

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ABULKHAIR PATAMAMA ALIAS CATIYA, ODTOG CAMOLO,
PUKUNUM CAMOLO ALIAS MOCADAY, DIRIMBANGAN IKO ALIAS
DIBARATUN, PAITO MANGOR...**

G.R. No. 107938. December 04, 1995

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

Desiring to learn if his corn plants were being destroyed by stray animals or by men, Hadji Salic Sultan Sarip decided to visit his farmland some fifty (50) fathoms away from his residence at Mapoling, Maguing, Lanao del Sur, at around 9:30 o'clock in the evening on October 1989. He asked his uncles Pangcatan Comolang and Malik Comolang (both then living with him in the same house) to accompany him. Little did the trio realize that their nocturnal excursion would result in the untimely demise of Pangcatan Comolang.

Sarip started out for his farm together with Malik Comolang only, Pangcatan Comolang having told them to go ahead, and he would follow shortly. Several minutes thereafter and before reaching the farm, Hadji Salic and Malik were startled to hear gunfire shattering the silence of the night. It seemed to them that the shots came from the direction of their residence, so they quickly turned back.

At a point close to their home, they froze in their tracks. For they saw several men — Abulkhair Patamama, Odtog Camolo, Pukunum Camolo, Dirimbangan Iko, Paito Mangorangca and Boniara Camolo — riddling the prostrate body of Pangcatan Comolang with bullets discharged from their assorted firearms. Then, apparently satisfied with the carnage, the assailants leveled their guns at Hadji Salic and Malik, warning them not to interfere lest they meet the same fate as Pangcatan. The armed men took their victim's wrist watch and wallet, after which they fled into the darkness of the night.

On recovering from their shock, Hadji Salic and Malik immediately sought out Pangcatan's son, Pacalinog Sultan Sarip, and informed him of the incident. They brought him to the scene of the crime where Pangcatan's motionless body lay, bathed in blood. Cautiously the three approached the inert Pangcatan, and after convincing themselves that he was dead, they reported the killing to the Station Commander of Maguing, P/Lt. Yusoph Bagul. Commander Bagul went back with the trio to the locus criminis so he could make an "on the spot report."^[1]

Early in the morning of the next day, Pacalinog Sultan Sarip, the victim's son, requested Rural Inspector I Sultan Macapanton Rimbang, to issue the death certificate for his father, there being no physician in the area. Sultan Rimbang acceded to the request, and indicated in the certificate^[2] that the gunshot wounds inflicted on Pangcatan Comolang, were the immediate cause of his death.

An information^[3] for murder was thereafter presented against Abulkhair Patamama @ Catiya, Odtog Camolo, Pukunum Camolo @ Mocaday, Dirimbangan Iko @ Dibaratun, Paito Mangorangca, and Boniara Camolo. The indictment — filed with the Regional Trial Court of Lanao del Sur, 12th Judicial Region, Marawi City, Branch 9

presided by Judge Amer R. Ibrahim — alleged that with treachery, evident premeditation and superior strength, and the use of assorted high powered firearms, the accused attacked, assaulted and shot the victim, inflicting on him gunshot wounds which caused his death.

Warrants of arrest were issued against the accused. However, only Abulkhair Patamama was apprehended, so arraignment and trial proceeded as against him only. The rest of the named defendants have remained at large.

The prosecution's evidence tended to establish the above narrated facts. Hadji Salic and Malik pointed to Abulkhair Patamama as one of those who shot the deceased that fateful night. Malik asserted that there was a bright moon hovering in the Maguing skyline that night, which illumined the faces of the accused and thus enabled him to recognize them.[4] Rural Inspector Rimbang testified as regards the circumstances surrounding his issuance of the death certificate of the deceased, and the fact that the deceased sustained eight (8) gunshot wounds, causing his death.[5]

The accused Abulkhair Patamama interposed alibi as a defense. Testifying on his own behalf, he maintained that it was impossible for him to be at the scene of the crime since he was already residing at Guimba, Marawi City, at the time, and had in fact been residing there for more than a year before the slaying of Pangcatan; and that since transferring residence to Marawi City, he had not returned to Mapoling, Maguing. He also said that there was no way Hadji Salic and Malik could have seen the assailants of Pangcatan, for contrary to Malik's testimony, there was no moon in the sky at the time of the murder, as evidenced by a certification secured by the defense from one Carmelito P. Calimbas, OIC Astronomy Research and Development Section of PAGASA. The certification states that "based on PAGASA's astronomical computations ** there was no moon in the sky for an observer situated in Maguing, Lanao del Sur," at 9:00 p.m. on 3 October 1989 since the moon rose at 7:45 a.m. and set on the same date at 7:41 p.m.[6]

On April 10, 1992, the Trial Court rendered judgment convicting Abulkhair Patamama as charged, and sentencing him "to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the sum of P50,000.00." [7]

Abulkhair Patamama has appealed to this Court. In his brief, he impugns the credibility of prosecution witnesses Hadji Salic and Malik Comolang, and argues that the prosecution 'had failed to prove his guilt beyond reasonable doubt. He theorizes that the testimony of Salic and Malik is biased and tainted since they were relatives of the deceased. He hypothesizes further that their identification of him as one of the deceased's slayers is shrouded in serious doubt and falls short of the positiveness and reliability essential for conviction. He makes capital of the failure of Salic and Comolang to disclose the identities of the assailants at the first opportunity. They did not do so when P/Lt. Yusoph Bagul conducted, in their presence, his "on the spot report," for that report states that the victim was shot to death by an "unidentified group of armed men." If they were really at the crime scene as it was taking place, Salic and Malik should have immediately informed the Station Commander of the identity of the assailants conducted by the latter, and their failure to do so during the on-the spot investigation proves that they were not present at the time the deceased was killed.

The defense stressed that the PAGASA certification, supra — the authenticity and veracity of which were affirmed by appellant's counsel, Atty. Casan Macabanding — completely undermined Malik's testimony that the moon was bright enough on the night of the killing as to enable him to see distinctly the faces of the, slayers. To bolster his claim of innocence, of the impossibility of him committing the crime, accused appellant reiterates here his alibi.

The Court affirms the decision of the Court a quo.

Hadji Salic and Malik Comolang positively identified the accused as one of Pangcatan's assailants. They pointed

to accused-appellant as one of the gunmen who shot and killed Pangcatan Comolang. Their testimonies were clear, straightforward, and based on their personal observation. The Court entertains no doubt that they actually saw how Pangcatan was slain and who performed the deed. Hadji Salik pertinently deposed as follows:[8]

"Q

Then what happened?

A

When we have gone down Pangcatan Comolang told us to go ahead and he will just follow us.

Q

Then what happened?

A

When we were about to reach my land we heard with Malik burst of gunfires.

Q

When you heard the burst of gunfires, what did you do?

A

We immediately returned to the direction where the burst of gunfires came from which is our house.

Q

Then what happened?

A

What I saw was Abdulkhair (sic) Patamama in the process of shooting Pangcatan Comolang with his companions.

Q

Have you recognized the companions of Abdulkhair (sic) Patamama?

A

Yes, Sir.

Q

Who were they?

A

Pukunum Camolo, Dirimbangan Iko, Paito Mangorangca, Boniara Camolo and Abdulkhair Patamama (sic).

Q

When you saw these people firing at Pangcatan Comolang, what is the position of Pangcatan Comolang?

** * *** **

A

He was lying down

Q

When you saw these people firing at Pangcatan Comolang, what happened after that?

A

They took his wristwatch and his wallet.

Q

Then what happened next?

A

Afterwards Abdulkhair (sic) pointed his gun to us and said: do not intervene or else we will kill you.

Q

What happened next?

A

Afterwards they ran away."

For his part, Malik Comolang testified thus:[9]

"Q

And when this Hadji Salic asked you to accompany him to his land, what happened?

A

When we were already in the ground floor, Pangcatan Comolang told us to go ahead because he will first slip on his pants.

Q

What happened next?

A

When we reached the land of Hadji Salic, we heard several gunshots.

Q

When you heard several gunshots, what did you do?

A

We immediately returned back.

Q

When you returned back, what happened?

A

We saw Pangcatan Comolang lying down while he was being fired upon by Abdulkhair (sic) Patamama with his companions.

Q

You said with his companions; who are the companions of Abdulkhair (sic) Patamama?

A

Abdulkhair (sic) Patamama, Pukunum Comolang, Dirimbangan Iko, Paito Mangorangca and Boniara Camolo.

Q

When you saw this people firing at Pangcatan Comolang, what happened?

A

They poked their guns at us and instructed us not to interfere or they will shot at us.

Q

What happened next?

A

Thereafter Abdulkhair (sic) Patamama took the wallet and wrist watch of the victim and then ran away."

The fact alone that Hadji Salic and Malik are relatives of the victim provides no sufficient reason to reject their testimony. There is no legal provision that disqualifies relatives of the victim of a crime from testifying, being otherwise competent, regarding the facts and circumstances of the crime.[10] Mere relationship of witnesses to the victim, whether by consanguinity or affinity does not necessarily impair their credibility as witnesses.[11] This is specially so when the witnesses were present at the scene of the crime,[12] as in this case. Both prosecution witnesses Hadji Salic and Malik were at the crime scene when Pangcatan was being shot by men, the accused among them, armed with assorted high-powered firearms. They saw how Pangcatan, lying on the ground, was ruthlessly fired upon and killed by those men. They later narrated in open court what they had seen and heard; and there is no evidence whatever to show that they were actuated by improper or ill motives to give false testimony against the accused.

That it took these two witnesses four days from the time the investigation was conducted at the scene of the crime to reveal to the police authorities the identity of the victim's assailants, is also inconsequential. Time and time again it has been emphasized that delay in relating to the police authorities the attendant facts of the crime by witnesses can not be taken against them.[13] Witnesses to crimes react differently. In the case at bench, Salic and Malik were evidently frightened by the threats levelled at them by the killers, including the accused-appellant. Hence their fear for their own lives rendered the delay in informing the police of the identity of Pangcatan's killers is justifiable, and understandable.

Also of little evidentiary value is the PAGASA certification presented by the defense respecting the rising and setting of the moon on the night in question; and this, because it is clearly hearsay,[14] having been prepared and signed by a certain Carmelito Calimbas, allegedly the Officer in Charge of the Astronomy Research and Development Section of PAGASA. Calimbas was not presented in court for identification and to show that he was technically qualified to make and issue such certification. The rules of evidence properly exclude the testimony of witnesses demonstrably incompetent, as well as evidence that can not be tested by cross-examination.[15] The surrogate or substitute testimony of the defense counsel, Atty. Casan Macabanding, to the effect that the contents of the certification are true and correct, is hearsay and valueless. The lawyer was incompetent to depose on the truth of the statements in the certificate. He did not prepare the certificate; he was not a member of PAGASA, nor was any claim ever made that he is an expert on climatology, meteorology or lunar movements, and his sole

testimony cannot be deemed to have adequately rebutted the evidence that there was moonlight enough for clear identification of the victim's assailants.

Tested against the statements of Salic and Malik and other evidence presented by the prosecution, accused-appellant's alibi can not stand. His alibi is not convincing enough to preclude any doubt that he could not have been physically present at the place of the crime or the vicinity at the time of its commission. As can be gathered from accused-appellant's own testimony, he was a native of Maguing and a relative by affinity^[16] of Pangcatan's family. Known to the Pangcatan family, he could have been easily recognized by Salik and Malik. Further, his place of residence in Marawi City is less than 40 kilometers away from Maguing, Lanao del Sur and can be reached by an hour of travel by land transportation, of which fact the trial court took judicial notice.^[17]

At any rate, the question boils down to credibility of witnesses, as to which rule has it that the trial court's assessment must stand, absent any cogent reason to disturb it, and no such reason or circumstance has been shown here.

The appreciation by the trial court of treachery as one of the qualifying circumstances can not, however, be sustained. Treachery must be proven as clearly as the crime itself.^[18] Absent any particulars as to the manner in which the aggression commenced or how the act which resulted in the death of the victim unfolded, as in this case, treachery cannot be appreciated.^[19] The qualifying circumstance of abuse of superior strength however, was properly appreciated. It is clear that Pangcatan's offenders not only enjoyed overwhelming numerical superiority but they also took advantage of their combined strength in order to consummate the offense.^[20] The offenders used high-powered firearms, weapons of assault grossly disproportionate to what defense was available to the victim.^[21] In fact, Pangcatan was unarmed.

Even in the absence of treachery, abuse of superior strength would still qualify the killing to murder, and there being no aggravating or mitigating circumstance present the penalty imposed upon accused-appellant by the court a quo, which is reclusion perpetua will not therefore be disturbed.

WHEREFORE, the trial court's judgment of conviction is hereby **AFFIRMED**, without pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Regalado, Puno, Mendoza, and Francisco, JJ., concur.

[1] TSN of 27 March 1991, p. 7

[2] Exh "D"

[3] Rollo, p.13

[4] TSN 22 August 1991, p. 7

[5] TSN 24 June 1991, p. 6

[6] Exh"5-A"

[7] Rollo, p. 24

[8] TSN 10 January 1991, pp. 4-5

[9] TSN 27 March 1991, pp. 6-7

- [10] Pp. vs. De la Cruz , 207 SCRA 632; Angelo vs. CA 210 SCRA 402
- [11] People vs. Galendez , 210 SCRA 360 ; People vs. Morales , 241 SCRA 267
- [12] De Leon vs People, 210 SCRA 151; People vs. Jacolo, 216 SCRA 631
- [13] People vs.Sabellano, 198 SCRA196; People vs. Sampaga ,202 SCRA 157; People vs.Caraig 202 SCRA 200
- [14] People vs. Nebreja, 203 SCRA 45; Eugenio vs. CA, 239 SCRA 207
- [15] San Sebastian College vs. CA, 197 SCRA 138
- [16] TSN, 23 Oct. 1991, p. 14
- [17] Decision, p. 6
- [18] People vs. Abalo, 229 SCRA 274
- [19] People vs. Lug-aw, 229 SCRA 308; People vs. Apa-ap, 235 SCRA 468; People vs. Timple 237 SCRA 52
- [20] People vs. Padilla, 233+ SCRA 46; People vs. Francisco, 234 SCRA 333; See also People vs. Bongadillo, 234 SCRA 233
- [21] Padilla, supra.

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