

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELEUTERIO C. COMPENDIO, JR., ALIAS “LOLOY,” ACCUSED-APPELLANT.

G.R. No. 114002. July 05, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused-appellant Eleuterio C. Compendio, Jr. appeals from the decision[1] dated 8 December 1993 of Branch 14 of the Regional Trial Court (RTC) of Baybay, Leyte, in Criminal Case No. B-1747, finding him guilty beyond reasonable doubt of the crime of murder.

The case commenced with the filing of a complaint with the Municipal Trial Court (MTC) of Baybay, Leyte, on 27 January 1992,[2] while the information was filed with the RTC on 23 October 1992, its accusatory reads:

That on or about the 18th day of August 1989 in the Municipality of Baybay, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with evident premeditation, with intent to kill and treachery, did then and there wilfully, unlawfully and feloniously [sic] attack, assault and stab one Cirilo Vitualla, with the use of a bladed weapon, which the accused had provided himself for the purpose, thereby inflicting upon said victim physical injuries which caused the instantaneous death of the victim.[3]

This was later amended, with leave of court, to insert a second paragraph thereof reading:

Accused Eleuterio Compendio is a recidivist having been convicted of the crime of Frustrated Homicide in Crim. Case No. B-1554, on October 6, 1989.[4]

After pleading not guilty upon arraignment, trial on the merits ensued with the presentation of the following witnesses: Trinidad C. Sabando and SPO1 Anselmo C. Tan, Jr. for the prosecution; and the accused-appellant, Romeo L. Aguinaldo, Perfecto Inso, Thelma Gofredo, and Luz Alvero for the defense. They all testified before Judge Vicente M. Aujero, then Presiding Judge of Branch 14. Judge Cristina T. Pontejos, who penned the decision after taking over the case from Judge Aujero, only received the formal offer of exhibits for the defense.[5] She thus admitted that she "could no longer observe the demeanor of the witnesses or appraise or assess -- what they said during trial. Their testimonies were already lifeless and cold in the transcripts." [6] She had to rely on the transcripts of the stenographic notes of the testimony of the witnesses and summarized the testimony of Sabando and SPO1 Tan, which find to be fully supported by the said transcripts:

On August 18, 1989 at about 3:00 o'clock in the early morning, while Cirilo Vitualla and his companion, Nenita Jose were on board a pedicab (potpot) cruising along Magsaysay Avenue, Baybay, Leyte, near the Petron Gasoline Station, it suddenly stopped. The driver alighted and forced [the] passenger, Cirilo Vitualla to get out and once outside, he was stabbed by [the pedicab driver] accused Eleuterio Compendio alias Loloy on the left side of the breast, causing the former to fall down with his back to the ground. This was the scene Trinidad Sabando saw while walking on foot ahead of the pedicab at a distance of five (5) armlength[s] away.

She recognized both the victim, Vitualla and accused Compendio by the light of the electric bulb from the said gasoline station. She also knew that the weapon used was a knife while the victim was unarmed.

After this incident was reported to the police by Nenita Jose, the victim's companion, a team headed by SPO1 Anselmo Tan went to Brgy, Kilim, Baybay, Leyte "to investigate the crime" per order of the Station Commander. There, they found accused already on board a passenger jeepney bound for Ormoc City, carrying two (2) bags of clothes. It had been found out from the inquiry made by the police that accused admitted to the killing but this statement was not reduced to writing.[7]

The accused-appellant interposed the defense of alibi. According to him, on the night of 18 August 1989, he was in his house on M.L. Quezon Street, Baybay, Leyte, with his live-in partner, Nene Nuñez. He went to sleep at around 8:00 p.m., and woke up only at about 6:00 a.m. the next day.[8] On questions from the court, he admitted that the Sangi bridge on M.L. Quezon Street was only two corners away from his house and he could reach the bridge by walking from his house in fifteen minutes.[9] Romeo Aguinaldo was presented to affirm a previous affidavit taken by the accused-appellant's counsel where the former allegedly refuted the testimony of Trinidad Sabando; however, on the witness stand, Aguinaldo denied knowledge of the contents of the affidavit.[10] For this reason, the defense introduced the testimony of Perfecto Inso who attested that Aguinaldo's affidavit was read twice to Aguinaldo by Atty. Alfredo T. Bensí in the latter's office.[11]

Thelma Gofredo, Aguinaldo's common-law wife, asserted that the victim, Cirilo Vitualla, was at her house drinking tuba with Aguinaldo from 8:00 p.m. to 9:00 p.m. on 18 August 1989 and left only at 10:00 p.m.. The following day, at 6:00 a.m., she learned that Vitualla had died because his corpse was carried to his house nearby.[12] While Luz Alvero testified that around 4:00 a.m. of 19 August 1989, she, together with Isyang (the victim's mother) and Romeo Aguinaldo, retrieved the corpse of the victim from the Sangi bridge near the house of Dr. Bernardo. Her testimony was meant to discredit Trinidad Sabando by providing details about the victim's death which were allegedly inconsistent with those narrated by Sabando.[13]

The trial court found the accused-appellant's alibi flawed in light of Sabando's positive identification, as the possibility of his being at the crime scene at the time of the killing could not be discounted, considering his meeting with his live-in partner on the night of 18 August 1989 and his flimsy excuse that he was asleep from 8:00 p.m. until 6:00 a.m.. However, the trial court found no evidence of evident premeditation, but appreciated the qualifying circumstance of treachery because at the time the victim was attacked, he was "unarmed and had no time to defend himself as he was just forced to get out and once out, he was stabbed right away." [14]

The trial court likewise considered against the accused-appellant the aggravating circumstance of recidivism despite absence of proof, and justified its action in this wise:

For having been convicted of the crime of Frustrated Homicide (Crim. Case No. B-1554) on October 6, 1989, the Information was amended on February 24, 1993, to include recidivism as an aggravating circumstance but the prosecution failed to attach the certified true copies of the judgment of conviction against accused, however, he failed to object to such lack of presentation, hence the Court has to appreciate it as an aggravating circumstances.[15] (citations omitted)

It then disposed as follows:

WHEREFORE, in view of all the foregoing, the Court finds accused Eleuterio Compendio alias Loloy guilty as charged for the crime of Murder and hereby sentences him to suffer the penalty of life imprisonment, and to indemnify the heirs of Cirilo Vitualla in the sum of P50,000.00 without subsidiary penalty in case of insolvency.[16]

In this appeal, the accused-appellant claims that the trial court erred:

I. INSTATING THAT THE TESTIMONY OF 1ST WITNESS TRINIDAD SABANDO, WAS VERY CATEGORICAL AND STRAIGHT FORWARD [sic], AND ALSO COMPLETE WITH ITS DETAILS;

II. IN GIVING CREDENCE TO THE TESTIMONY OF 2ND WITNESS, SPO1 ANSELMO TAN, PHILIPPINES [sic] NATIONAL POLICE (PNP) BAYBAY, LEYTE;

III. IN STATING THAT ON AUGUST 18, 1989, AT ABOUT 3:00 O'CLOCK IN THE EARLY MORNING, THE VICTIM, CIRILO VITUALLA, WAS WITH HIS LIVE-IN PARTNER, NENITA JOSE, ON BOARD THAT PEDICAB (POTPOT) ALLEGEDLY DRIVEN BY THE ACCUSED-APPELLANT ELEUTERIO COMPENDIO;

IV. IN STATING, THAT IT WAS THE LIVE-IN PARTNER OF THE VICTIM, CIRILO VITUALLA, WHO REPORTED THE STABBING INCIDENT TO THE PHILIPPINES [sic] NATIONAL POLICE (PNP), BAYBAY, LEYTE.[17]

In the first assigned error, the accused-appellant attacks the credibility of prosecution witness Trinidad Sabando. On this score, the oft-repeated rule is that appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[18] This case, however, falls under one of the exceptions to the above rule, namely, where one judge heard the testimony of the witnesses and another penned the decision;[19] hence, we are not precluded from making our assessment of the probative merit and value of the testimony of the witnesses on the basis of the transcripts of the stenographic notes thereof.

After poring over Sabando's testimony, we find her to be a trustworthy witness. Her narration of the events and observations of what transpired before her were delivered in a direct, unaffected, and convincing manner. She stuck to her story and was uncompromising in regard thereto on cross-examination and on questions from the court. We detect no indication of prevarication.

The argument under the second assigned error is incomprehensible. What we gather is that the accused-appellant assails the admissibility of his alleged uncounselled oral admission when he was apprehended and investigated by SPO1 Tan. It must however, be noted that the trial court did not take into account the alleged admission and relied on Sabando's testimony to convict the accused-appellant. What it found material was SPO1 Tan's avowal that the accused-appellant "was collared at Brgy. Kilim, Baybay, Leyte on board a passenger jeepney bound for Ormoc City, with bags of clothes just a few hours after the incident,"[20] which it considered proof of "flight."

The third and fourth assigned errors are irrelevant and inconsequential. While it may be true that the trial court erroneously found that Nenita Jose was with the victim during the killing, and reported the incident to the Baybay Philippine National Police (PNP), the error does not alter, affect, or negate its finding that the accused-appellant was seen and positively identified by Trinidad Sabando as the killer of the victim Cirilo Vitualla.

Against the credible testimony of the lone eyewitness, the accused-appellant had nothing to offer but alibi which, however, must fail. It is settled that alibi cannot prevail and is worthless in the face of the positive identification of the accused.[21] For alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the locus criminis at the time the crime was committed.[22] In the instant case, the accused-appellant was not elsewhere so as to preclude his presence at the scene of the crime at the time of its commission. He was at a distance which could be reached in fifteen minutes by walking from where the victim was killed.[23]

There is then no doubt in our minds that the accused-appellant killed Cirilo Vitualla in the early morning of 18 August 1989.

To elevate the killing to murder, the prosecution alleged in the information the qualifying circumstances of evident premeditation and treachery. We agree with the trial court that the prosecution failed to establish the following requisites of evident premeditation, viz., (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[24]

We cannot, however, agree with the trial court that treachery was duly proven. Under substantive law, there is treachery when the offender commits any of the crimes against persons (e.g., homicide or murder) employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[25] Two conditions must then concur for treachery to be present, viz., (1) the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate; and (2) the said means of execution were deliberately or consciously adopted.[26]

In the instant case, all the prosecution could rely upon was the testimony of the lone eyewitness, Trinidad Sabando, to the effect that while walking home, the pedicab driven by the accused-appellant overtook her then stopped; its driver forced his passenger, the victim who was a deaf-mute and then unarmed, to alight. After the victim had disembarked, the accused-appellant, facing the victim who was six feet from the pedicab, stabbed the latter on the left portion of the breast. The victim fell to the ground and the accused-appellant sped away in his pedicab. The following was Sabando's testimony on this point:

FISCAL RUBIO:

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Q: Since you walked in going home, was there any unusual incident [that] happened while on your way going home?

A: Yes, there was.

Q: Will you please tell the Honorable Court what kind of incident . . . happened?

A: Cirilo Vitualla was stabbed.

Q: Please clarify, what happened first while on your way going home?

A: When I reached the bridged of Sangi, a pedicab overtook me.

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Q: So, when this pedicab or potpot overtook you, what happened next if any?

A: When the pedicab overtook me around five arms length from me, I saw the pedicab stopped and the driver alighted and he forced the passenger to alight and then he stabbed the passenger.

Q: Did you recognize the passenger of the pedicab?

A: Yes.

Q: Who was he?

A: Cirilo Vitualla.

Q: How about the driver of the pedicab or potpot, did you recognize him?

A: Yes, I knew [sic] him.

Q: Who was the driver of the pedicab or potpot?

A: Loloy Compendio.

Q: How do you recognized [sic] that it was Loloy Compendio who was the driver of the pedicab and who stabbed the passenger Cirilo Vitualla?

A: I saw them because the light of the electric bulb from the Petron is bright.

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Q: So after stabbing the victim the driver who was Loloy Compendio speeded away [sic] his potpot?

A: Yes, after stabbing he rode his potpot and speeded [sic] away.

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Q: Let's go back to the stabbing incident, did you clearly see the accused stabbed [sic] the victim?

A: Yes, I clearly see [sic].

Q: What instrument did the accused use in stabbing the victim?

A: Knife.

Q: Was the victim armed at that time when he was stabbed by the accused?

A: None.

Q: Did you hear any arguments between the two before the incident happened?

A: No, because the victim is mute.[27]

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Q: How many times did the accused stabbed [sic] Cirilo Vitualla?

A: Only once.[28]

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Q: Was the victim Cirilo Vitualla able to parry during the stabbing incident?

A: No.

Q: What part of the body of the victim was he hit?

A: Near the breast.

Q: Left side or right portion?

A: Left portion.

xxx xxx xxx

COURT:

Questions.

Q: As you said that you saw the stabbing incident, at the moment that the accused delivered his blow to the victim, was the victim inside the pedicab already or outside the pedicab?

A: Already outside the pedicab.[29]

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Q: When you said that you saw the driver stabbed [sic] the victim he was about five arms length[s] [away]? At the moment that the accused stabbed or delivered the blow to the victim, how far was Cirilo Vitualla or how far was he to the pedicab when it stopped?

A: One fathom.

Q: And when the accused delivered the blow, did you recognize what instrument [was] used by the accused?

A: Yes, a knife.

Q: And is it a fact that when he was hit [he] instantaneously fell down to the ground?

A: Yes.

Q: But it was also a fact that the victim was facing the accused when he was stabbed, is that correct?

A: Yes.

Q: Before or immediately before, did you hear any arguments between the accused and the victim?

A: No, because the victim is mute.

Q: Can he not talked [sic] by murmuring?

A: He cannot mumbled [sic].

Q: Did you not hear him before he fell down mumbled [sic] before he stumbled down?

A: No.[30]

The foregoing testimony of Sabando fails to establish the aforementioned requisites of treachery. It gives no hint that the accused-appellant deliberately adopted a mode of attack that would deprive Vitualla of the chance to retaliate or defend himself. In fact, when he forced the victim to alight from the pedicab, the accused-appellant exposed himself to a possible anticipatory strike from the victim. Clearly, the latter would have been more helpless if he merely remained seated inside the pedicab where his movements would necessarily be restricted by its less spacious confines. Neither could it be determined whether the victim "had no time to defend himself," since Sabando gave no indication as to the time-interval between each of the accused-appellant's acts. Finally, the victim was sufficiently forewarned of the evil design of the accused-appellant when the latter forced the former to alight from the pedicab. It cannot thus be said that the attack was sudden and unexpected. The rule is that circumstances which would qualify the killing as murder must be proved as indubitably as the crime itself.[31] Equally significant is the rule that treachery cannot be appreciated to qualify the killing as murder when the victim was forewarned of the attack by the assailant or when the attack was frontal or was not sudden as to have caught the deceased completely unaware.[32]

There being no treachery nor other circumstance to qualify the killing as murder, the accused-appellant can only be adjudged guilty of homicide.

The generic aggravating circumstance of recidivism alleged is the amended information likewise cannot be appreciated against the accused-appellant for lack of proof. We disagree with the opinion of the trial court that the failure of the prosecution to present "certified true copies of the judgment of conviction" in the other case was cured by the failure of the accused-appellant "to object to such lack or presentation."

Recidivism is an aggravating circumstance under Article 14(9) of the Revised Penal Code whose effects are governed by Article 64 thereof, and is, therefore, an affirmative allegation whenever alleged in the information. Since the accused-appellant entered a plea of not guilty to such information, there was a joinder of issues not only

as to his guilt or innocence, but also as to the presence or absence of the modifying circumstances so alleged. The prosecution was thus burdened to establish the guilt of the accused beyond reasonable doubt and the existence of the modifying circumstances. It was then grave error for the trial court to appreciate against the accused-appellant the aggravating circumstance of recidivism simply because of his failure to object to the prosecution's omission as mentioned earlier.

The net result then is that neither mitigating nor generic aggravating circumstances have been proven in this case. Conformably with Article 64(1) of the Revised Penal Code, the penalty prescribed for the offense proved must be imposed in its medium period. The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal and its medium period comprises fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. Since the accused-appellant is entitled to the benefits of the Indeterminate Sentence Law (Act No. 4103, as amended), he can thus be sentenced to an indeterminate penalty whose minimum shall be within the range of the penalty next lower to that prescribed in Article 249.

Before we conclude, we must point out that for the crime of murder, the trial court imposed the penalty of life imprisonment instead of reclusion perpetua. Time and again we have emphasized that the two penalties are not synonymous and have advised judges to apply the appropriate penalty and even warned them against lapsing into the same error.[33] We, therefore, enjoin the trial court to apply the appropriate penalty in the future.

It may also be noted that before counsel for accused-appellant, Atty. Alfredo T. Bensi, could submit to this Court the Appellant's Brief, he filed three motions for extension of time, all of which were granted. Yet, Atty. Bensi failed to file the Appellant's Brief, compelling us in the resolution of 7 June 1995 to require him to "SHOW CAUSE why he should not be disciplinarily dealt with or held in contempt for such failure and to COMPLY with the submission of said brief, both within ten (10) days from notice hereof." [34]

Atty. Bensi finally filed the Appellant's Brief on 1 August 1995 without explaining the delay, although he attached therewith an affidavit of good faith signed by one Vicenta Compendio, mother of the accused-appellant, stating in part:

That herein affiant, sometime in the month of January, 1995 informed my son's attending Counsel his services is then terminated, effective February, 1995, engaging the services of another Counsel;

That due to my unexpected stroke (high blood pressure) affiant herein, was unable to go through seeking the services of another counsel; affiant, separated her husband eight years ago;

That I am executing this affidavit now, vouchsafing thus, all of the above-mentioned facts, causing such delay in the filing of the Appellant's brief as mandated not attributed to my sons attending Counsel.[35]

It is apparent that Atty. Bensi intended the affidavit as compliance with the show-cause resolution. The explanation is not fully satisfactory. Regardless of his reason for the delay, Atty. Bensi failed to comply with the Rule 12.03, Canon 12 of the Code of Professional Responsibility which reads:

Rule 12.03 -- A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapsed without submitting the same or offering an explanation for his failure to do so.

He is, therefore, admonished to faithfully comply with his duties as a lawyer.

WHEREFORE, the challenged judgment of the Regional Trial Court of Baybay, Leyte, Branch 14, in Criminal Case No. B-1747 is hereby **AFFIRMED** in all respects, subject to the modification abovementioned. As modified, accused-appellant **ELEUTERIO COMPENDIO** alias "Loloy," is hereby found guilty beyond reasonable doubt, as principal, of the crime of homicide. There being no mitigating or aggravating circumstances and applying in his

favor the benefits of the Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate imprisonment penalty ranging from TEN (10) years of prision mayor medium, as minimum, to SEVENTEEN (17) years and FOUR (4) months of reclusion temporal medium, as maximum.

Cost against the accused-appellant.

SO ORDERED.

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

[1] Original Records (OR), 143-154; Rollo, 15-28 (with two copies or pages 4 and 9).

[2] OR, 2.

[3] OR, 22; Rollo, 6.

[4] Id., 26; Id., 7.

[5] TSN, 28 September 1993, 1-16.

[6] RTC Decision, 4; OR, 146; Rollo, 18.

[7] OR, 143-144; Rollo, 15-16.

[8] TSN, 22 April 1993, 51-52.

[9] Id., 54.

[10] TSN, 23 April 1993, 3-9.

[11] TSN, 17 May 1993, 18.

[12] TSN, 20 July 1993, 6-8.

[13] TSN, 21 July 1993, 19-24.

[14] OR, 152; Rollo, 26.

[15] Id., 152-153; Id., 26-27.

[16] Id., 153; Id., 27.

[17] Brief for the Appellant, 1; Rollo, 60.

[18] *People vs. Pascual*, 208 SCRA 393, 399 [1992]; *People vs. Florida*, 214 SCRA 227, 236 [1992]; *People vs. Jumamoy*, 221 SCRA 333, 343 [1993]; *People vs. Pamor*, 237 SCRA 462, 471 [1994].

[19] *People vs. Sulit*, 233 SCRA 117, 124 [1994]; *People vs. Escalante*, 238 SCRA 554, 563 [1994].

[20] OR, 150; Rollo, 23.

[21] *People vs. Lee*, 204 SCRA 900, 910 [1991]; *People vs. de la Cruz*, 207 SCRA 632, 645 [1992]; *People vs. Kyamko*, 222 SCRA 183, 194 [1993]; *People vs. Dural*, 223 SCRA 201, 215 [1993].

[22] *People vs. Penillos*, 205 SCRA 546, 560 [1992]; *People vs. Buka*, 205 SCRA 567, 584 [1992]; *People vs. Castor*, 216 SCRA 410, 419 [1992]; *People vs. de la Cruz*, 229 SCRA 754, 765 [1994].

[23] TSN, 22 April 1993, 54.

[24] *People vs. Narit*, 197 SCRA 334, 349 [1991]; *People vs. Barba*, 203 SCRA 436, 458 [1991]; *People vs. Boniao*, 217 SCRA 653, 672 [1993]; *People vs. Cordova*, 224 SCRA 319, 347-348 [1993].

[25] Article 14(6), Revised Penal Code.

[26] *People vs. de la Cruz*, *supra* note 21, at 650; *People vs. Hubilla*, G.R. No. 114904, 29 January 1996, at 9.

[27] TSN, 25 March 1993, 5-8.

[28] *Id.*, 22.

[29] *Id.*, 25.

[30] TSN, 25 March 1993, 41-42.

[31] *People vs. Genobia*, 234 SCRA 699, 709 [1994].

[32] *People vs. Hubilla*, *supra* note 26, at 10.

[33] *People vs. Penillos*, *supra* note 22, at 565-566; *People vs. Lascuna*, 225 SCRA 386, 404-405[1993].

[34] *Rollo*, 59.

[35] *Id.*, 70.

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