# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO GAILO, RUDY GAILO, RONALDO GAILO @ "MUKONG", JERRY GAILO, BUDOY GALLANTES AND PABLO DELOS REYES, ACCUSED, RENATO GAILO ...

*G.R. No. 116233. October 13, 1999*

Ponente: GONZAGA-REYES, J.

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**GONZAGA-REYES, J.:**

Accused Renato Gailo, Rudy Gailo, Ronaldo Gailo, Jerry Gailo, Budoy Gallantes and Pablo delos Reyes were charged with the crime of murder before the Regional Trial Court of Iloilo City, Branch 25,[1] in an Information which accusatory portion reads:

> That on or about the 28th day of November, 1990, in the Municipality of Jordan, Subprovince of Guimaras, Iloilo, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping each other, and with the use of superior strength, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, stab and slash with a bolo, hit with an iron bar, and use personal violence upon one Mario Mañale on the different parts of his body, thereby inflicting mortal wounds on Mario Mañale which were the direct and immediate cause of his death thereafter.
>
> CONTRARY TO LAW.

The case proceeded only against herein accused-appellants, Renato Gailo and Rudy Gailo, the four other accused having remained at large.

In a Decision dated March 8, 1994, the Regional Trial Court of Iloilo City declared:

> WHEREFORE, premises considered, there being ample proof shown to establish accused Rudy Gailo's and Renato Gailo's guilt beyond any shadow of doubt of the crime of Murder, they are therefore pronounced guilty thereof and are sentenced to suffer the penalty of Reclusion Perpetua with the accessory penalties as well provided in Article 41 of the Revised Penal Code[,] as well [as] ordered to indemnify the family of the victim in the sum of P50,000.00, to pay his burial and wake expenses in the amount of P17,786.00 and to pay the costs.

In meting out the judgment of conviction, the trial court relied chiefly on the positive identification of two eyewitnesses to the incident, Fernando Sotela and Rolando Portillo. It likewise gave bearing to the findings in the necropsy report, which indicate, from the nature and number of wounds on the victim's body, that different weapons were wielded by more than one person in inflicting the reported injuries.

In the trial, it was established that the victim, Mario Mañale, and witnesses Sotela and Portillo were co-workers and housemates in Sitio Puting Balas, Barangay Rizal, Jordan, Guimaras. Fernando Sotela testified that at about 7:00 in the evening of November 28, 1990, Sotela and Mañale went to the store of Mercy Espinosa, also in Sitio

Puting Balas, to drink beer. Some minutes later, they were joined in their drinking by Renato Gailo and his elder brother, Ronaldo Gailo, alias “Mukong”. A minor altercation ensued when Ronaldo boxed the victim, but the two were soon pacified and the group resumed their drinking.

Ronaldo then invited Sotela and the victim to his house, where allegedly there was a birthday party. Renato and Ronaldo then left them at the store. After some time, Sotela and the victim also left the store to go to Ronaldo’s house. Sotela recounted that at a distance of about ten meters from Ronaldo’s house, Ronaldo, Renato and Rudy Gailo assaulted the victim, who was walking some five meters ahead of Sotela. From where he stood, Sotela witnessed Ronaldo stab the victim on the face with a bolo, then Renato stabbed the victim on the back, and Rudy hit the victim with a lead pipe on the neck. A minute later, Budoy Gallantes, Jerry Gailo and Pablo delos Reyes arrived, and for five minutes, helped stone the victim, hitting him on the head and body. As the six accused were dragging the victim’s body into the yard of Rudy Gailo, Sotela left the scene of the crime.

The second prosecution witness, Rolando Portillo, testified that on the evening of November 28, 1990, he got worried when Sotela and the victim failed to go home to the quarters where they were housed by their employer, and thus decided to go out to look for them. From a distance of about 15 meters and with the aid of moonlight, he witnessed Rudy Gailo hit the victim with a lead pipe on the left side of the head, then Renato Gailo stab the victim on the back, while the victim was held by the other four accused.[2]

Both Sotela and Portillo knew the six accused for some time before the incident. Sotela gave his statement to the police the next day, November 29, 1990, while Portillo declared that he became afraid to stay in Guimaras after the incident and went home to Leganes, Iloilo where, four months later, he told the victim’s brother what he saw.

The necropsy report of Dr. Edgardo Jabasa bore the following findings:

> 1. Multiple contusion and hematoma with superficial and deep abrasions distributed all over the face, neck, left and right shoulder region, right arm and forearm, chest, lumbar region at the back.
>
> 2. Multiple deep and superficial lacerations, at the frontal, parietal region of head, involving the full thickness of scalp, with surrounding contusion and hematoma.
>
> 3. Lacerated wound, 8 cm. long, extending from the right frontal region of forehead to the right zygomatic region [of] face causing depressed and linear of the frontal and zygomatic bones, laceration of frontal lobe of the brain and intracranial hemorrhage.
>
> Cause of Death: Extensive cerebral laceration and cerebral hemorrhage due to multiple compound fracture.

On testimony, Dr. Jabasa said that the wounds on the victim’s body could have been inflicted by more than one person, and that the most fatal injury arose from the multiple compound fracture on the head.[3]

Guillermo Mañale, brother of the victim, testified on the amount of actual damages incurred by the victim’s family, by way of burial and wake expenses, equivalent to P17,786.00.

Mercedes Gailo, mother of accused Ronaldo, Renato and Jerry, was presented as the first witness of the defense. She stated that Rudy Gailo is her brother-in-law, being the younger brother of her husband; Pablo delos Reyes, her nephew; and Budoy Gallantes, a far relation. Mercedes maintained that it was her son, Ronaldo Gailo, alone, who killed Mario Mañale. She testified that at about 5:30 in the afternoon of November 28, 1990, she and her son, Ronaldo, arrived at Sitio Puting Balas from Iloilo City where they were vending fruits. On the way home, she dropped by the house of one Luz Laserna to lead the praying of the rosary. After the prayer, she learned that there was a fight between the victim and her son, Ronaldo, in Mercedes Espinosa’s store, which was about ten arms-length away from the house of Luz Laserna. She proceeded to the store and learned that Ronaldo was kicked


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by Mario Mañale when he refused to accept beer that was being offered by the latter. After a while, the two were pacified and she went home.

At around 9:00 in the evening, while she and her children were in bed, she heard Mario Mañale, Miguel Yanguer and Fernando Sotela calling for Ronaldo. She claims that she asked the three what they wanted of Ronaldo, then told them that Ronaldo stepped out "to answer the call of nature". At this point, Sotela and Yanguer allegedly started throwing stones at their house, while Mario Mañale aimed his gun at their house.[4] She then went downstairs and advised them to settle the matter tomorrow as it was already late. She went back into the house and prepared to go back to bed when she heard gunfire from the direction of accused Rudy Gailo's house. When she went out of her house to investigate, she saw the victim and her son, Ronaldo, fighting in Rudy Gailo's yard, and witnessed Ronaldo hitting the victim with a "pugakhang", a homemade gun. It seemed to her that Mario Mañale was already dead. She told her son to stop hitting Mañale, then pulled him away for she saw that he also had a wound on his left arm, below the shoulder. She shouted for help and put bandage on her son's wound. She then roused accused Pablo delos Reyes, who was then sleeping in their house, and told her daughter to call accused Rudy Gailo, who was then at the nearby beach, fishing.[5] Pablo delos Reyes and Rudy Gailo then brought Ronaldo to the barangay captain, to whom they allegedly surrendered the "pugakhang", then to the hospital for the treatment of his wound.[6] She claims to have seen the wounds on the body of the victim, and maintains that there were no stab wounds but merely a contusion that could have been caused by the "pugakhang" that Ronaldo hit him with.[7] During her testimony, she identified the medical certificate presented by the defense as the same certificate issued to Ronaldo when he had his wound treated.[8] She denies knowing about Ronaldo's whereabouts after his discharge from the hospital.[9]

Accused-appellants Renato and Rudy Gailo, for their part, denied participating in the killing of Mario Mañale, and maintained that they were nowhere near the place of the crime when it happened. Renato declared that he was in Barangay Ortiz, Iloilo City on the night of the incident, while Rudy stated that when the killing took place, he was fishing at the beach roughly half a kilometer away from his house. In his testimony, Renato also maintained that accused Jerry Gailo, who was also his brother, was in Zamboanga at the time of the incident.

Rudy corroborated the testimony of Mercedes Gailo that he was the one who brought Ronaldo to the barangay captain, then to the hospital. Unlike Mercedes's account, however, he did not mention being accompanied by Pablo delos Reyes. He claims having seen Ronaldo's wound, and Ronaldo having told him that he was shot by Mario Mañale before he was able to grab the "pugakhang" and hit Mañale on the head with it.[10]

Aside from the foregoing testimonies, the defense also presented the following documentary evidence: (1) a medical certificate issued by a certain Dr. Ronnie Payba of the Western Visayas Medical Center, Iloilo City, certifying to the examination and treatment of Ronaldo Gailo on November 29, 1990 of a "gunshot wound, multiple, left arm[,] with radial nerve injury", which "will require medical attendance for more than nine days but less than thirty days"[11] ; and (2) an excerpt from the Jordan police blotter, relating in substance the information reported by Barangay Captain Eduardo Cando of Barangay Rizal, Jordan on November 29, 1990, that: Rudy Gailo and Rolando "Mukong" Gailo killed Mario Mañale; Ronaldo Gailo turned over to him a homemade gun allegedly used by Mañale in shooting Ronaldo on the right shoulder; Ronaldo was brought to Iloilo City for treatment; based on the investigation conducted by the barangay captain and two policemen, Mario Mañale, Fernando Sotela and Miguel Yanguer assaulted the Gailo family and Mañale shot Ronaldo Gailo on the shoulder with a 20-gauge "pugakhang", while Mañale's companions ran away; Rudy Gailo and Ronaldo Gailo stabbed, hacked and threw stones at Mañale, hitting him on different parts of his body and causing his instantaneous death; and, the police recovered one live bullet and one peso from the left side pocket of Mañale's clothes.[12]

Hereunder is the assignment of errors of accused-appellants:

1. The lower court erred in finding accused-appellants guilty and in not giving credence to their defenses of denial and alibi.

2. The lower court erred in not taking into consideration the doctor's findings that the victim had no stab wound, but only multiple contusion, hematoma and lacerations, inflicted by a blunt instrument, and that the victim died of external cerebral lacerations and cerebral hemorrhage due to multiple compound fracture.

3. The lower court erred in not finding: that only accused Ronaldo "Mukong" Gailo killed the victim, that he killed the victim in self-defense, that Ronaldo Gailo was also shot and seriously wounded by the victim, that the victim was the aggressor and was guilty of evident premeditation, that the victim had ample reason to deliberately seek retaliation against Ronaldo Gailo, that there was no reason for Ronaldo Gailo to injure the victim, and that the testimonies of the prosecution witnesses were full of inconsistencies.

Accused-appellants contend that they could not possibly have participated in the killing of Mario Mañale since they were somewhere else at the time of the incident. However, the defense was not established by competent evidence. In alibi, it is not enough that the accused allege that he was in another place when the crime was committed, but also that it was physically impossible for him then to have been at the scene of the crime. In this case, accused-appellant Renato Gailo stated that he was in Iloilo City on the night of the killing. When asked on cross-examination how long it normally takes to travel from Sitio Puting Balas in Jordan, Guimaras to Iloilo City, he replied that in fair weather conditions, it would take only a half-hour by pumpboat.[13] The other accused-appellant, Rudy Gailo, testified that he was fishing at a beach which is a half-kilometer away from his house.

In the case of accused-appellant Renato Gailo, no corroborative evidence, i.e., testimony of relatives or friends in Iloilo City with whom Renato could have stayed on November 28, 1990, was presented to substantiate his claim that he was indeed in Iloilo City that day. The defense presented no witnesses to corroborate the alibi apart from Renato's mother, Mercedes Gailo, whose credibility may be undermined by the natural interest to protect her own son. Corroborative testimony is not credible if tainted with bias[14] [15] , especially in this case where the witness is so closely related to the accused as to wish to help them evade liability for the crime.[16] Neither did the alibi of accused-appellant Rudy Gailo suffice to prove that he could not have been anywhere near the locus criminis, for in his own testimony he admitted that he was but a half-kilometer away from the place of the crime.

Accordingly, in the instant case, accused-appellants' bare and self-serving assertions cannot prevail over the positive identification of the two principal witnesses of the prosecution, Fernando Sotela and Rolando Portillo.[17]

Next, accused-appellants ask that we re-assess the trial court's conclusions based on the findings in the necropsy report. The defense contends that the post-mortem findings are consistent with their allegation that the victim sustained no stab wounds, but only a contusion caused by accused Ronaldo Gailo's hitting the victim with a homemade gun. They also call attention to the testimony of Mercedes Gailo who allegedly looked at the wounds of the victim and attested that there were no stab wounds but only a contusion.

Such asseverations are baseless. The findings in the necropsy report[18] succinctly set out that multiple wounds were found on the victim's body. The report specifically indicated the presence of several lacerations, most prominent of which is an 8 cm. long wound on the face. Webster's Dictionary defines a "laceration" as "a breach or wound made by tearing or rending roughly". Following are pertinent portions of Dr. Jabasa's testimony on this matter:

PROS. CALMORIN:

Q In your post-mortem findings, the following are indicated: [starts reading the necropsy report]

COURT: Just ask the probable cause of death.

PROS. CALMORIN:

Q And these wounds could have been caused by bolo blows?

A Yes, Sir.

Q And the bolo blows could have been inflicted by one person?

A Yes, Sir.

Q And could it be caused by more than one person?

A Yes, Sir.

Q And these injuries you have indicated are fatal?

A The multiple compound fracture of the head was the most fatal which caused his death.[19]

The finding of "lacerations" in the necropsy report is in consonance with the testimonies of Fernando Sotela and Rolando Portillo that the victim was stabbed. The doctor's findings of multiple hematoma, contusions and abrasions on the victim's body likewise coincide with the accounts of both Sotela and Portillo that Mañale was hit with a lead pipe by Rudy Gailo and thereafter, with stones, by the other accused. Even the police blotter, submitted in evidence by the defense, reported that the victim was hacked, stabbed and hit with stones on the different parts of his body.

The findings in the necropsy report patently belie accused-appellants' claim that there were no stab wounds and that the victim died only from blows sustained from being hit with the "pugakhang". The testimony of Mercedes Gailo that she saw only one contusion on Mañale's body is rendered superfluous by the necropsy report and the expert testimony of Dr. Jabasa. The argument is further rendered futile by the fact that during trial, counsel for the defense admitted the findings of Dr. Jabasa respecting the victim's cause of death,[20] and declined to conduct cross-examination of the doctor.[21] As clearly stated in the necropsy report, the cause of death is "extensive cerebral laceration and cerebral hemorrhage due to multiple compound fracture."

In fact, it was owing to the nature, kind and number of wounds suffered by the victim that the lower court gathered the conclusion that different types of weapons were used to commit the murder, and that the weapons were wielded by more than one person.[22] As worded by the lower court, the wounds were res ipsa loquitur --- they spoke for themselves.

This leads us to accused-appellants' third assignment of errors, whereby it is essentially contended that it was Rolando Gailo alone who killed Mario Mañale, and that he did the same in self-defense. They also claimed that Mañale's reason for being in the vicinity of Rolando Gailo's house on the night of November 28, 1990 was not to attend a birthday party as witness Sotela purported to show, but to exact revenge for Rolando's boxing him earlier in the day at Espinosa's store.[23] In fact, accused-appellants alleged, Mañale even came armed with a homemade gun.[24] They further claimed that Mañale in fact shot Rolando with this homemade gun, which Rolando subsequently wrested from him and hit him with, causing his death.

Judging from the nature, kind and number of wounds sustained by the victim, we are hard-pressed to accept the above version of the incident of accused-appellants, particularly that: Mañale was killed by Ronaldo Gailo alone, the killing was done in self-defense, and the victim died from being hit with the homemade gun. Neither is the allegation that accused Ronaldo Gailo was shot by the victim supported by credible and sufficient evidence. The authenticity of the medical certificate purportedly issued to Ronaldo Gailo was not established, because the doctor


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who was said to have issued it was not presented as a witness.[25] identification thereof by Mercedes Gailo does not suffice because there is no showing that she saw the execution of this document.[26] The homemade gun was never presented in evidence. We also agree with the observation of the trial court on the inconsistency of the evidence of the defense on the claimed location of the gunshot wound --- the testimonies of Mercedes Gailo and Rudy Gailo, and the alleged medical certificate of Dr. Payba stated that the wound was on the left arm, while the police blotter reported the wound to be on the right shoulder.

Besides, the theory of revenge strikes us as an afterthought. In Mercedes Gailo's testimony, it was Mario Mañale who kicked accused Ronaldo Gailo at Espinosa's store. If this is true, it is Ronaldo who should have felt aggrieved and would have wanted "revenge".

The other contentions of accused-appellants, that Mario Mañale was the aggressor, that he planned to kill accused Ronaldo Gailo, and that Ronaldo Gailo had no reason to injure the victim, are simply reiterations of the defense's version of the facts. The trial court, however, found the version of the prosecution "far more logical, natural and credible", and the testimonies of Fernando Sotela and Rolando Portillo more believable than that of Mercedes Gailo.[27]

The time-tested rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it.[28] In the absence of any clear showing that some matters of weight and substance which would have affected the result of the case, have been overlooked, misunderstood or misapplied, the factual findings of the trial judge are given great weight and respect by the appellate courts.[29] In the instant case, especially, where the basis for conviction is the positive identification by two prosecution witnesses, who had known all six accused for a sufficient length of time and who bore no apparent ill motive for accusing them, we see no reason for deviating from this long-settled doctrine.

Also, while accused-appellants assail the testimonies of Sotela and Portillo as being riddled with inconsistencies, neither does their Brief elaborate on what these inconsistencies are. Our review of the records confirms the existence of the following conflicting statements: (1) on direct examination, Fernando Sotela said that he and the victim started walking towards Ronaldo Gailo's house at 9:30 in the evening,[30] while on cross-examination, he said that they went to the same house at 7:30 in the evening[31] ; (2) Sotela said that Renato Gailo stabbed the victim on the back before Rudy Gailo hit him with a lead pipe,[32] while Portillo claimed that Rudy hit him first before Renato stabbed him[33] ; (3) Sotela testified that accused Budoy Gallantes, Jerry Gailo and Pablo delos Reyes arrived after the victim was stabbed and fell to the ground,[34] while Portillo said that when the victim was first attacked, they were present and helped by holding the victim down;[35] and (4) Sotela said the name of their employer is Griño, while Portillo said it was Borres.[36] We find these discrepancies and inconsistencies to be minor and insufficient to impeach the credibility of Sotela and Portillo. Taken altogether, they do not affect the substance and weight of their declarations. This Court has ruled that inconsistencies in testimony should be determined not by resort to individual words or phrases alone but by the whole impression or effect of what has been said or done. [37] The above conflicting statements do not erode the concurrence of the two testimonies on material points, most important of which is the positive identification made by both witnesses of the accused-appellants as two of the perpetrators of the murder.

We affirm the trial court's holding that the killing is qualified to murder by the use of superior strength, the accused having clearly overpowered the victim in terms of number and weapons used. We reverse, however, to the extent that it appreciated nighttime as an aggravating circumstance. There are two tests for nocturnity to be aggravating --- the objective test, under which nocturnity is aggravating because it facilitated the commission of the offense, and the subjective test, under which nocturnity is aggravating because it was purposely sought by the

offender in order to facilitate the achievement of his objectives, prevent discovery or evade capture. [38] In the instant case, there is no evidence that nighttime was sought for any of these purposes, or that it aided the accused in the consummation of the murder. Moreover, at the time of the killing, there was sufficient illumination from the moon such that the two eyewitnesses were able to identify the six accused. When the place of the crime is illuminated by light, nighttime is not aggravating. [39]

Neither was treachery proven, as there was no showing that the attack was made swiftly and unexpectedly as to render the victim helpless and unable to defend himself. Neither can we appreciate the presence of evident premeditation, there having been no indication that accused-appellants earlier resolved to kill the victim and clung to such determination for a considerable length of time.

Inasmuch as the crime was committed on November 28, 1990, the then provisions of Article 248 of the Revised Penal Code, as yet unamended by R.A. No. 7659, and which impose the penalty of reclusion temporal in the maximum period to death for the crime of murder, apply. In conformity with People vs. Muñoz[40] and subsequent cases[41] , the applicable penalty where the crime of murder is committed without any aggravating or mitigating circumstance is reclusion perpetua, which is the medium period of the penalty for murder under Article 248 of the Revised Penal Code.

Finally, we find the claim for actual damages of P17,786.00, representing burial and wake expenses, to be duly substantiated by the records[42] ,, hence meriting its award.

WHEREFORE, the decision, dated March 8, 1994, of the Regional Trial Court of Iloilo City (Branch 25) finding accused-appellants guilty beyond reasonable doubt of the crime of murder, qualified by use of superior strength, and sentencing accused-appellants to suffer the penalty of reclusion perpetua, and to pay the heirs of the victim P50,000.00 as death indemnity, and P17,786.00 as actual damages, is hereby AFFIRMED.

**SO ORDERED.**

Melo, (Acting Chief Justice), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Presided by Judge Bartolome M. Fañunal.

[2] TSN, March 24, 1993, 5, 9.

[3] TSN, March 17, 1993, 5.

[4] TSN, August 5, 1993, 5.

[5] Ibid., 7.

[6] Ibid., 8.

[7] Ibid.

[8] Ibid., 9; Exhibit “1”, Records of the Case, 94.

[9] Ibid.

[10] TSN, August 25, 1993, 5.

[11] Exhibit “1”; Records of the Case, 94.

[12] Exhibit “2”; Records of the Case, 93.

[13] TSN, August 18, 1993, 8-9.

[14] People vs. Angeles, 209 SCRA 799.

[15] People vs. Omotoy, 267 SCRA 143.

[16] See People vs. Benito, G.R. No. 128072, February 19, 1999.

[17] Reproduced in full at page 3.

[18] TSN, March 17, 1993, 3-4.

[19] Ibid., 3.

[20] Ibid., 5.

[21] RTC Decision; Rollo, 21.

[22] Accused-Appellants' Brief; Rollo, 48-51.

[23] Ibid., 53.

[24] See Revised Rules of Court, Rule 132, Sec. 20.

[25] Ibid.

[26] RTC Decision; Rollo, 21.

[27] People vs. Sarabia, 266 SCRA 471; People vs. Ombrog, 268 SCRA 93; People vs. Burton, 268 SCRA 531.

[28] People vs. Basao, G.R. No. 128286, July 20, 1999; People vs. Macahia, G.R. No. 130931, May 19, 1999; People vs. Alojado, G.R. No. 122966-67, March 26, 1999.

[29] TSN, April 7, 1993, 5.

[30] Ibid., 17.

[31] Ibid., 9.

[32] TSN, March 24, 1993, 9.

[33] TSN, April 7, 1993, 30-32.

[34] TSN, March 24, 1993, 5.

[35] TSN, April 7, 1993, 3.

[36] People vs. Mañozca, 269 SCRA 513.

[37] TSN, March 24, 1993, 10.

[38] People vs. Parazo, 272 SCRA 512; People vs. Velaga, Jr., 199 SCRA 518.

[39] See People vs. Bato, 21 SCRA 1445. In this case, nighttime was not appreciated as an aggravating circumstance because the place from which the accused fired at the victim was sufficiently lighted for him to be visible to, and recognized by, those who may be nearby.


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**[40] 170 SCRA 107.**

[41] People vs. Quiboyen, G.R. No. 130636, July 14, 1999; People vs. Artiaga, 274 SCRA 685; People vs. Amigo, 252 SCRA 43; People vs. dela Cruz, 216 SCRA 476.

[42] Exhibit “C”; Records of the Case, 76-78.

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