

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRITO AÑONUEVO Y BORAL ALIAS HANGER, ACCUSED-APPELLANT.

G.R. No. 112989. September 18, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Accused-appellant anchors his bid for acquittal on the defense of alibi, but, not heeding the settled doctrines enunciated by this Court in numerous cases, fails to meet the requirements for its plausible application.

This is an appeal from the judgment of the trial court[1] convicting Pedrito Añonuevo y Boral, a.k.a. "Hanger", of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim Rufino Ereño in the amount of P50,000.00 and to pay the costs.[2]

The Facts

This case was commenced by an Information charging the accused-appellant as follows:[3]

"That on or about the 9th day of March 1993, at about 7:30 o'clock in the evening, in Barangay Tubigdanao, Municipality of San Jose, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a homemade shotgun, with deliberate intent to kill thru treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack(,) assault and shoot RUFINO EREÑO (sic) with the use of said weapon which the accused had provided himself for the purpose, thereby inflicting upon said Rufino Ereño (sic) several gunshot wounds which caused the instant death of said victim."

The accused-appellant pleaded Not Guilty when arraigned.

Prior to commencement of trial, the prosecution and the accused agreed upon the following stipulation of facts:[4]

- "1. Any mention or reference to the name Pedrito Añonuevo y Boral also known as Hanger identifies the accused;
2. Fact of death of the victim, Rufino D. Ereño, is reflected in the medico-legal certificate, Exh. 'A', page 3, and certificate of death, Exh. 'B', page 4 of the case folio;
3. The time, date and place of the incident, 7:30 o'clock in the evening, March 9, 1993, in Barangay Tubigdanao, Municipality of San Jose, Northern Samar;"

The prosecution had as its witnesses Fe Ereño and Julio Ereño, the wife and brother of the victim respectively, and SPO4 Ricardo Sudio, the deputy chief of police in San Jose, Northern Samar. The defense, on the other hand, presented the accused-appellant himself and his wife Nora Añonuevo.

The victim, Rufino Ereño, was autopsied the day after the incident, and was found to have succumbed to shock secondary to internal hemorrhage as a result of the gunshot wounds he sustained in different parts of the body, the number, nature and locations of which are detailed in the autopsy report (Exhibit "A").[5]

The trial court summarized the circumstances surrounding the killing as follows:[6]

"At about 7:30 in the evening on March 9, 1993, at a place less than a kilometer from the barangay proper of Tubigdanao, the family of Rufino Ereño was preparing to retire for the night. The husband was lying down on the side of the one-room affair dwelling hut. Their three children ages seven, six and two and a half, were also inside. Fe Ereño was towards the rear of the house at the kitchen's yard transferring the small pig to a place inside the house for the evening. She was around three or four brazas to where her husband was. It was there that she heard a gunfire from that direction and saw the accused at a distance of around one-half meter to the house and at the side thereof where her husband lay. The accused was around three brazas to her carrying a long gun in fort position as he withdrew and ran away. She dashed inside the house and saw her husband vomiting blood with injuries at the left of the neck and towards the nape. She ran to the barangay poblacion to the house of one Banker Ballesta, the son of the barangay captain who went to the place of the incident. From there, Ballesta motored to the town and notified Julio Ereño, the victim's younger brother, who, in turn notified the police. The report was recorded in the police blotter (Exh. "1"). It was around 8:00 o'clock in the evening. The body was brought to the town's district of P. Tingzon where the grieving widow told Julio Ereño and deputy chief of police Ricardo Sudio of the gun wielder to be the accused.

The accused is long familiar to the Ereño spouses. Fe Ereño used to see him whenever he goes to town. He resides in a farm at another barangay. She told that her husband was killed because whoever makes copra for Juan Añonuevo, the accused's nephew, would be resented by the accused. The victim used to make copra for Juan Añonuevo at the latter's coconut land. Other hired hands are residents of Tubigdanao who stopped working for Juan Añonuevo. She heard that the accused prohibited them from working for Juan. The victim last made copra in February, the month before his death.

Julio Ereño testified that immediately after Ballesta told him of the shooting of his brother, he notified the police at the municipal hall who recorded his report (Exh. "1"). He met Fe Ereño, his sister-in-law, later at P. Tingzon in town.

x x x x x x x x

The accused testified that the victim was a friend and they see each other often. Fe Ereño was also his friend and knows her since she was small. He branded her accusation as a lie. On March 9, 1993, in the evening he was at home sleeping with his wife and their small child. His house is in San Lorenzo, a barangay around five kilometers to the town. From San Lorenzo to Tubigdanao is around two kilometers accessible only by a footpath and can be negotiated in about ten minutes by walking at a fast pace. He came to know of the death of Rufino Ereño only on the 24th of March, 1993, when he was told he was subpoenaed. He was always at home from March 10, 1993, up to his arrest on March 27. He could not think of any reason as to why Fe Ereño would accuse and testify to impute a crime upon an innocent person. He claims that the killer was not even identified for Julio Ereño, the victim's brother, reported to the police that the gunman could not be identified (Exh. "1"). Juan Añonuevo is his nephew who owns two parcels of land in San Lorenzo which came from the former's father. His coconut land is situated between these properties of Juan with whom he maintains good relationship. The victim was only one of those hired to make copra by Juan Añonuevo and the last time he made copra was in February this year. Nora Añonuevo, his wife, vouched for his presence at their home during the whole evening of March 9, 1993."

After trial, the court a quo rendered judgment as follows:

"WHEREFORE, the Court hereby finds Pedrito Añonuevo y Boral, also known as Hanger, GUILTY beyond reasonable doubt of the crime of murder and, with neither mitigating nor aggravating circumstances to consider, hereby sentences him to suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of Rufino Ereño in the amount of P50,000.00 and to pay the costs."

The Issues

Before this Court, accused-appellant assigns the following errors:[7]

"I

The court a quo erred in giving weight and credence to the testimony of the prosecution witnesses and in disregarding the theory of the defense despite the evidence to the contrary.

II

The court a quo erred in convicting accused-appellant notwithstanding the fact that his guilt was not proved beyond reasonable doubt."

In his brief, accused-appellant centers his arguments on two main issues: the credibility of the prosecution's key witness and the weight to be given the defense of alibi.

The Court's Ruling

First Issue: Credibility of Prosecution Witness

Appellant assails the credibility of the main witness for the prosecution, the victim's wife Fe Ereño. Appellant claims Fe Ereño could not have seen her husband's assailant, for while she was present at the premises, nevertheless she did not see the actual shooting, as she was at the back of the kitchen busy attending to a piglet, and therefore had no opportunity to get a good view of the assailant. The defense also laid emphasis on the fact that it was nighttime, and the prosecution had not established that the victim's house was situated in a place where there were no plants and trees in the surroundings which could have obstructed the moonlight from fully illuminating the scene or which might otherwise have prevented Fe Ereño from seeing the person of the assailant. Thus, the accused claims, her identification of appellant as her husband's killer is unreliable and untrustworthy. Her testimony, aside from being biased, is uncorroborated and therefore also insufficient to convict appellant.[8]

We disagree. The record shows that Fe Ereño was in a position to see her husband's killer. Her testimony was to the effect that her family's dwelling was a small one-room hut. At the time she heard the gunshot, she was in their yard tethering their pig. The yard was near their kitchen, so she was in a good position to see appellant who was at the side of the hut, about three arms-lengths away from her, backing away from the house holding a long firearm in fort position, and then running away. Said she:

"Q

What were you doing at the time when you were in your house?

A

I was tethering our pig.

Q

Where was your pig at that time?

A

In our yard

x x x x x x x x

Q

At the time you were tethering your pig where was your husband?

A

He was lying down inside our house.

Q

In what part of the house was he lying down?

A

At the right side.

Q

Right side of what?

A

(witness repeating the answer) Right side.

COURT:

Q

Your house is a one room affair?

A

Yes, sir.

FISCAL:

Q

And while you were tethering your pig can you remember of any unusual incident that took place?

A

Yes, sir.

Q

What happened?

A

There was an explosion.

Q

What did you do upon hearing that explosion?

A

I did not know from where I was standing.

Q

Where were you standing?

A

Near our kitchen.

Q

And what did you observe?

A

That was it I saw Pedrito.

Q

Who is that Pedrito?

A

Añonuevo.

Q

What was he doing when you saw him?

A

He was moving backward carrying with him a long gun.

Q

You said that he was moving backward(,) from where he was he that he was moving backward?

A

Just near that place where my husband was lying.

x x x x x x x x

Q

How far were you to Pedrito Añonuevo when you saw him?

A

About three brazas away.

Q

And then what did you do next?

A

I ran inside the house.

Q

and what did you do xxx what did you discover inside your house?

A

I saw my husband vomiting already with blood.

Q

Why?

A

Because he was shot.

Q

Uou said that he was shot(,) where was he hit?

A

He was hit on the left side of his neck (witness indicating the left side of his neck toward he nape)."[9]

Thanks to the defense counsel, the positive identification by Fe Ereno was further highlighted during cross-examination, where she testified as follows:

"Q

My question is, where were you particularly when you heard the explosion, were you already up in the house or down in the yard?

A

At the time of the explosion I was still downstairs, where the pig was.

Q

Downstairs at the kitchen of your house?

A

Yes, sir.

Q

Where the explosion you heard or genearted from the living portion of your house?

A

At the side.

Q

In that place from where you were when you heard the explosion the place could be seen by you, is it not?

A

Yes, sir.

Q

No obstruction toward that direction?

A

None, sir.

Q

And you said the distance when you saw the accused between you and him was only three brazas, wat was your distance to the place where your husband was?

A

About four brazas.

Q

How soon did you see the accused after you heard gun fire?

A

Same time of the explosion.

Q

You mean when you heard the gun fire you turned your attention to where the same came from?

A

Yes, sir.

Q

And you saw xxx what did you see?

A

I saw the accused Pedrito Añonuevo.

Q

At that instant you saw him what part of his body was exposed to you?

A

His whole body.

Q

Yes, what part of the body facing you?

A

His whole fromt body.

Q

You mean when he was already moving backward?

A

Yes, sir, he was toward my right side.

Q

You mean, you glanced toward your right and you saw him moving backward? Facing you?

A

Yes, sir, moving backward away from our house.

Q

How far was he to the house at that instant when you saw him?

A

About half a meter away.

x x x x x x x x

Q

And how far were you to the house from that point where you were standing according to you?

A

Four brazas away.

Q

You were four brazas away from the kitchen of your house?

A

Yes, sir."[10]

Furthermore, when the incident took place, it was only about 7:30 in the evening, with a bright moon providing adequate illumination which enabled Fe Ereño to identify the appellant.

"Q

Now, you said that you saw the accused Pedrito Añonuevo, how were you able to recognize him?

A

Because the moon was bright.

Q

How bright was the moon(?)

A

It was very bright.

Q

Where was the position of the moon at that time?

A

The moon was in a position of 7:00 o'clock and it came from the east where the sun rises.

Q

After seeing him where did he go?

A

He ran away."[11]

The trial court even made note of the fact that there was a full moon the day prior to the incident, i.e., on March 8, 1993.[12]

Fe Ereño was familiar with accused-appellant, and thus easily recognized him. She testified on direct:

Q

How long have you known this Pedrito Añonuevo before that incident?

A

Long before because we frequently meet on the road.

COURT:

Q

How often do you meet him on the road?

A

Always whenever he goes to town.

Q

You said that he goes to town, why where was he staying?

A

In the farm.

Q

Where is that farm?

A

In San Jose, toward San Lorenzo.

Q

In whose land?

A

His own land."^[13]

During trial, the accused admitted that Fe Ereño knew him just as well as he did her, and so the court a quo observed that, based on the surrounding circumstances, all the opportunities for a positive identification by the sole witness were present in this case.

The trial court found the testimony of Fe Ereño convincing. When the credibility of witnesses is at issue, appellate courts will generally not disturb the findings and assessments of trial courts.^[14] The credibility of witnesses is a matter best assessed by the trial court which had observed their demeanor and deportment during trial.^[15] Findings of trial courts regarding the veracity of a testimony are given great weight and accorded high respect by this Court in the absence of a showing that they were reached arbitrarily.^[16] We will not disturb these findings unless there is a clear showing that facts or circumstances of weight or substance have been overlooked or misunderstood which could affect the result of the case.^[17] Appellant has not presented any reason why this case should be an exception to the general rule.

Appellant claims Fe Ereño failed to identify her husband's assailant to the police, and that the shooting was

recorded in the police blotter on March 9, 1993 with the suspect unnamed and unidentified.[18] However the testimonies of prosecution witnesses reveal that it was Julio Ereño, the victim's brother, who first reported the incident to the police, and at the time he did so, he did not yet know who the assailant of his brother was.[19] When Fe Ereño was investigated on the same night of the shooting, she immediately identified appellant as her husband's killer.[20] This was established by the testimony of the Deputy Chief of Police who declared that Fe Ereño revealed to him the accused as the killer upon their return to the town that night.[21]

Fe Ereño's identification of appellant is sufficient to convict him. It has repeatedly been held that the testimony of a single eyewitness is credible and positive and if it satisfies the court as to the guilt of the accused beyond reasonable doubt is sufficient to convict.[22]

Appellant, instead of introducing evidence to show that Fe Ereño had motive to testify falsely against him, even admitted that she had no reason to wrongly accuse him of the death of her husband.[23] The testimony of Fe Ereño cannot be denied credence just because she happened to be the victim's wife. Mere relationship of a witness to the victim does not automatically impair his credibility and render his testimony less worthy of credence where no improper motive can be ascribed to him for testifying.[24] Rather, the witness' relationship to the victim, far from rendering her testimony biased, would even make it more credible as it would be unnatural for a relative who is interested in seeking justice for the deceased to accuse somebody other than the real culprit.[25]

Second Issue: Is the Alibi Airtight?

In the face of the overwhelming evidence against him, appellant relies on the defense of alibi. He testified that he was at home sleeping with his wife and their young child when the shooting was committed. His wife corroborated his story, claiming that her husband was with her at home the whole night of March 9, 1993, and he never left the house.[26] The accused-appellant also claims he had no motive to kill Rufino Ereño, insisting that the victim was his friend and that they knew each other quite well.[27]

The rule is well-settled that in order for the defense of alibi to prosper, it is not enough to prove that appellant was somewhere else when the offense was committed but it must likewise be demonstrated 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.[28]

"Alibi, the plea of having been elsewhere than at the scene of the crime at the time of the commission of the felony, is a plausible excuse for the accused. Let there be no mistake about it. Contrary to the common notion, alibi is in fact a good defense. But to be valid for purposes of exoneration from a criminal charge, the defense of alibi must be such that it would have been physically impossible for the person charged with the crime to be at the locus criminis at the time of its commission, the reason being that no person can be in two places at the same time. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused's presence at the crime scene, the alibi will not hold water." (underscoring ours)[29]

In this case, appellant admitted that the place where the crime was committed could be reached from his place in approximately 10 to 20 minutes on foot. He said:

"Q

How far is Tubigdanao to your house in San Lorenzo?

A

It could be around two kilometers away.

Q

How many minutes would it take to negotiate from Tubigdanao to your house?

A

It could be around 20 minutes because there is no road in going there and you have only to hike, but if one is fast in walking it would only take around 10 minutes.

Q

Is there a footpath?

A

Yes, sir."[30]

In light of the foregoing testimony, the trial court certainly could not be faulted for not giving weight to accused-appellant's alibi. Besides being inherently weak for not being airtight, accused's alibi cannot prevail as against the positive identification made by the prosecution witnesses.[31] Likewise, the testimony of appellant's wife is of little value to his defense, as it only corroborates his leaky alibi. Also, alibi has been held to become less plausible as a defense when it is mainly established by the accused himself and his immediate relatives.[32]

His defense of lack of motive will likewise not prosper, as motive is immaterial where there is direct testimony of a credible witness and where the culpability of the accused has been established beyond reasonable doubt.[33] In any event, the trial court held that "(i)t is not that there is want of any motive at all for the killing", preferring to believe Fe Ereño's testimony to the effect that the accused had threatened the workers who made copra for accused's nephew Juan Añonuevo, and had told them he would treat them as his (accused's) enemies. Everyone but the victim desisted from making copra for Juan Añonuevo; the victim last worked in February, the month before he was killed.

Treachery Not Proven

However, although the trial court observed that:

"The killing is characterized by the treacherous manner it was perpetrated x x x. The victim certainly had no opportunity to defend himself and he was in no position to mount any defensive maneuver such as would subject the accused to any risk. Killing a sleeping victim was considered an example par excellence of the crime qualified by treachery (citing *People vs. Curatchia*, 97 SCRA 549 and *People vs. Pajanustan*, 97 SCRA 699) and the circumstance surrounding the shooting of Rufino Ereño assumes no less consideration even without it being positively shown that he was asleep (sic)."[34]

the evidence fails to show that appellant's attack on Rufino Ereño was committed with treachery. The most that can be said in this case is that the victim was reclining at one side of his one-room dwelling hut when he was shot, with the killer firing from outside the hut. There was no evidence, not even from the testimony of Fe Ereño, that the victim was asleep, or that his back was turned to the accused when the latter fired the shot, or was otherwise in a defenseless position. All that Fe Ereño saw was her husband vomiting blood. It is elementary that *alevosia*, to be appreciated, must be proven as clearly as the elements of the crime or crimes it is alleged to qualify. This the prosecution had failed to do. It should have proven that the accused had consciously and deliberately employed a form of attack to ensure the consummation of his objective without risk to himself from any defense the person assaulted could have made.[35] This cannot be said to have been done in the instant case. On the other hand, the trial court ruled out evident premeditation for lack of evidence, to which we agree.

WHEREFORE, in view of the foregoing considerations, the Decision appealed from is hereby MODIFIED, in that the accused-appellant Pedrito Añonuevo y Boral is found GUILTY of the crime of HOMICIDE, and that the

penalty imposed upon him is the indeterminate sentence of ten (10) years of prision mayor as minimum penalty, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, there being no aggravating and mitigating circumstances, as maximum penalty. The P50,000.00 civil indemnity for the victim's death is hereby AFFIRMED, consistent with prevailing jurisprudence. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Regional Trial Court, 8th Judicial Region, Branch 19, Catarman, Northern Samar, presided by Judge Cesar R. Cinco.

[2] Rollo, p. 17.

[3] Original Records, p. 24.

[4] Ibid., p. 42.

[5] Executed by Dr. Norma E. Dato, Municipal Health Officer of San Jose, Northern Samar; records, p. 3. Pertinent portions of said Autopsy Report read as follows:

"I. Cadaver on dorsal decubitus position, pale, rigor mortis present and with injuries described below:

A. Back:

Gunshot wound No. 1 - .6 cm. x .4 cm. located below the occipital line, left side.

Gunshot wound No. 2 - 4.8 cm. x 2.8 cm. located at the side of the neck, left.

Gunshot wound No. 3 - 2.3 cm. x 1.1 cm. located below gunshot wound no. 2;

Gunshot wound No. 4 - .6 cm. x .4 cm. located below gunshot wound no. 3;

Gunshot wound No. 5 - .6 cm. x .4 cm. located below gunshot wound no. 4,

II. Important organs injured were the heart, liver and left lung."

[6] Decision, pp. 2-3; rollo, pp. 14-15.

[7] Rollo, p. 44.

[8] Ibid., p. 45.

[9] TSN, July 23, 1993, pp. 3-5.

[10] TSN, July 23, 1993, pp. 13-15.

[11] TSN, July 23, 1993, p. 5.

[12] Decision, p. 4; rollo, p. 58.

[13] TSN, July 23, 1993, pp. 5-6.

[14] People vs. Sapurco, 245 SCRA 519, 524, July 3, 1995; People vs. Pamor, 237 SCRA 462, October 7, 1994; People vs. Dulos, 237 SCRA 141, September 28, 1994; People vs. Comia, 236 SCRA 185, September 1, 1994; People vs. Agravante, 236 SCRA 300, September 5, 1994; see also People vs. Pija, 245 SCRA 80, 84, June 16, 1995, citing People vs. Rivera, 242 SCRA 26, March 1, 1995, which cited People vs. Yumang, 222 SCRA 119,

May 17, 1993; *People vs. Kyamko*, 222 SCRA 183, May 17, 1993; *People vs. Aruta*, 222 SCRA 201, May 1, 1993; *People vs. Clapano*, 227 SCRA 598, November 8, 1993; and *People vs. Joma*, 220 SCRA 440, March 24, 1993.

[15] *People vs. Gornes*, 230 SCRA 270, February 23, 1994.

[16] *People vs. Repollo*, 237 SCRA 476, October 7, 1994; *People vs. Balisteros*, 237 SCRA 499, October 7, 1994.

[17] *People vs. Capoquian*, 236 SCRA 655, September 22, 1994.

[18] *Rollo*, p. 46.

[19] TSN, July 28, 1993, p. 7.

[20] *Ibid.*, p. 9.

[21] *Decision*, p. 4; *rollo*, p. 16.

[22] *People vs. Rivera*, 245 SCRA 421, 431-432, June 29, 1995; *People vs. Jimenes*, 235 SCRA 322, 327, August 15, 1994.

[23] TSN, July 27, 1993, p. 25.

[24] *People vs. Alban*, 245 SCRA 549, 556, July 3, 1995, citing *People vs. Pastoral*, 226 SCRA 219, September 10, 1993; *People vs. Enciso*, 223 SCRA 675, June 25, 1993; *People vs. Jotoy*, 222 SCRA 801, May 31, 1993; *People vs. Sarino*, 221 SCRA 234, April 7, 1993; *People vs. Villanueva*, 208 SCRA 810, May 8, 1992.

[25] *People vs. Villanueva*, 242 SCRA 47, 55, March 1, 1995; *People vs. Buligon*, 205 SCRA 766, February 4, 1992; *People vs. Morales*, 241 SCRA 267, 275, February 13, 1995 citing *People vs. Viente*, 225 SCRA 361, August 17, 1993.

[26] *Rollo*, p. 48.

[27] *Ibid.*

[28] *People vs. Pija*, *supra*, at p. 85. See also, *People vs. Bernardo*, 220 SCRA 31, March 17, 1993.

[29] *People vs. Florentino Bracamonte*, G.R. No. 95939, June 17, 1996.

[30] TSN, July 27, 1993, p. 22.

[31] *Vide: People vs. Viñas, Sr.*, 245 SCRA 448, 458, June 29, 1995.

[32] *People vs. Quinevista, Jr.*, 244 SCRA 586, 594, May 31, 1995, citing *People vs. Paglinawan*, 233 SCRA 494, June 28, 1994; *People vs. Torres*, 232 SCRA 32, April 28, 1994.

[33] *People vs. Supremo*, 244 SCRA 548, 553, May 31, 1995.

[34] *Decision*, p. 5; *rollo*, p. 17.

[35] *People vs. Barros*, 245 SCRA 312, 321, June 27, 1995. See also *People vs. Amaguin*, 229 SCRA 166, January 10, 1994; *People vs. Ocaña*, 229 SCRA 341, January 19, 1994; *People vs. Salveron*, 228 SCRA 92, November 22, 1993; *People vs. Gundran*, 228 SCRA 583, December 17, 1993.

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