. Cruz, Ronda, Cebu. It is also significant to note that the house he was working in, is also in the vicinity of the crime scene, for it is also situated in Ronda, Cebu. To support his alibi, Mariñas presented Rodolfo Caingles, a co-worker, to testify that he was there at the construction site at the time of the crime. The bias of this witness became evident after cross-examination when, with great reluctance, and under repeated questioning, he admitted that his wife and the wife of Gorgonio Mariñas were sisters.[27]

Florencio Dionaldo, who testified that he was a fisherman, on cross-examination showed his unfamiliarity with the shoreline nearest his residence and with the faces of the moon. His counsel later manifested that fishing was actually Dionaldo's "hobby," in an attempt to save his client's testimony.[28] Moreover, Dionaldo testified that he was at home, singing and playing the guitar, or just lounging around. Again, it must be pointed out that Dionaldo lives in Ronda, Cebu, not very far from the scene of the crime nor from the victim's home.

Rolando Bucog's alibi that he was at home taking care of his younger brother and sister can be similarly discounted. The Bucog residence is likewise in Ronda, Cebu.

The findings of the trial court, particularly in giving the lie to the appellants' testimonies, should be upheld for the following reasons. First, the defense of alibi often crumbles in the face of positive identification, even if made by

only one credible witness.[29] Second, at the time and on the day of the crime, all the appellants were in Ronda, Cebu or not very far therefrom. Layaguin and Tabotabo were fishing in a nearby island. Mariñas was at a construction site in Ronda, Cebu. Bucog and Dionaldo were at their respective homes, also located in Ronda, Cebu. It would not have been impossible for the appellants to be present at the scene of the crime considering the short distance that they would have had to traverse. The Court has held that alibi fails as a defense, when it has not been shown that it would have been impossible for the accused to be at the scene of the crime.[30] Third, the lower court had the opportunity to observe the demeanor and behavior of the witnesses and appellants and accordingly judge their credibility. Consequently, we have often refrained from overturning the factual findings of lower courts.[31] From the foregoing, the Court finds no reason not to affirm the findings of the trial court with respect to the alibi offered by the appellants.

The last error assigned by appellants is the appreciation of the circumstance of abuse of superior strength, which qualifies the killing to murder. They maintain that it is necessary to prove deliberate intent to take advantage of superior strength,[32] that superiority in numbers is not necessarily superiority in strength,[33] and that as a consequence, only the crime of homicide was committed in the case at bar.

We likewise hold that the trial court committed no error in appreciating the presence of the qualifying circumstance of abuse of superior strength. To take advantage of superior strength is to purposely use excessive force out of proportion to the means of defense available to the person attacked.[34] Although superiority in numbers is not always superiority in strength, the same is decidedly true in the case at bar where all the appellants were armed. This fact definitely demonstrates superiority in strength. Furthermore, there was only one adversary, an unarmed man who, at the time he was first shot, was already on his knees, pleading for his life. Upon slumping to the ground after Layaguin shot him, two other men shot him again. He was in no position to defend himself at that point. These facts undoubtedly prove that the appellants manifestly took advantage of their collective and superior strength in killing Rosalito Cereño.

WHEREFORE, the instant appeal is hereby **DISMISSED**. The decision of the trial court dated August 13, 1991 convicting accused-appellants of the crime of murder is **AFFIRMED** in toto.

SO ORDERED.

Regalado, (Chairman), Puno, and Torres, Jr., JJ., concur.

Mendoza, J., on leave.

[1] Rizalino Gemina died on September 10, 1991. Records, pp. 158-159.

[2] Benito Cereño was first attacked by Edgar Layaguin. However, the case for Direct Assault filed against him was settled. The other accused were involved in the second attack on the elder Cereño, who was shot at but not hit, on June 1, 1987. They were charged with Frustrated Murder and Direct Assault. TSN, November 3, 1987, p. 7.

[3] TSN, October 19, 1987, pp. 8-12.

[4] Left axilla. TSN, November 16, 1987, p. 8.

[5] Certificate of Death, Exhibit A, Records, p. 166. TSN, November 16, 1987, p. 6.

[6] Criminal Case No. CBU-11214.

[7] Juvy Tabotabo was arrested on September 7, 1987; Florencio Dionaldo and Rolando Bucog on August 21, 1988; Rizalino Gemina and Edgar Layaguin on July 12, 1987; and Gorgonio Mariñas on February 9, 1988.

- [8] Rollo, p. 59.
- [9] Penned by Judge Celso M. Gimenez, Regional Trial Court of Cebu City Branch V, Rollo, pp. 34-59.
- [10] Order dated September 13, 1991. Records, p. 160.
- [11] Records, pp. 161-163.
- [12] Rollo, p. 93.
- [13] *People v. Danico*, G.R. No. 95554, May 7, 1992, 208 SCRA 473.
- [14] *People v. Pimentel*, G.R. No. 87781, December 11, 1992, 216 SCRA 375; *People v. Yadao*, G.R. No. 72991-92, November 26, 1992, 216 SCRA 1.
- [15] TSN, October 19, 1987, p. 12.
- [16] October 19, 1987.
- [17] *People v. Plascencia*, G.R. No. 90198, November 7, 1995, 249 SCRA 674.
- [18] TSN, October 19, 1987, p. 13.
- [19] *People v. Francisco*, G.R. No. 99058, October 25, 1995, 249 SCRA 526; *People v. Sinatao*, G.R. No. 110895, October 25, 1995, 249 SCRA 554.
- [20] *People v. Villalobos*, G.R. No. 71526, May 27, 1992, 209 SCRA 304.
- [21] Rollo, p. 100.
- [22] Decision, p. 4; Rollo, p. 37.
- [23] Decision, p. 20; Rollo, p. 181.
- [24] TSN, February 9, 1988, p. 2.
- [25] TSN, February 9, 1990, p. 11.
- [26] TSN, December 22, 1988, p. 3.
- [27] TSN, March 29, 1989, pp. 7-10.
- [28] TSN, August 21, 1989, p. 8.
- [29] *People v. Lamsing*, G.R. No. 105316, September 21, 1995; *People v. Lopez*, G.R. No. 112448, October 30, 1995; *People v. Pidia*, G.R. No. 112264, November 10, 1995.
- [30] *People v. Escoto*, G.R. No. 91756, May 11, 1995; *People v. Cabresos*, G.R. No. 109776, May 26, 1995.
- [31] *People v. Lazaro*, G.R. No. 99263, October 12, 1995, 249 SCRA 234; *People v. Reodico*, G.R. No. 107101, October 16, 1995, 249 SCRA 309; *People v. Pacapac*, G.R. No. 90623, September 7, 1995, 248 SCRA 77.
- [32] Citing *People v. Salcedo*, 172 SCRA 78, 87.
- [33] Citing *People v. Balictas*, 91 SCRA 500, 510.
- [34] *People v. Salison, Jr.*, G.R. No. 115690, February 20, 1996; *People v. Casingal*, G.R. No. 87163, March 29, 1995, 243 SCRA 37, 46.

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