

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PRIMITIVO PAGLINAWAN, ACCUSED-APPELLANT.*G.R. No. 107804. June 28, 1994*

Ponente: REGALADO, J.

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In an information dated September 8, 1987 filed before the Regional Trial Court of Cebu, Branch 13,[1] accused-appellant Primitivo Paglinawan was charged with the murder of Macario Avanceña allegedly committed with a firearm in Cebu City on May 3, 1987 and attended by treachery and evident premeditation. After resetting the pre-trial conference several times, the defense eventually decided to dispense with the same.

On November 18, 1988, appellant Paglinawan pleaded not guilty when arraigned. After trial on the merits, he was found guilty beyond reasonable doubt of the crime charged, and was sentenced to serve the penalty of reclusion perpetua and to indemnify the heirs of Macario Avanceña in the sum of P30,000.00.[2]

Librada Guimal, a widowed daughter of the deceased Macario Avanceña, was the principal witness for the prosecution. She testified that sometime in December, 1986, her father reported to the authorities the theft of his rooster. Her father suspected that it was herein appellant who stole said rooster. It was later recovered at the barangay hall after appellant allegedly left it there. Nonetheless, said incident understandably caused a misunderstanding and bad blood thereafter existed between the parties although no charges were brought against Paglinawan.[3]

On January 4, 1987, Librada witnessed appellant actually threatening to kill her father, Macario. In the front yard of her father's house, she saw Paglinawan poke a gun at her father and heard him vow that he would kill the latter.[4]

The next day, at about 5:00 A.M., Librada was fetching water in their front yard. Macario likewise went out to the yard to purchase bread from an ambulant vendor. Without any warning, she heard a gunshot and saw appellant aiming a gun at her father. Her father sustained a gunshot wound on the right thigh. Appellant was about to fire another shot at her father but forbore from doing so when he saw that people had started milling around them. This incident merited the attention of a local newspaper, the Freeman, which reported the incident in its January 6, 1987 issue. Again, no charges were brought against appellant because the latter allegedly threatened to kill all the members of the Avanceña family. Besides, appellant was reputed to have killed a number of persons and reportedly challenged others with his firearm which he often brought with him.[5]

A few months later, on May 3, 1987, at about 2:15 P.M., Librada, her father Macario, and her brother-in-law were all out in the yard of their residence in Sitio Tuburan, Cebu City. At that time, Librada, who was two meters away from her father, was hauling firewood, and her brother-in-law was constructing a pathway, while her father was observing the former. Suddenly, she saw appellant come out of a small pathway holding something behind his back. Then, she saw Paglinawan shoot her father from behind, hitting him in the right elbow. The victim tried to run but he was shot again in the back, causing him to fall face downward on the ground. He died on the spot.

Appellant then pointed his gun at Librada but desisted from firing. Instead, he ran away when Librada and her sister shouted for help.[6]

The other witness for the prosecution was Dr. Jesus P. Cerna, medico-legal officer of the then Philippine Constabulary-Integrated National Police, Cebu Metrodiscom. He testified that he conducted a necropsy examination on the body of Macario Avanceña which revealed that the victim sustained two gunshot wounds, the first located at the right arm, 5 centimeters above the elbow joint, and the other at the back.[7]

Expectedly, appellant denied authorship of the crime and relied heavily on alibi for his defense. To explain why he was implicated in the murder of Macario Avanceña, Paglinawan narrated the events that preceded the May 3, 1987 killing. On January 4, 1987, according to him, a certain "Pepe," supposedly a close friend of the Paglinawan brothers (herein accused Primitivo and Tomas), was fatally shot. Teodoro and Alejandro Avanceña, sons of the deceased Macario Avanceña, were suspected in the killing of "Pepe." The following day, on January 5, 1987, Macario Avanceña was shot on the right thigh. The names of herein appellant Paglinawan, along with the three cousins of "Pepe," namely, Ernie, Arthur and Nerio, were mentioned as having had something to do with the crime. After the incident, Ernie, Arthur and Nerio immediately fled the area, leading people to surmise that their flight was an indication of guilt. Appellant, who did not flee, was consequently considered as off the hook,[8] so to speak.

Purportedly to avoid trouble, appellant's wife insisted that they transfer to Dalaguete, Cebu after he was suspected as the perpetrator of the January 5, 1987 incident. Hence, appellant who was originally a resident of F. Llamas Street, Sitio Tuburan, Labangon, Cebu City, reportedly transferred to Obong, Dalaguete, Cebu two weeks after the January 5, 1987 incident.[9]

On the day of the fatal shooting of victim Avanceña, specifically on May 3, 1987, appellant maintained that he was in Obong, Dalaguete and nowhere near Labangon. In fact, at the time of that incident he was planting some root crops near the Obong Elementary School building, after which he decided to go fishing.[10]

On cross-examination, appellant reluctantly admitted that there is also a pending case of illegal possession of firearms against him, as well as the fact that he was a suspect in the theft of a rooster of deceased Avanceña, although he denied having committed said offenses.[11]

Tomas Paglinawan, brother of appellant, testified for the defense. According to him, it was impossible for Primitivo to be the killer of Macario Avanceña because two weeks after January 6, 1987, he personally saw off Primitivo at the South Expressway Terminal. Primitivo allegedly decided to transfer residence to Dalaguete to avoid trouble because every time there was an untoward incident, he was always the suspect. For instance, when the rooster of the deceased Macario Avanceña was stolen, his brother Primitivo was implicated. Again, when a certain "Andoy" was shot in 1986, Primitivo was a suspect.[12]

After a thorough review and impartial evaluation of the evidence in this case, the Court finds no cogent reason to disturb the factual findings and legal conclusions of the court a quo.

On appeal, appellant raises the sole issue of whether or not the State has "failed to prove that the accused Primitivo Paglinawan is one and the same person who allegedly shot the deceased Macario Avanceña." [13] The defense argues that witness Librada Guimal "mentioned the name Primitivo Paglinawan without informing or pointing to him before the court that Primitivo Paglinawan is one and the same person who allegedly shot (her) father last May 3, 1987." To convince this Court, appellant goes on to theorize that "(i)t is also not impossible that in the locality or in any place in Cebu City, there are other Primitivo Paglinawan(s) aside from the accused in this case." [14]

We reject these posturings. To say that there may be other Primitivo Paglinawans aside from appellant in the locality is speculative, to say the least. The categorical and positive identification made by Guimal leaves no doubt as to the identity of appellant Paglinawan. After going through the records and the witness' testimony, it is readily evident that Guimal was actually familiar with the person of appellant. Witness Guimal had known appellant for about ten to twelve years, appellant having often visited the sitio where they live from 1973 to 1987. She even knew the fact that appellant was invariably jobless, and there were occasions when she was able to personally talk to him.[15] In fact, appellant himself admitted that before his transfer to Obong, Dalaguete, he knew the Avanceñas.

Generally, people in the provinces know each other both by faces and names. It is, therefore, highly unlikely for witness Guimal to be mistaken as to the identity of appellant. Although it is routine procedure for witnesses to point out the accused in open court by way of identification, the fact that witness Guimal did not do so in this case was because the public prosecutor failed to ask her to point out appellant, hence such omission does not in any way affect or diminish the truth or weight of her testimony.

As earlier stated, appellant invokes the discredited defense of alibi to support his plea for acquittal. Time and again, and we are constrained to repeat here what appears to be a banality, the Court has emphasized that alibi is one of the weakest defenses, not only because it is inherently weak and unreliable but also because of its easy fabrication without need of much checking or rebuttal.[16] For alibi to prosper, the requisites of time and place must be strictly met. To recall, it must be shown that it was physically impossible for the accused to have been at the scene of the crime at the time it was committed or it must be established by clear and convincing evidence that the accused was at some other place and for such a period of time as to negate his presence at the time when and the place where the crime was committed.[17]

In the case at bar, Obong, Dalaguete, Cebu is 98 kilometers away from Sitio Tuburan, Labangon, Cebu City. Although it may appear quite far, nonetheless it would only take approximately one hour and thirty minutes by bus to reach Cebu City.[18] Thus, it was physically possible for appellant to go to Sitio Tuburan with facility and ease. Furthermore, even appellant himself could not state firmly and unflinchingly that he was no longer a resident of Sitio Tuburan. When asked to state his personal circumstances in open court, he gave his residential address as No. 6-C F. Llamas Street, Labangon, Cebu City. However, obviously on second thought, he later maintained that he was a resident of Dalaguete.

Appellant's defense of alibi was corroborated by his brother, Tomas. The accepted evidentiary rule is that alibi becomes less plausible as a defense when it is mainly established by the accused himself and his immediate relative who would naturally be expected to make statements in his favor,[19] as what happened in this case when appellant's brother was relied upon to support the defense of alibi under tenuous assumptions.

In fact, a reading of Tomas Paglinawan's testimony shows that he did not personally vouch for the fact that it was physically impossible for appellant to be at Sitio Tuburan nor could he directly attest that he saw Primitivo in a particular place, other than where the incident happened, at the time in question. Tomas merely stated that he sent off his brother to Dalaguete two weeks after January 6, 1987. While it may be possible that Primitivo did actually transfer residence, Tomas' testimony did not corroborate the claim of Primitivo that at the time of the murder of victim Avanceña, he was really near the Obong Elementary School or, for that matter, in the town of Dalaguete.

Furthermore, it is a well-entrenched doctrine that greater weight is given to the categorical identification of the accused by the prosecution witnesses than to the accused's plain denial of participation in the commission of the crime.[20] Such definitive apperception by the prosecution witnesses prevails over the negative statement of the accused.[21] Denial cannot prevail over the positive recognition of the accused by the prosecution witnesses.[22]

Appellant seeks to erode Guimal's credibility by pointing out that although she had alleged that he had committed several atrocities against her father, yet no charges were filed against him. This contention borders on sophistry. Whether or not charges were previously brought against appellant is completely beside the point. For, as clearly established by Guimal, appellant was a well-known trouble-maker and police character, and had in fact theretofore made threats against the life of her father, hence it was but natural for them to hesitate in filing charges against him.

Appellant would also question the failure of the People to further present witnesses other than the victim's daughter, considering the claim of the prosecution that there were other persons who witnessed the incident. Said argument is without logic or merit.

The testimony of a lone eyewitness, if found convincing and trustworthy by the trial court, is sufficient to support a finding of guilt beyond reasonable doubt.[23] Such testimony of a single witness, if credible and positive, is sufficient to produce conviction. The non-presentation of certain prosecution witnesses is not a sufficient defense.[24] The matter of presentation of its witnesses by the prosecution is not for the accused and, in a limited sense, for the trial court to control. The discretion belongs to the city or provincial prosecutor to decide how the prosecution should present its case.[25]

We agree with the court below that the crime committed in the case at bar is murder qualified by treachery. Here, appellant approached the victim stealthily from behind and fired the first shot, hitting him at the right elbow. The victim tried to escape the attack but the second shot was fatal. Indisputably, the victim was attacked when he was not in any position to defend himself. Thus, as in *People vs. Gabatin*,^[26] the slaying was qualified by treachery as the victim was not able to offer the least resistance to the sudden assault, the manner whereof obviated any danger to his assailant arising from any defense which the deceased might have taken.

On the other hand, the prosecution failed to prove the time when appellant determined to kill his victim, the act of the offender manifestly indicating that he clung to that determination to kill, and a sufficient lapse of time between the determination and the execution of the crime.^[27] Hence, although evident premeditation was alleged in the information, the Court cannot consider that circumstance in this case.

WHEREFORE, premises considered, the judgment appealed from is hereby **AFFIRMED**, with the modification that the civil indemnity to be paid by accused-appellant Primitivo Paglinawan is increased to P50,000.00 in line with our current doctrinal policy.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Puno, and Mendoza, JJ., concur.

[1] Original Record, 1.

[2] *Ibid.*, 189; Decision, 5, penned by Judge Meinrado P. Paredes.

[3] TSN, August 24, 1989, 7-9; *ibid.*, June 9, 1990, 6.

[4] *Ibid.*, June 19, 1990, 7-8.

[5] *Ibid.*, August 24, 1989, 9-12, 14; *ibid.*, June 19, 1990, 9-10; *ibid.*, June 20, 1990, 3-4, 6.

[6] TSN, August 24, 1985, 15-19; *ibid.*, June 20, 1990, 9-10, 13.

[7] *Ibid.*, July 12, 1989, 6; Exhibit A, Original Record, 5.

- [8] Ibid., November 5, 1991, 5-8.
- [9] Ibid., id., 9.
- [10] Ibid., id., 10-11.
- [11] Ibid., id., 9, 14.
- [12] Ibid., December 5, 1991, 4, 6-7.
- [13] Rollo, 40; Appellant's Brief, 6.
- [14] Ibid., 41; id., 7.
- [15] TSN, June 19, 1990, 4-5.
- [16] People vs. Lapan, G.R. No. 88300, July 6, 1992, 211 SCRA 337.
- [17] People vs. Lozano, G.R. No. 90801, February 13, 1992, 206 SCRA 234.
- [18] TSN, November 5, 1991, 10.
- [19] People vs. Sabellano, G.R. Nos. 93932-33, June 5, 1991, 198 SCRA 196.
- [20] People vs. Bausing, et al., G.R. No. 64965, July 18, 1991, 199 SCRA 355.
- [21] People vs. Marilao, G.R. No. 71681, September 5, 1989, 177 SCRA 271.
- [22] People vs. Samson, G.R. No. 55520, August 25, 1989, 176 SCRA 710.
- [23] People vs. Rañola, G.R. No. 95757, August 4, 1992, 212 SCRA 106.
- [24] People vs. Marilao, G.R. No. 71681, supra.
- [25] People vs. Fernandez, et al., G.R. No. 80481, June 27, 1990, 186 SCRA 830.
- [26] G.R. No. 84730, October 28, 1991, 203 SCRA 225.
- [27] See People vs. Balatucan, G.R. Nos. 93805-06, February 7, 1992, 206 SCRA 81.

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