

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ESTEBAN ACOB, CRIZALDY ACOB ALIAS “ZALDY” AND
ROBINSON SILAO, ACCUSED-APPELLANTS.**

G.R. No. 114382. July 20, 1995

Ponente: MELO, J.

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MELO, J.:

Accused-appellants were charged with murder in an Information reading as follows:

That on or about 10 in the evening of March 27, 1986, at nighttime purposely sought to better accomplish their end and facilitate the commission of their offense, at Barangay Curifang, Municipality of Solano, Province of Nueva Vizcaya, Philippines and within the jurisdiction of this Court, the accused Esteban Acob, Crizaldy Acob alias Zaldy and Robinson Silao, who were then armed with stones and fishing gun with arrow and while in possession and control of said weapon, conspiring, confederating and mutually helping each other, did then and there wilfully, unlawfully and feloniously, by means of treachery, employing means to weaken the defense or means or person to insure or afford impunity, taking advantage of superior strength and with evident premeditation, with intent to kill, attack, assault and use personal violence upon the person of Marlon Reyes y Lannu by then and there, shooting him with a fishing gun with arrow and hitting him with stones on the different parts of his body especially the head, thereby inflicting upon him fatal wounds which were the direct and immediate cause of his death, to the damage and prejudice of his heirs.

Contrary to law.

(p. 40, Rollo.)

After trial, the court a quo found all the accused guilty beyond reasonable doubt as charged in a decision dated July 27, 1993, and were accordingly -

... sentenced to suffer the penalty of reclusion perpetua and to pay jointly and severally the victim's heirs in the sum of P50,000.00 as civil indemnity, the sum of P10,000.00 as moral damages, the sum of P50,000.00 as actual damages, and the costs of suit.

(p. 52, Rollo.)

Hence, the instant appeal, with accused-appellant arguing that the trial court erred in considering the testimony of Gloria Cardona and Rodrigo Julio despite inconsistencies and contradictions therein; that the testimony of another witness, Randy Pataweg, should not have been given weight; and that the defense of accused-appellants should not have been treated by the trial court as "plain alibi".

The facts of the case, as summarized by the trial court and as borne out by the evidence, are as follows:

On the night of March 27, 1986, at about 10 p.m. Manolo, Marlon (all Reyeses) and Rodrigo Julio were in front of the Reyes house fixing their six by six truck that was used for logging. When Manolo went out, he met Zaldy

Acob, who was drunk. Zaldy demanded from him the payment of Sacan's debt amounting to P40,000.00 representing the balance due to the house Sacang sold to the Reyeses. Manolo replied that he did not know about the debt. Manolo added by saying that Zaldy must collect the said amount from Sacang. Zaldy replied, "Shit", and went away. About an hour later, Zaldy was being prevented by someone as he shouted "it is only now brother-in-law Marciano that I am asking you a favor and you cannot even help me." Zaldy was able to go further in front of the Reyes house and shouted, "Vulva of your mother, you the family of Reyes, I might burn your house." This time Zaldy has companions, Esteban Acob, Robinson Silao, Levy Taberna and George Acob, and others who could not be identified because they hid behind the trunks of trees. Immediately after the shouting, Zaldy threw stones at the Reyes house. His companions, Eddie Pangilinan, Levey Taberna, George Acob and Robinson Silao participated in the stoning. Honorio Verdan, Rodrigo Julio, and Marlon Reyes went inside their house to avoid being hit by the raining stones. Zaldy Acob shouted again, "You Marlon Reyes, come out of the house." Marlon tried to get out but was prevented by his brother Manolo. Marlon explained that Zaldy was his gangmate and Manolo allowed Marlon to get out. When Marlon came out, Robinson Silao met him, held his hand while his other hand held Marlon's neck. Zaldy Acob struck Marlon with a stone at the back of his head causing Marlon to fall, his face facing upwards. While in that position Esteban Acob hit Marlon's eye with a dart used in fishing. Manolo tried to come out of their house but was forced to retreat when stones fell on their gate. Moments later, Domingo Benito of the CHDF arrived. He fired his carbine rifle in the air twice which stopped the stoning. Domingo called Manolo Reyes to come out and carry the body of Marlon inside their house. Manolo asked Domingo to help him. At that moment, Marlon was already unconscious while his face continued bleeding. When Marlon was already inside the house, Marlon [should be Manolo] and Domingo wiped the blood on Marlon's face and on his right eye. Manolo looked for a tricycle and finding one, he immediately brought Marlon to the Provincial Hospital of Nueva Vizcaya in Bayombong for treatment. While on the way to the hospital, the late Marlon Reyes revealed to tricycle driver Randy Pataweg that his assailants were Crizaldy Acob and companions. Meanwhile in the house of Reyes, Eddie Pangilinan murmured something to Domingo Benito. It turned out later that they were looking for an arrow. The said arrow was recovered the following day by the son of Gloria Cadorna.

On his part, Dr. Froilan Salvador, the admitting physical from Major Ferdinand Marcos Veterna Regional Hospital and now Nueva Vizcaya Provincial Hospital testified that from his findings, Marlon Reyes sustained periorbital edema with hema toma, contusion on the occipital area, punctured wound, lower eyelid, right eye, and (5) AB (Exh. "D", "D-1") He further testified that based on the findings of Dr. Renato Sibayan, the attending physician from St. Luke's Hospital, the cause of death of Marlon Reyes is cardio respiratory arrest due to shock and hemorrhage as a result of the injuries in his head (Exh. "C").

Zenaida Reyes, Marlon's mother, testified that while she was in New Jersey, her daughter Perlita called her, relayed Marlon's condition and asked for money. She sent Perlita an count of \$ 1,000.00 at an exchange rate of 20.00 to \$1.00 as payment for the expenses incurred by her for Marlon to P20,000.00, hospitalization expenses P100,000.00 excluding other expenses. In coming to the Philippines, she incurred \$850.00 as expenses for round trip ticket and additional \$1,000.00 as pocket money. To prosecute the case, she retained Atty. Rogelio Corpuz as her counsel, and their agreement was that she would pay him P300.00 per hearing. She advanced him P3,000.00. On July 3, 1989, she came back again to the Philippines to follow up the case and spent P987.00 as expenses in obtaining a round trip ticket.

(pp. 41-42, Rollo.)

Accused-appellants contend that the testimony of prosecution witness Gloria Cadorna is unworthy of belief and cannot be relied upon to sustain their conviction, as it is full of inconsistencies. The alleged inconsistencies

pointed out by accused-appellants are the following:

1. She said stones were being thrown and she was very frightened, but instead of seeking cover in the safety of her home, she had to run down and go near the incident (tsn., 5-2-87, p. 4).
2. She said she saw people whom she could not recognize because they were shaded by trees from the moonlight (tsn., 4-22-87, p. 37), yet she said they were not strangers and from their place and then names two of them as Levita Berna and Eddie Pangilinan (tsn., 5-21-87, pp. 19-20).
3. In her sworn statement given to the police, she said it was Zaldy Acob who choked the victim (Marlon Reyes), but would accused Robinson Silao as the one who held the neck of the victim, which statement she did not tell before. She would say that Robinson Silao should no longer be involved in the case. She reasons out that she was confused during the time she gave her statement to the police. Yet she was investigated three days after the incident or on March 30, 1986 (ibid., pp. 21-24), and already possessing her true senses.
4. She said that Esteban Acob, Zaldy Acob and Robinson Silao were waiting, Esteban near his house and Robinson under the star apple tree before the incident, (tsn., 6-19-87, p. 6) she would again change her testimony by saying that said accused were standing on the said places after the incident (tsn., 5-21-87, pp. 29-31).
5. While Mrs. Cadorna said that the incident happened so fast, with the accused immediately meeting Marlon in the middle of the street and hitting him there (tsn., 4-22-87, p. 10), she would say in another instant that Marlon was pulled towards the street before he was hit (tsn., 6-19-87, p. 12).

(pp. 75-76, Rollo.)

Likewise, accused-appellants maintain that the testimony of prosecution witness Rodrigo Julio is untrustworthy and unreliable as it is shot through with contradictions. The purported contradictions are as follows:

1. When witness Julio said that he, with Marlon Reyes and Honorio Berdan, were fixing a 6x6 truck on 27 March 1986, which was the time when accused Zaldy Acob was passing back and forth saying "Vulva of your mother, I might burn your house" (Ibid., pp. 6--7), he would say otherwise when cross-examined, saying that they were already inside the house, because they were preparing the tools to fix the truck and that they have not yet started fixing the truck (Ibid., pp. 24);
2. Julio said he was a truck helper for less than a year of the Reyeses, so much so that he became close to them (Ibid., p. 22), but he would nevertheless say that he was a brother-in-law of Marlon Reyes (tsn., 8--26-87, p. 2);
3. He testified that the truck was without defect and they were just preparing it for delivery the following day which is a Good Friday (Ibid., p. 3) or they were only preparing the tools to repair the truck (tsn., 7-28-87, p. 28), yet at the start of his testimony, he declared that they were outside the house fixing the 6x6 truck (Ibid, p. 5). There were many more instances in Julio's testimony that they were repairing the 6x6 truck;
4. He would say that his companion in repairing the truck were Marlon Reyes and a certain Hononio Berdan (supra), but he would change that and say that his companions were Marlon Reyes and his brother Manolo Reyes (tsn., 8-26-87, p. 6);
5. Julio would say he was only 5 meters away from the place where Silao and Marlon allegedly harmed Marlon (Ibid, p. 11), but he testified earlier that he was 7 meters away from the place of incident (supra); and
6. He earlier said that it was 10 o'clock p.m. when they were fixing the truck, but would later say that they were fixing the truck at 5 p.m. and went inside the house at 7 p.m. (Ibid, pp. 18-19) when it was still bright.

(pp. 78-80, Rollo.)

Accused-appellants' contention that Gloria Cadorna could not have witnessed the attack on the victim because it was unnatural for a woman to possess sufficient courage to leave the safe haven of her house and hazard her life by going to a place where a killing was transpiring does not carry any weight, pure conjecture and guess-work as it is.

In the first place, different people react differently to situations, and there is no standard norm of human behavioral response when one is confronted with a strange, startling, or frightful experience (*People vs. Raptus*, 198 SCRA 425 [1991]; *People vs. Dabon*, 216 SCRA 656 [1992]). It is obvious Gloria Cadorna's curiosity and inquisitiveness as to what was happening, the Filipino "usisero" trait, overcame the natural timidity of the woman.

Moreover, accused-appellants failed to mention that Gloria Cadorna was with her husband and a boarder (pp. 28 and 29, *tsn.*, April 22, 1987) when she went out of her house to witness the incident. She must have drawn courage to go near the scene of the killing from the presence of her husband and companion.

An evaluation of the alleged inconsistencies and contradictions of the testimony of prosecution witnesses Gloria Cadorna and Rodrigo Julio readily shows that they refer to minor and trivial matters. This Court has consistently held that inconsistencies in minor details do not undermine the integrity of a prosecution witness (*People vs. Ocampo*, 218 SCRA 609 [1993]; *People vs. Lase*, 219 SCRA 584 [1993], and may be disregarded if they do not impair the essential veracity of the testimony of the witness (*People vs. Colcol, Jr.*, 219 SCRA 107 [1993]). The inconsistencies and contradictions in the testimony of Cardona and Julio pointed out by accused-appellants in no way impair the main thrust of their testimony that they witnessed accused-appellants' attack on the victim which led to his death. Verily, these minor inconsistencies and contradictions only serve to attest to the truthfulness of the witnesses and to the fact that they had not been coached or rehearsed (*People vs. Bustos*, 171 SCRA 243 [1989]).

In the final analysis, the alleged errors of the trial court relied upon by accused-appellants pertain to the question of credibility of witnesses, and we need only say in this regard that the findings of the trial court on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any clear showing that it had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could have altered the result of the case (*People vs. Lase*, *supra*). A conscientious search of the record yields no such facts or circumstances.

We need not delve into the alleged error raised by accused-appellants that the testimony of prosecution witness Randy Pataweg should not have been given weight. The testimony of Pataweg is totally unnecessary for the prosecution. He merely testified that when he was bringing the victim to the hospital in his tricycle he asked the victim who his assailants were and the victim answered that they were Zaldy (appellant Crizaldy Acob) and his companions. Pataweg did not witness the attack on the victim. The forthright declarations of Gloria Cadorna and Rodrigo Julio who witnessed the actual assault on the victim and identified accused-appellants as the assailants of the victim, are more than sufficient to sustain the conviction of accused-appellants.

Lastly, accused-appellants contend that the trial court erred when it treated their defense as plain alibi. Their defense, however, is that accused-appellant "Crizaldy Acob never left their house x x x Esteban Acob also did not go out of their house" (p. 19, Appellants' Brief) and that "accused Robinson Silao" xxx tired, he did not go out that night xxx" (pp. 19-20, Appellants' Brief). They, therefore, assert that they were in some other place (their respective houses) and not at the scene of the crime at the time of the commission of the crime. This is plain and simple alibi. Alibi is "a defense that places the defendant at the relevant time of crime in a different place than the scene involved and so removed therefrom as to render it impossible for him to be the guilty party" (*Black's Law Dictionary*, Sixth Ed., p. 71). Essential to a valid defense of alibi is the physical impossibility of presence at the

scene of the crime at the time of commission thereof (People vs. Dominguez, 217 SCRA 170 [1993]). The houses of accused-appellants are near the scene of the crime, and accused-appellants are neighbors. The propinquity of the houses of accused-appellants to the place of the crime wholly negates their defense of alibi. Moreover, alibi cannot prevail over positive identification (People vs. Cabuang, 217 SCRA 675 [1993]; People v. Pacana, 218 SCRA 346 [1993]). Accused-appellants were positively identified by the prosecution witnesses as the perpetrators of the crime. Their defense of alibi must perforce be rejected.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

Costs against accused-appellants.

SO ORDERED.

Feliciano, (Chairman), Romero, Vitug, and Francisco, JJ., concur.

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