

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLLIE ALVARADO Y LLANER, ACCUSED-APPELLANT.***G.R. No. 117402. July 21, 1997*

Ponente: FRANCISCO, J.

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At around 6:30 in the evening of May 26, 1991, Zosimo Estaño was stabbed dead by one of five (5) men who arrived at his house located at Andromeda, municipality of Angono, Rizal. An information for murder qualifiead by treachery and evident premeditation was thereafter filed against herein appellant Rollie Alvarado and four (4) others whose true names and whereabouts were unknown. As his co-accused all remained at large, only appellant underwent trial.

From the collective testimonies of victim Zosimo's wife Felicidad Estaño[1] daughter Rosalie Estaño[2] and sister Leonora Arocha,[3] the prosecution's version of the killing was that on the aforementioned time, date and place and while Felicidad and Zosimo were doing certain household chores, appellant and his four (4) companions arrived and hurled the following challenge on Zosimo: "Lumabas ka, kalbo, kung matapang ka." As soon as Zosimo has gotten out of their house, appellant's companions held him on both arms. Rosalie who was riding a bicycle and Leonora who was in her house which was only three (3) meters away from Zosimo's residence, saw appellant stab the helpless Zosimo on the stomach with a bolo which caused the latter to fall on the ground. One Joselito dela Cruz, Zosimo's friend who tried to pacify appellant, was likewise stabbed on the stomach. Zosimo was thereafter rushed to the Angono District Hospital but he expired before reaching it. At the hospital, Rosalie saw appellant who she identified to the policemen present as her father's assailant.

The prosecution presented two (2) other witnesses. Zosimo's brother Paulito Estaño testified on the funeral expenses amounting to P17,000.00 he shouldered. [4] Dr. Dario Gajardo, who performed the post mortem examination of Zosimo, testified that as per his findings, Zosimo's body bore a wound on the left ear and a fatal stab wound on the right lumbar region caused by a single bladed weapon the trajectory of which, was "upward toward the posterior portion of the body x x x." [5]

Appellant, as defense, denied any involvement in the killing and averred that he likewise was a victim in the incident in question. In brief, he claimed that he was on his way to the house of an aunt after taking a snack at a store in Arveemar Subdivision when he saw a commotion involving two (2) drunk persons armed with bolos chasing each other. Appellant tried to ignore the incident by proceeding with his journey, but found himself running away after noticing one of the drunk men giving chase on him. He was hacked on the left foot by his pursuer who he identified as one "Pacing", Zosimo's brother-in-law. Appellant was thereafter brought by his relatives to the Angono hospital but was transferred to the Orthopedic hospital on that same evening. He came to know that he was a suspect in the killing of Zosimo when policemen were already guarding him at both hospitals. He was immediately brought to the police station after his discharge. Despite Pacing's assault on his person, he did not file any case against the former. Appellant also denied having any previous acquaintance with the victim Zosimo and his wife Rosalie Estaño, and claimed that he was being implicated to the crime simply because some

of the other suspects were admittedly his friends.[6]

Rafael Velasco, a laborer-friend of appellant, essentially corroborated the latter's story of denial and as to the circumstances surrounding appellant's hacking by "Pacing", having viewed the incident some twenty (20) meters away from atop the wall near the river situated between Arveemar Subdivision and Phase III of Doña Justa Village, Angono Rizal. He, however, was not among those who brought appellant to the hospital as he was to visit a friend at that time.[7]

PO3 Edgar Fetalvero, one of the responding policemen present at the Angono hospital, testified that Rosalie mentioned the name "Sonny Alvarado" upon being asked who her father's assailant was. Furthermore, when Rosalie was accompanied to the operating room where appellant was staying and asked to identify the suspect, she said she does not know the wounded patient. This witness admitted not having executed any affidavit on the matter as he deemed it proper to leave it entirely to investigator Edmund Lorena who, after all, was also present at the hospital and personally heard all of Rosalie's statements. He testified for the defense upon the invitation of appellant and his counsel Atty. Diloy.[8]

The last witness for the defense was Walter Nuyda. Prior to his testimony, the prosecution, apparently questioning the propriety of Nuyda being allowed to testify, made manifest the fact of the presence in court of this witness during the past hearings despite Fiscal Venzon's queries whether there were other witnesses present to which defense counsel replied "none". The trial court nonetheless allowed Nuyda to take the witness stand. Nuyda, who brought along a sketch of where the killing took place for reference, thus testified that while he was taking a walk homeward bound, he heard two (2) women shouting "Namatay na si Sadam." "Sadam" referred to the victim Zosimo as the latter was allegedly known to be a trouble-maker when inebriated. He allegedly saw appellant walking naturally and Rosalie riding a bicycle already crying, at around 6:00 in the evening, but denied having seen the actual killing of Zosimo.[9]

Having found the prosecution's story specifically the eyewitness accounts of Rosalie and Leonora to be more credible than appellant's denial, the trial court in its now assailed decision of January 7, 1994 convicted appellant of murder, sentenced him to suffer the penalty of reclusion perpetua and to pay Zosimo's heirs P17,000.00 as actual damages, P50,000.00 for Zosimo's death and costs.

Before us, appellant assigns the following errors, the gist of which evidently goes into credibility:

I

"The court a quo grave erred in finding accused-appellant Rollie Alvarado guilty of murder beyond reasonable doubt despite insufficiency of evidence and also in disregarding the theory of the defense.

II

"The court a quo gravely erred in giving weight and credence to the testimony of the prosecution witnesses which are biased and unreliable."

This is another occasion to stress anew that the trial court, more than the reviewing tribunal, is in a better position to gauge credibility of witnesses and to properly appreciate the relative weight of the often conflicting evidence for both parties,[10] having had the direct opportunity to observe them on the stand and determine if they were telling the truth or not.[11] And since appellate courts do not deal with live witnesses but only with the cold pages of a written record,[12] this Court gives the highest respect to the trial court's assessment of the credibility of eyewitness.[13] We have gone over the records and found that the trial court correctly upheld the prosecution's case.

Rosalie positively identified appellant in open court as the one among the five (5) men who stabbed her father Zosimo. She thus testified:

“FISCAL ANG:

“Q And can you tell us how was your father challenged?

“A They were shouting at him, sir.

“Q And after your father came out of your house, what happened next?

“A He was pulled out by the man and they stabbed him

“Q Now, you said that he was pulled by the man, how was he pulled and who pulled at your father?

“A I could recognize only one of them, sir.

“Q Now, how many were holding at your father?

“A Four (4), sir.

“Q How about the fifth one?

“A He was the one who stabbed my father, sir.

“Q Now, this person who stabbed to (sic) your father, do you know him?

“A Yes, sir

“Q Now, is he in Court?

“A Yes, sir.

“Q Will you please point that person if he is in Court?

“INTERPRETER:

The witness is pointing at a man wearing a white shirt, who identified himself as Rollie Alvarado.

“Q Now, Miss Witness, how (sic) the accused Rollie Alvarado stabbed your father?

“A While he was being held by the other man he stabbed him on the left side of the stomach.

“Q Now, what kind of weapon did he use?

“A Bolo, sir.”[14]

Leonora corroborated Rosalie’s story by giving a similar account:

“Q Now, you said many persons went to your place, can you recall who went to see your brother, can you recall who were they?

“A Yes, sir.

“Q Who are they?

“A They were Rollie Alvarado, Jun, Sammy also the brother of Rollie Alvarado, they were five of them, I could no longer recall the name of the rest.

“Q So you were able to recall only 3 of the 5?

“A Yes sir.

“Q Now, if you will see the faces, will you be able to recall who they are?

“A Yes, sir.

“Q Please point to the person on this room if any of the 5 persons is here in the Court room.

“A (Witness pointing to a man wearing a white shirt and maong pants, who identified himself as Rollie Alvarado.)

“Q After the 5 persons went to your house and call your brother and challenged your brother, what happened next?

“A He was held by the 4 companion of Rollie Alvarado and he was stabbed by Rollie Alvarado.

“Q When you say he, you mean Zosimo Estaño?

“A The one who stabbed Zosimo Estaño.

“Q Now, to clarify, correct me if I am wrong, your brother Zosimo Estaño was retrained by 4 persons and after which Rollie Alvarado stabbed your brother, am I correct?

“A Yes, sir.

“Q Now, how was your brother retrained by these 4 person (sic)?

“A He was held by the 4 men on both sides. Two on each sides hold on the arms and shoulder.

“Q So your brother was not able to move whatsoever?

“A No, sir.

“Q And was not able to defend himself at any thrust if any?

“A No more, sir.

“Q After which Rollie Alvarado stabbed your brother?

“A Yes sir.”[15]

Well settled is the rule that greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused’s denial and explanation concerning the commission of the crime.[16] This is so inasmuch as mere denials are self-serving evidence that cannot obtain evidentiary weight greater than the declaration of credible witnesses who testified on affirmative matters.[17]

Appellant would, however, attempt to undermine the prosecution’s case by claiming that:

- 1) Rosalie and Leonora are unreliable and biased witnesses as they are the daughter and sister respectively, of victim Zosimo,
- 2) Rosalie failed to identify appellant at the Angono hospital and in fact mentioned another name — “Sonny Alvarado” as testified to by defense witness PO3 Fetalvero, and
- 3) the prosecution failed to present as its witness Joselito dela Cruz — Zosimo’s friend who was himself stabbed in the incident but who fortunately survived — who, according to appellant, is the “only credible witness who could identify the assailants of the victim.”

These arguments do not persuade.

On the first argument, the consistent ruling is that mere relationship of witnesses to the victim, whether by consanguinity or affinity, does not necessarily impair their credibility as witnesses. This is specially so when the witnesses, like Rosalie and Leonora, were present at the scene of the crime.[18] Another way of putting it is that relationship per se of witnesses with the victim does not necessarily mean they are biased; on the contrary, their relationship with the victim would deter them from implicating anybody to the crime.[19] Furthermore, the records do not provide any compelling answer as to why Rosalie and Leonora would falsely accuse appellant. Equally settled is that where there is no evidence, and nothing to indicate that the principal witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimony is entitled to full faith and credit.[20]

On the second, assuming[21] that Rosalie indeed failed to recognize appellant at the Angono hospital and named another person as her father’s assailant, it could nonetheless be explained by the fact that she was at that time not

in her normal equanimity - being in a state of shock of grief over her father's violent and untimely death. As this Court has once said, it is not a common experience for a person to witness the perpetration of an atrocious crime. The shocking experience usually distorts his/her normal pattern of reaction.[22] Thus, Rosalie's mistake in identifying another person as one of the accused does not make her an entirely untrustworthy witness. It does not make her whole testimony a falsity. An honest mistake is not inconsistent with a truthful testimony.[23] Besides, what is controlling is Rosalie's in-court identification of appellant, duly corroborated by Leonora, as the person who delivered the death blow on Zosimo.

On the third, it is not for the defense to press any speculation that a certain person not presented by the prosecution would likely be the most credible witness to bolster the case of the state. Suffice it to state that the matter of deciding whom to present as witness for the prosecution is not for the accused or for the trial court to decide, as it is the prerogative of the prosecutor. [24]

This Court will likewise leave undisturbed the following finding of the trial court, that:

“While there are some differences in the testimony of Rosalie Estaño in Court with sworn statements she gave to the police regarding as to where she is at the time the victim was stabbed, yet the Court feels that the same are minor matters and would rather strengthened (sic) the credibility of her testimony.”[25]

Such finding is further supported by the dictum that discrepancies between sworn statements or affidavits and testimonies made at the witness stand do not necessarily discredit the witnesses, since ex-parte affidavits are generally incomplete.[26]

We, however, take exception to the trial court's pronouncement that what qualified the killing of Zosimo to murder is the aggravating circumstance of abuse of superior strength. As earlier mentioned, the information alleged “treachery and evident premeditation”, not abuse of superior strength. It is the existence of treachery which qualifies the crime to murder since Zosimo was killed after already being in a helpless condition,[27] it appearing that Zosimo's hands were being held by appellant's companions before he was stabbed by appellant. Granting that abuse of superior strength was also alleged, it is nonetheless absorbed in treachery.[28]

Lastly, on the issue of penalty, the Office of the Solicitor General makes the following observation and recommendation:

“We observe that a modification in the penalty imposed on the appellant is called for in view of the amendment of Article 27 of the Revised Penal Code by Republic Act No. 7659 [1993]. As amended by Section 21 of Republic Act No. 7659 [1993] and explained by this Honorable Court in *People v. Cua*, G.R. No. 82292, March 1, 1995, the duration of the penalty of reclusion perpetua shall be from twenty years and one day to forty years. In view of the fact that the penalty of reclusion perpetua now has a specified duration, a judgment imposing the penalty of reclusion perpetua should specify a straight penalty within the range of the penalty of reclusion perpetua. Given the presence of treachery and evident premeditation, any one of which serves to qualify the crime to murder, we respectfully recommend that the penalty of thirty-four (34) years of reclusion perpetua be meted out to the appellant.”[29]

We cannot accede to this recommendation in view of this Court's En Banc Resolution in “*People v. Lucas*” dated January 9, 1995[30] where it was clarified that “Although Section 17 of R.A. No. 7659 has fixed the duration of reclusion perpetua from twenty (20) years and one (1) day to forty (40) years, there was no clear legislative intent to alter its original classification as an indivisible penalty. It shall then remain as an indivisible penalty”. Reclusion perpetua, therefore, retains its nature as having no minimum, medium and maximum periods. It is imposed in its entirety regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime.[31]

WHEREFORE, the modification of a particular disquisition made by the trial court notwithstanding (re: treachery as the qualifying circumstance and not abuse of superior strength), appellant's conviction for murder and the penalty of imprisonment and pecuniary liabilities imposed on him are hereby AFFIRMED.
SO ORDERED.

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

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- [1] TSN of September 23, 1992, pp. 5-19.
[2] TSN of February 10, 1992, pp. 4-27.
[3] TSN of March 9, 1992, pp. 9-20.
[4] TSN of January 27, 1994, pp. 3-7.
[5] TSN of March 9, 1992, pp. 2-8.
[6] TSN of December 14, 1992, pp. 4-39.
[7] TSN of January 18, 1993, pp. 5-16.
[8] TSN of February 8, 1993, pp. 4-15.
[9] TSN of March 3, 1993, pp. 6-16.
[10] *People v. Prado*, 254 SCRA 531.
[11] *People v. Dones*, 254 SCRA 696.
[12] *People v. Panlilio*, 255 SCRA 503.
[13] *People v. Laurente*, 255 SCRA 543.
[14] TSN of February 10, 1992, pp. 5-6.
[15] TSN of March 9, 1992, pp. 9-10.
[16] *People v. Polangco*, 251 SCRA 503 citing *People v. Andasa*, 206 SCRA 636, 641.
[17] *People v. Salison*, 253 SCRA 758; *People v. Godoy*, 250 SCRA 676.
[18] *People v. Patamana*, 250 SCRA 603.
[19] *People v. Juan*, 254 SCRA 478.
[20] *People v. Laurente*, 255 SCRA 543 citing *People v. Simon*, 209 SCRA 148; *People v. Castor*, 216 SCRA 410; *People v. Taneo*, 218 SCRA 494; *People v. Rostata*, 218 SCRA 657; *People v. Quejada*, 223 SCRA 77.
[21] The assumption is made considering that Rosalie testified as having identified appellant at the hospital. See TSN of February 10, 1992, p. 10.
[22] *People v. Trilles*, 254 SCRA 633.
[23] *Sison v. People*, 250 SCRA 58.
[24] *People v. Porras*, 255 SCRA 514 citing *People v. Eligino*, 216 SCRA 321 and *People v. Alerta, Jr.*, 198 SCRA 656.

[25] Decision, p. 8.

[26] *People v. Ferrer*, 255 SCRA 19 citing *People v. Sarellana*, 233 SCRA 31 and *People v. Quiming*, 222 SCRA 371.

[27] *People v. Miranday*, 242 SCRA 620.

[28] *People v. Panganiban*, 241 SCRA 91; *People v. de Leon*, 248 SCRA 609; *People v. Francisco*, 249 SCRA 526.

[29] Appellee's Brief, pp. 15-16.

[30] 240 SCRA 66.

[31] *People v. Duquit*, 205 SCRA 501 citing Article 63 of the Revised Penal Code.

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