

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PAQUITO DUMAYAN, ACCUSED-APPELLANT. EDDIE DUMAYAN,
ALLAN REAL AND ROMY LOYOLA BERGARDO, ACCUSED.**

G.R. No. 116280. May 21, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us on appeal is the Decision of the Regional Trial Court of Malolos, Bulacan in Criminal Case No. 713-M-92 convicting the appellant of the crime of murder.

The appellant, Paquito Dumayan, and his co-accused[1] were charged with the crime of murder as defined and penalized under Article 248 of the Revised Penal Code in an Information, that reads:

That on or about the 1st day of February, 1992, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bladed weapons and with intent to kill one Carlito Tamayo, conspiring, confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault, stab with the said bladed weapons and use personal violence on the said Carlito Tamayo, hitting the latter on his body, thereby causing him stab wounds which directly caused his death.

Contrary to law.

Upon being arraigned on May 27, 1992, the appellant, assisted by his counsel, entered the plea of "Not guilty" to the charge in the information. Thereafter, trial on the merits ensued.

It appears from the evidence adduced by the prosecution that on February 1, 1992 at around 2:00 o'clock in the afternoon, Carlito Tamayo was reading "komiks" magazine at the ground floor of their house in Daang Bakal, Barangay Cofradia, Malolos, Bulacan. His common law wife, Anastacia Tamayo, was upstairs together with their four (4) children. At that instance, Paquito Dumayan, Eddie Dumayan, Allan Real and Romy Loyola Bergardo arrived. Carlito asked them where were they going and the group replied that they were merely hanging around ("Diyan lang sa tabi-tabi").[2]

Subsequently, Carlito begged to be excused from the group to take a rest. As Carlito was about to climb the stairs, Anastacia heard him remark "Aray! Bakit Pareng Eddie, wala naman akong kasalanan?" Thereafter, she saw her husband, whose shirt was soaked with blood, being chased by Eddie, Paquito, Allan and Romy along the railway. While Carlito was thus running away from the group, Anastacia followed and pleaded for help. Carlito was eventually overtaken and attacked simultaneously by his pursuers. Anastacia saw appellant Paquito Dumayan stab Carlito at the back with an 18-inch bolo. Romy and Allan also stabbed her husband before the group finally fled.[3]

Emilia Santos, a junk shop operator, witnessed the entire incident. Emilia testified that she was standing in front

of her house, which was located across the house of Carlito, when Eddie struck him (Carlito) with a bolo at the back and on the ear as he was about to climb the stairs. Although wounded, Carlito managed to run to seek help. However, his pursuers eventually caught up with him. Allan stabbed Carlito from the front, followed by appellant Paquito Dumayan who stabbed him from behind. Romy also stabbed Carlito on the left side of his body. Thereafter, the attackers fled by boarding a Baliwag Transit bus bound for Manila.[4]

Carlito did not reach the hospital alive due to the injuries which he sustained on the different parts of his body. Dr. Homobono Soriano, M.D., Assistant Chief Resident of the Emergency Ward and Out-Patient Department of the Bulacan Provincial Hospital, conducted a post-mortem examination on the body of the said victim. Dr. Soriano identified his signature on the autopsy report[5] which he prepared showing that the victim sustained six (6) serious stab and hack wounds on the following parts of his body, to wit: (1) at the right ear almost severing it; (2) at the pigastria area; (3) at the scapular region; (4) at the left axillary region; (5) at the thoracic region; and (6) at the left lumbar region.

Traversing the evidence of the prosecution, appellant Paquito Dumayan testified that on February 1, 1992 he left his house in Daang Bakal, Cofradia, Malolos, Bulacan at 7:30 o'clock in the morning and went to Atlag, Malolos, Bulacan where he worked as laborer in a construction company. He worked in the construction site the entire day and went home only at 5:00 o'clock in the afternoon. Upon his arrival at home, appellant learned from the neighbors that Carlito was stabbed allegedly by his step-son Eddie, Allan and Romy. Appellant belied that he went into hiding after the stabbing incident on February 1, 1992; and that, in fact, he went about his usual activities until he was arrested by the police on February 8, 1992 as one of the suspects in the killing of Carlito Tamayo.[6]

In support of appellant's alibi, the defense presented a xerox copy of an alleged payroll sheet[7] of FMA Construction Company covering the period from January 27, 1992 to February 2, 1992. The payroll sheet purports to show that the appellant was paid his salary for the entire period reflected thereon.

Bartolome Dionisio confirmed that the appellant worked as laborer, under his supervision, with the FMA Construction Company. He identified during the trial the xerox copy of the payroll sheet for the period from January 27, 1992 to February 2, 1992 which purports to show that the appellant received his salary for the said period. He admitted, however, that the subject payroll sheet was prepared by a certain Mr. Cruz.[8]

Norma Dumayan testified that she saw the appellant preparing food inside his house in the early morning of February 1, 1992. As a civic leader in Daang Bakal, Malolos, Bulacan she reminded him to register for the forthcoming May 11, 1992 national elections and the latter agreed to register in the afternoon of that day. At 7:30 o'clock in the morning, the appellant left his house to report for work.

At around 2:00 o'clock in the afternoon of the same day, she saw Carlito being chased by Eddie Dumayan while Anastacia Tamayo was following them and asking for help. The appellant was not around during the incident and she saw him again only at 5:00 o'clock in the afternoon after he alighted from a passenger jeep.[9]

After analyzing the evidence, the trial court rendered a decision on December 10, 1993 convicting the herein appellant, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused guilty as principal of the crime of Murder and there being aggravating and no mitigating circumstance hereby sentences him with the penalty of reclusion perpetua; to indemnify the heirs of the victim the amount of fifty thousand pesos (P50,000.00) and to pay the cost of this suit.

In regards to accused Eddie Dumayan, Allan Real and Romy Loyola who are at-large, let the records be sent to

the archived until such time that the said accused shall have been arrested and brought before the Court. In the meantime, let alias warrants of arrest be issued against the said accused.

SO ORDERED.

Aggrieved by the decision, the appellant interposed the instant appeal raising the following assignments of error:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE OF (sic) CLEAR EVIDENCE THAT HE WAS NOT THE ONE WHO DELIVERED THE INITIAL ATTACK BUT EDDIE DUMAYAN, HIS CO-ACCUSED.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED IN THE ABSENCE OF EVIDENCE OF CONSPIRACY.

III

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED DESPITE OF THE TRUTH OF HIS DEFENSE BUT NOT AN ALIBI.

In his Brief,[10] the appellant imputes the liability for the killing of Carlito Tamayo solely on his other co-accused. He pointed out that Eddie Dumayan was found by the trial court as the person who stabbed Carlito as the latter was about to climb the stairs before the victim was also stabbed by Allan Real and Romy Loyola Bergado. He claims that he was working in Atlag, Malolos, Bulacan as construction worker on the occasion of the said stabbing incident. It was therefore erroneous for the trial court to dismiss his defense of alibi and give credence to the testimonies of the prosecution eyewitnesses which are inherently partial and inconsistent. In any case, he cannot be held liable for the crime of murder for the reason that conspiracy cannot be sufficiently inferred from their alleged acts of chasing and attacking the victim.

After a careful review of the record, we find no cogent reason to overturn the assailed decision of the trial court. The presence of Anastacia Tamayo and Emilia Santos during the stabbing incident on February 1, 1992 in Daang Bakal, Cofradia, Malolos, Bulacan was established inasmuch as the same was not actually disputed by the defense. During the trial of this case, the defense merely insisted on the absence of the appellant from the scene of the crime and questioned the credibility of the two (2) prosecution eyewitnesses primarily on the basis of their relationship with the victim and the alleged inconsistency in their testimonies.

It should be emphasized that where the credibility of witnesses is concerned, this Court does not generally disturb the appreciation 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.[11] We believe that the eyewitness accounts of Anastacia and Emilia of the stabbing incident, which were characterized by the trial court as clear and straightforward,[12] deserve full faith and credence. These prosecution witnesses were in the vicinity when the stabbing incident occurred. While Anastacia was upstairs together with her children, she had a clear view of the doorway where her husband was initially stabbed by Eddie Dumayan. When Carlito ran to seek for help, Anastacia followed Eddie and his group who pursued her husband. It was at this instance that she saw the appellant and his other co-accused stab Carlito at the back with their bladed weapons. Anastacia even cuddled her mortally wounded husband when the attackers were fleeing the scene of the crime by boarding a Baliwag Transit bus bound for Manila. On her part, Emilia was standing in front of her house, which was located just across the house of the victim, at the time when he was stabbed in the back by Eddie. According to her, she saw Eddie strike the victim again on the right ear before the latter could run to seek for help. She also saw the

appellant and his co-accused stab the victim who was already in a kneeling position.

Appellant can not validly impugn the credibility of prosecution witnesses Anastacia and Emilia on account of their relationship with the victim. Other than his bare allegation of partiality on the part of the said prosecution witnesses, the appellant failed to ascribe any motive that could have driven them to fabricate false testimonies against him. The mere fact that the victim is the common-law husband of Anastacia and that Emilia is her niece does not render their testimonies inadmissible or devoid of evidentiary weight. We emphasize that mere relationship of the witnesses to the victim does not impair their credibility as to render their testimonies unworthy of credence where no improper motive can be ascribed to them for so testifying.[13] In other words, relationship per se of a witness to the victim, whether by consanguinity or affinity is no indicator of an impaired credibility of the said witness.[14] Besides, a relative of the victim has a natural knack in remembering the face of an assailant for he, more than anybody else, would be concerned that justice be given to the victim with the malefactor being brought to face the law.[15]

The alleged inconsistency in the testimonies of the prosecution witnesses relative to the position of the victim when he was stabbed by the appellant refers to a minor detail that does not detract from their credibility. Such slight variance in their testimonies is due to the sudden and unexpected occurrence of the incident before the eyes of these surprised witnesses. Inconsistencies and contradictions which are too insignificant will not merit attention as long as they concur on material points.[16] Witnesses testifying on the same event do not have to be consistent in every detail as differences in recollections, viewpoints or impressions are inevitable.[17] What is important, however, is that they have witnessed the unfolding crime and positively identified the appellant as one of the culprits, such as in the case at bar.[18]

Having been positively identified by the prosecution witnesses, the appellant cannot deny his liability for the killing of Carlito Tamayo by insisting that he was at the place of his work in Atlag, Malolos, Bulacan at the time of the stabbing incident. We have invariably held that positive identification, where categorical and consistent, prevails over denial and alibi which are negative and self-serving evidence undeserving of weight in law, if not substantiated by clear and convincing evidence.[19] The payroll sheet, which does not even contain the signature of the appellant,[20] is inadmissible in evidence for being a mere xerox copy of the original. Likewise, the testimony of the appellant's niece, Norma Dumayan, does not deserve credence for the reason that she admitted not having actually seen the stabbing incident since she was far from the scene of the crime.[21]

Based on the established facts, we affirm the trial court's appreciation of the qualifying circumstance of treachery. Two conditions must concur to constitute treachery, namely: 1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and 2) deliberate or conscious adoption by the culprit of the means of execution.[22] Prosecution witnesses Anastacia and Emilia vividly recalled that the unsuspecting victim was about to climb the stairs when Eddie suddenly stabbed him on the back with his bolo. The initial attack was immediately followed by another hacking blow, this time hitting the victim on the right ear which almost severed it. The attempt of the unarmed victim to escape proved futile since the appellant and his co-accused pursued him. Upon catching up with him, they attacked the victim simultaneously with their respective bladed weapons until he was mortally wounded.

The evidence on record also shows the existence of conspiracy in the killing of Carlito Tamayo. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. [23]Based on the testimonies of the same prosecution witnesses, it appears that the appellant and his co-accused were together when they arrived at the house of the victim. When the said victim ran after having been initially stabbed by Eddie, the appellant and his co-accused chased him and upon catching up with him, all of them simultaneously stabbed and hacked the victim on different parts of his body. Thereafter, they left the

mortally wounded victim and rode the Baliwag Transit bus bound for Manila.

There is no need to prove a previous agreement among the malefactors to commit the crime if by their overt acts, it is clear that they acted in concert in the pursuit of their unlawful design.[24] In this case, the malefactors' actions of assisting one another in simultaneously stabbing and inflicting wounds on the victim are clear and indubitable proofs of a concerted effort to bring about the death of the victim. There being a conspiracy in the commission of the crime, each of the conspirators, no matter how minimal his participation in the crime, is guilty as principal perpetrator thereof.[25]

However, we do not find sufficient evidence on record to justify the existence of evident premeditation. To appreciate evident premeditation the following requisites must be shown to exist: 1) the time when the accused decided to commit the crime; 2) an overt act showing that the accused clung to their determination to commit the crime; and 3) the lapse of a period of time between the decision and the execution of the crime sufficient to allow the accused to reflect upon the consequences of the act. Needless to state, these requisites of evident premeditation do not obtain in the case at bar.

WHEREFORE, the appealed Decision of the Regional Trial Court of Malolos, Bulacan in Criminal Case No. 713-M-92 convicting the appellant, Paquito Dumayan, of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim, Carlito Tamayo, the amount of P50,000.00 by way of civil indemnity ex delicto, is hereby AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Appellant's co-accused namely: Eddie Dumayan, Allan Real and Romy Loyola Bergado evaded arrest and remained at-large up to the present.

[2] TSN dated July 11, 1992, pp. 14-15.

[3] TSN, Id., pp. 4-8.

[4] TSN dated February 11, 1993, pp. 7-17.

[5] Exhibit "C".

[6] TSN dated March 31, 1993, pp. 3-8.

[7] Exhibit "1".

[8] TSN dated May 27, 1993, pp. 4-5.

[9] TSN dated August 5, 1993, pp. 3-4.

[10] Rollo, pp. 38-46.

[11] *People vs. Gornes*, 230 SCRA 270, 275 (1994).

[12] Decision, Rollo p. 21.

[13] *People vs. Letigio*, 268 SCRA 227, 243 (1997); *People vs. Piandong*, 268 SCRA 555, 565 (1997); *People vs. Manambit*, 271 SCRA 344, 367 (1997).

[14] *People vs. Baniel*, 275 SCRA 472, 486 (1997).

[15] *People vs. Bundang*, 272 SCRA 641, 650 (1997).

[16] *People vs. Gayon*, 269 SCRA 587, 591 (1997).

[17] *People vs. Alas*, 274 SCRA 310, 321 (1997).

[18] *People vs. Manozca*, 269 SCRA 513, 522-523 (1997).

[19] *People vs. Zamora*, 278 SCRA 60, 75 (1997).

[20] Decision, *supra*.

[21] TSN dated May 5, 1993, p. 4.

[22] *People vs. Serzo, Jr.*, 274 SCRA 553, 569 (1997); *People vs. Mallari*, 212 SCRA 777, 784 (1992); *People vs. Mabuhay*, 185 SCRA 675, 680 (1990).

[23] *People vs. Pacana*, 218 SCRA 346, 351 (1993).

[24] *People vs. Mercado* 275 SCRA 581, 589-590 (1997); *People vs. Escosio*, 220 SCRA 475, 489 (1993).

[25] *People vs. Alas*, 274 SCRA 310, 326 (1997); *People vs. Cedon*, 233 SCRA 187, 194 (1994).

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