PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO FRANCISCO ALIAS "YOLING" AND ESTELITO FRANCISCO ALIAS "BOBOY", ACCUSED. LEONARDO FRANCISCO, ACCUSED-APPELLANT.

G.R. No. 110873. September 23, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Accused-appellant Leonardo Francisco (hereafter LEONARDO), together with Estelito[1] Francisco (hereafter ESTELITO) and Alex Dacutara (hereafter ALEX), were charged before Branch 6 of the Regional Trial Court of Palo, Leyte, with the crime of murder in an information which reads:

> That on or about the 4th day of June, 1986, in the Municipality of Pastrana, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another, with deliberate intent to kill, with treachery and evident premeditation, with abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, stab and wound one Ricardo Mendoza with the use of a bolo and bamboo (Patong) which the said accused had provided themselves for the purpose, thereby hitting and inflicting upon said Ricardo Mendoza wounds which caused his death.
>
> Contrary to law.[2]

Upon their arraignment, all three accused pleaded not guilty to the crime charged.[3] On December 3, 1987, during trial, ALEX died and consequently, the case against him was dismissed on January 12, 1988.

The evidence for the prosecution consists primarily of the testimony of Veronica Mendoza (hereafter VERONICA), the wife of the victim, who claims that she personally witnessed the killing of Ricardo Mendoza (hereafter RICARDO) by the three accused. According to VERONICA, on June 4, 1986, at around 4:30 in the afternoon, she, together with RICARDO and their children, Jesus and Richard, aged nine and six respectively, were walking along a path on their way home from the house of a neighbor. RICARDO was walking slightly ahead, while VERONICA and the children followed behind at a distance of approximately two arm's length. Suddenly, LEONARDO, ESTELITO and ALEX appeared behind RICARDO, coming from the sides of the path, which were lined with coconut trees and tall cogon grass.[4] LEONARDO and ALEX were each armed with bolos, while ESTELITO wielded a piece of bamboo about one meter long. LEONARDO delivered the first blow, hitting RICARDO on his back. This was followed by ESTELITO who hit the victim at the back of his head with a bamboo stick. Finally, ALEX hacked at RICARDO's back with a bolo. RICARDO fell face down on the ground. VERONICA rushed her children home and cried for help. Several policemen rushed to the scene of the crime, namely Benjamin Montanejos, Wilfredo Nierva, Arnulfo Tan, Antonio Diminico, and Benedicto Sequito. They brought the lifeless body of RICARDO to his house.[5]

According to the testimony of Benjamin Montanejos, upon their arrival at the crime scene they interrogated

VERONICA regarding the killing of RICARDO. VERONICA reported to the policemen that LEONARDO, ESTELITO and a certain "Baby" had killed her husband.[6] On June 7, 1986, ESTELITO surrendered to the mayor of Pastrana, admitting that he and ALEX killed RICARDO.[7]

The post-mortem report revealed that the cause of the victim's death was "shock secondary to a blow over the head."[8] Dr. Verisimo Opiniano, who conducted the autopsy, testified that out of the four wounds inflicted upon RICARDO, two were probably caused by a sharp bladed instrument and one by a heavy and blunt instrument, like a large piece of wood. Dr. Opiniano further testified that, based on the location of these three wounds, it may be safely assumed that there were two or more assailants and that they inflicted the wounds while standing right behind the victim. The fourth wound was actually a contusion which the victim probably sustained by falling to the ground.[9]

As a possible motive for the killing of RICARDO, the prosecution claims that LEONARDO might have harbored some resentment against the Mendozas because sometime in October, 1985, LEONARDO and his parents went to the house of the victim and challenged them to a fight for allegedly throwing rat poison in their rice field. However, the entire matter was amicably settled in a confrontation before the barangay captain.[10]

LEONARDO's defense consists of an alibi. He claims that he was in his house the whole day of June 4, 1986 entertaining visitors as it was the barangay fiesta. Among his visitors were Iluminado Daynata (hereafter DAYNATA), Jose Bigoy, Ricky Cornista, and Pacifico Nayan. DAYNATA was the last to leave LEONARDO's house at 5 p.m. After all his guests had left, LEONARDO went to sleep at 6:30 p.m. as he felt tired. He learned of the killing of RICARDO only the following day.[11]

In direct contradiction of the prosecution's account, the defense claims that it was RICARDO and his wife who were angry with LEONARDO since some of their chickens died after eating the rat poison which he placed in his rice field. RICARDO challenged LEONARDO to a fight, causing the latter to have him summoned before the barangay captain. LEONARDO wanted RICARDO to execute an affidavit, but the barangay captain did not deem it necessary.[12]

As regards ESTELITO, although he admits that he and ALEX killed RICARDO, he invoked the justifying circumstances of self-defense and defense of stranger. According to ESTELITO, on June 4, 1986, he and ALEX were walking to Barangay Sapsap to watch a cockfight when they met RICARDO on the road. RICARDO challenged ALEX to a fight and immediately drew his bolo and delivered a hacking blow at ALEX, which the latter was able to avoid. In defense of ALEX, ESTELITO hacked RICARDO with his bolo, hitting him just below the neck. ALEX was then able to pick up a piece of wood and he used it to strike RICARDO on the head. ESTELITO and ALEX hit RICARDO several more times until he fell to the ground.[13]

The trial court[14] found LEONARDO and ESTELITO guilty of murder qualified by treachery and sentenced them as follows -

> WHEREFORE, finding accused Leonardo Francisco alias "Yoling" and Estilito Francisco alias "Boboy" guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code and applying the Indeterminate Sentence Law, sentences Leonardo Francisco to an imprisonment of from TEN (10) YEARS and ONE (1) DAY to SEVENTEEN (17) YEARS and FOUR (4) MONTHS. The Court after appreciating the mitigating circumstance of surrender without any aggravating circumstance to offset the same in favor of accused Estilito Francisco, sentences said accused Estilito Francisco to an imprisonment of from SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum to TWELVE (12) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of Reclusion Temporal as maximum. Accused Leonardo Francisco and Estilito Francisco are hereby condemned to pay the heirs of Ricardo Mendoza an indemnify (sic) the sum of P30,000.00, without subsidiary imprisonment in case of insolvency.

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SO ORDERED.[15]

The trial court held that the defense of alibi cannot prevail over the positive identification of the accused by the wife of the victim. The evidence for the defense sought to establish that it was impossible for LEONARDO to be at the scene of the crime at the time of its commission, but the trial court was unconvinced. First of all, the place where the killing took place is only about 400 meters from LEONARDO's house and can be reached by a few minutes walk. Secondly, the fact that the killing allegedly took place at 4:30 p.m., as testified to by VERONICA, coupled with the testimony of DAYNATA that he was at LEONARDO's house until 5 p.m., which is 30 minutes after the crime took place, does not help the theory of the defense since all the times testified to were mere estimates of the witnesses.

The trial court pointed to LEONARDO's dissatisfaction with the outcome of his confrontation with the Mendozas before the barangay captain as his motive for wanting to harm or kill RICARDO. Also, if the theory of the defense is followed that RICARDO had the intention of harming LEONARDO because of the death of his chickens, there would be no plausible explanation for RICARDO's allegedly challenging ALEX to a fight, although they were not together with LEONARDO.

The court did not give credence to ESTELITO's claim of self-defense and defense of stranger because it found it quite unbelievable that he and ALEX did not sustain a single scratch if RICARDO indeed attempted to hack at them several times with his bolo.[16]

Only LEONARDO appealed the trial court's decision to the Court of Appeals. Basically, he asserted in his appellant's brief that the testimony of VERONICA should not have been given credence by the trial court because she is obviously a biased witness, being the wife of the victim, and it is uncorroborated. LEONARDO claims that his testimony is more convincing since it was corroborated by the testimonies of DAYNATA, who asserted that he was in LEONARDO's house at the approximate time of the killing, and by ESTELITO's declaration that LEONARDO did not take part in the killing of RICARDO. Moreover, even if VERONICA's testimony is to be believed, it does not support the finding of treachery because she said that the deceased was accosted by the accused, thereby precluding any treacherous initial attack. Finally, LEONARDO claims that the trial court erred in imposing the penalty which, taking into consideration the Indeterminate Sentence Law and the fact that there are no aggravating or mitigating circumstances, should have been TEN (10) YEARS and ONE (1) day to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY only.[17]

The appellate court[18] affirmed the conviction of LEONARDO for murder, but it increased the penalty imposed by the trial court to reclusion perpetua and the civil indemnity to P50,000. It ruled that VERONICA's testimony bears the credibility necessary to establish the guilt of the accused beyond reasonable doubt. The fact that she is RICARDO's wife is not an indication that she testified falsely since mere relationship to the victim is not a ground for disbelieving a witness. Also, her testimony could not have been corroborated by any other witnesses since there were no other persons around when the killing took place, except for her very young children.

The appellate court also stated that the defense of alibi cannot prevail over positive identification of the accused by a witness. For the defense of alibi to prosper at all, it must be proven by the accused that it was physically impossible for him to be at the scene of the crime or its vicinity at the time of its commission. Accused LEONARDO failed to discharge this burden.

Finally, the appellate court upheld the trial court's finding that treachery attended the commission of the crime since the attack was sudden, upon an unarmed victim who had absolutely no inkling of the impending tragedy, and it was made from behind the victim, insuring the absence of any risk to the assailants.[19]

The determination of LEONARDO's guilt depends mainly on whether or not the positive identification of the accused by VERONICA shall prevail over the denial and alibi offered by the accused. Alibi is the weakest defense, being easy to fabricate and difficult to disprove.[20] A positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial.[21] When there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[22]

The lower courts were fully justified in believing VERONICA's testimony. Her clear and direct testimony regarding the details of the assault, including the identity of the assailants, the weapons used, the order in which the blows were delivered and the parts of the victim's body where the blows landed,[23] which very closely corresponded with the descriptions of RICARDO's wounds detailed in the post-mortem report, is worthy of credence. It is most unlikely that a witness could have related all the details of a crime with such clarity and lucidity unless she was herself present at the time the killing transpired.

The defense has not pointed to any improper motive which might have impelled VERONICA to implicate any of the accused in the killing of her husband. Even LEONARDO's claim that the Mendozas were angry with him because in October, 1985 some of their chickens were poisoned by the rat poison placed by LEONARDO in his rice field is not sufficient to taint VERONICA's straightforward testimony. First of all, the prosecution's version of this incident is in direct contradiction with that of LEONARDO's. VERONICA asserted that it was LEONARDO and his father who challenged them to a fight because they thought that the Mendozas had thrown rat poison in LEONARDO's field. Secondly, the matter was amicably settled before the barangay captain. It is highly improbable that VERONICA would be capable of inventing a story right after the violent killing of her husband just to get back at LEONARDO for a minor incident which happened more than one year ago.

Contrary to the assertions of accused-appellant, the fact that VERONICA is RICARDO's wife does not detract from her credibility since the relationship of a witness to the victim, whether by consanguinity or affinity, is not an indication of the witness' impaired credibility nor does it taint her positive and clear testimony and render it unworthy.[24] In fact, the relationship with the victim would render the testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.[25]

The accused-appellant claims that VERONICA's testimony should not be given credence because it is uncorroborated, whereas his defense of alibi is corroborated by the testimonies of DAYNATA and ESTELITO. However, it has been held in a long line of cases that the testimony of a single witness, if found convincing and credible by the trial court, is sufficient to support a finding of guilt beyond reasonable doubt because truth is not established by the number of witnesses but by the quality of their testimonies.[26] Corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate,[27] but as already stated, the defense has not offered any reason for the Court to suspect the testimony of the prosecution witness herein.

Notwithstanding, VERONICA's testimony was in fact corroborated by Benjamin Montanejos (hereafter MONTANEJOS), who testified that VERONICA told him and his companions upon their arrival at the scene of the crime that LEONARDO, together with ESTELITO and ALEX, were responsible for RICARDO's death.[28] Her statement to MONTANEJOS may be considered as part of the res gestae. The requisites of res gestae as an exception to the hearsay rule are (1) that the principal act or the res gestae be a startling occurrence; (2) the statement is spontaneous or was made before the declarant had time to contrive or devise, and the statement is made during the occurrence or immediately prior or subsequent thereto; and (3) the statement made must concern

the occurrence in question and its immediately attending circumstances.[29] When VERONICA told MONTANEJOS and his companions that the three accused killed RICARDO she must have still been in a state of shock from having personally witnessed the brutal killing of her husband. Her state of mind at this point would not have permitted her to fabricate a story regarding the event which had just transpired.

We now come to the matter of the alibi offered by LEONARDO. For the defense of alibi to prosper, it must be established by positive, clear and satisfactory proof that (1) the accused was somewhere else when the offense was committed, and (2) it was physically impossible for the accused to have been present at the scene of the crime or its immediate vicinity at the time of its commission.[30] The Supreme Court has ruled where there is even the least chance for the accused to be present at the crime scene, the alibi will not hold.[31]

We agree with the trial court's finding that the accused-appellant has failed to show that it was impossible for him to be at the scene of the crime at the time the killing took place. First of all, the time of the assault was merely estimated by the prosecution. This is apparent from the wording used in plaintiff-appellee's brief wherein it is stated that "[a]t about 4:30 o'clock in the afternoon of June 4, 1986, the victim Ricardo Mendoza, his wife Veronica Mendoza and their children...were walking along a pathway on their way home."[32] According to the accused-appellant, he was in his house at the time the killing took place entertaining visitors and he offers the testimony of DAYNATA, who was the last person to have allegedly left the former's house on that day. DAYNATA testified that he was with LEONARDO on the afternoon of June 4, 1986 until he left the latter's house "[a]t past 5:00."[33] It is apparent that DAYNATA could only give an approximate and not an exact time of departure. Even LEONARDO admitted on cross-examination that he did not have a watch and could only give an estimate of the time.[34] Thus, it has not been proven that it was impossible for LEONARDO to have been at the crime scene even though it is true that he had guests over at his house on that day.

The trial court found that place where the killing took place was only 400 meters from the house of LEONARDO. Accused-appellant also testified that his house is about 400 to 500 meters from the scene of the crime.[35] In one case, where it was proven that the accused was only three kilometers from where the crime was committed, the Court held that it was "a manageable distance to travel in a few minutes."[36] Certainly, a distance of even 500 meters, which is equivalent to only half a kilometer, may similarly be reached in a few minutes.

Thus, accused-appellant has clearly failed to substantiate his alibi. Likewise, ESTELITO's claim that LEONARDO was not involved in RICARDO's killing is an outright prevarication in the face of VERONICA's positive identification of the three accused. If VERONICA was lying, then how could she have accurately identified the perpetrators of the heinous deed, including ESTELITO and ALEX, both of whom she had no reason to falsely implicate, as early as June 4, 1896, when ESTELITO only surrendered and admitted to the killing three days after?

We hold that the testimony of VERONICA, which includes the positive identification of the three accused, must prevail over the defense proffered by LEONARDO of denial and alibi.

Treachery attended the killing of RICARDO. There is treachery when the offender commits the crime employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make.[37] In the present case, the fact that the accused were all armed and attacked the victim suddenly and from behind, while he was walking home with his family, unarmed, without any inkling or warning that he would be the subject of a violent attack and deprived of any opportunity to defend himself, constitutes treachery. The aggravating circumstance of abuse of superior strength is already absorbed in treachery and can no longer be appreciated separately.

Although evident premeditation was alleged in the information, it was not established by the prosecution. To

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establish evident premeditation, there must be proof of (1) the time when the accused determined to commit the crime, (2) an overt act manifestly indicating that the accused clung to his determination to commit the crime; and (3) the lapse of a sufficient period of time between the determination and the execution of the crime, to allow the accused an opportunity to reflect upon the consequences of the act.[38] None of these elements were proven. The lower courts were correct in not appreciating this particular circumstance.

At the time the crime was committed, the imposable penalty for murder under the Revised Penal Code was reclusion temporal maximum to death. In the instant case, there being no aggravating or mitigating circumstances attendant in the commission of the crime, the appellate court correctly imposed upon the accused the penalty of reclusion perpetua, the medium period of the prescribed penalty. We likewise affirm the appellate court's award of P50,000 as indemnity ex delicto.[39]

WHEREFORE, the decision of the appellate court is hereby AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur. Purisima, J., no part.

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[1] Also referred to as "Estilito" in RTC Decision.

[2] CA Records, 14.

[3] CA Records, 81. On December 3, 1987, during trial, ALEX died and consequently, the case against him was dismissed on January 12, 1988.

[4] Brief for Plaintiff-Appellee, 4-5.

[5] TSN, 29 January 1987, 7-10; TSN, 22 April 1988, 5.

[6] TSN, 22 April 1988, 5.

[7] TSN, 31 March 1989, 11-12.

[8] Exhibit A-2.

[9] TSN, 1 October 1987, 7-8, 10-11.

[10] TSN, 29 January 1987, 27-28.

[11] Brief for Accused-Appellant, 1.

[12] TSN, 23 December 1988, 9-10.

[13] TSN, 31 March 1989, 3-8.

[14] The RTC decision was promulgated on April 4, 1991 and penned by Getulio M. Francisco.

[15] RTC Decision, 8.

[16] Ibid., 5-6.

[17] Brief for Accused-Appellant, 2-4.

[18] The CA decision was promulgated on May 21, 1993 by the Sixth Division composed of Angelina S. Gutierrez (ponente), Fidel P. Purisima (now Supreme Court Justice), and Jesus M. Elbinias.

[19] CA Decision, 5-8.

[20] People vs. Violin, 266 SCRA 224 (1997); People vs. Quiamco, 268 SCRA 516 (1997).2

[21] People vs. Gayon, 269 SCRA 587 (1997); People vs. Dinglasan, 267 SCRA 26 (1997).

[22] People vs. Abrecinoz, 281 SCRA 59 (1997); People vs. Letigio, 268 SCRA 227 (1997).

[23] Ibid., 8-9.

[24] People vs. Baniel, 275 SCRA 472 (1997); People vs. Manambit, 271 SCRA 344 (1997).

[25] People vs. Sion, 277 SCRA 127 (1997); People vs. Montero, Jr., 277 SCRA 197 (1997).

[26]People vs. Bajar, 281 SCRA 262 (1997); People vs. Lascota, 275 SCRA 591 (1997); People vs. Salcedo, 273 SCRA 473 (1997); People vs. Ramirez, 266 SCRA 335 (1997).

[27] People vs. Recio, 282 SCRA 274 (1997).

[28] TSN, 22 April 1988, 5.

[29] People vs. Queliza, 279 SCRA 145 (1997).

[30] People vs. Baniel, 275 SCRA 472 (1997); People vs. Patawaran, 274 SCRA 130 (1997); People vs. Henson, 270 SCRA 634 (1997).

[31] People vs. Enriquez, 281 SCRA 103 (1997).

[32] Brief for Planitiff-Appellee, 4.

[33] TSN, 19 December 1988, 4.

[34] TSN, 23 December 1988, 12.

[35] Ibid., 16.

[36] People vs. Montero, Jr., 277 SCRA 194 (1997).

[37] People vs. Tanedo, 266 SCRA 34 (1997).

[38] People vs. Quinao, 269 SCRA 495 (1997).

[39] People vs. Lotoc, G.R. No. 132166, May 19, 1999.

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