# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON ORTIZ, ANTONIO ORTIZ AND MARIONITO DEL ROSARIO, ACCUSED-APPELLANTS.

*G.R. No. 118624. October 08, 1999*

Ponente: YNARES-SANTIAGO, J.

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**YNARES-SANTIAGO, J.:**

On October 27, 1985, spouses Marilyn and Lauro Santos with their children, together with family friend Fidel Mortoya and his wife, went to Barangay Bagong Sicat, Cabanatuan City to attend a reunion of Lauro's family. Also present were Lauro's sister, Corazon Santos, her husband Augusto Quiambao and one Solita Subaran. At about 9:00 to 10:00 o'clock PM, a jeep driven by Pat. Benjamin Mendoza passed by in front of the Santos' house. Moments later, a stone was thrown on the roof of their house, immediately followed by a second stone. Lauro got out of the house and shouted, "Sino ba yang mga putang inang yan na matatapang lang sa dilim at hindi magsilabas?" Marilyn followed her husband, who was walking towards the road, and asked him to get back inside the house. Lauro was suddenly met by Pat. Mendoza, who was armed with an armalite rifle, and the three appellants. Appellants Marionito and Antonio, the latter being the brother-in-law of Pat. Mendoza, immediately held Lauro and brought him towards the direction of the barangay hall while appellant Ramon, Antonio's uncle, fired his armalite rifle towards the ground to prevent others from coming to Lauro's aid and to force Marilyn to get back to the house. The latter shouted to her husband, "Di, bumalik ka" but he could not because he was being dragged away by appellants. While inside their house, they heard another burst of gunfire coming from the direction of the barangay hall. A few minutes later, the house of Marilyn's sister-in-law was strafed with armalite bullets. A jeepload of soldiers arrived and Marilyn pleaded to them to find her husband in the vicinity of the barangay hall. There they found the dead body of Lauro Santos lying on the ground with his face blown up and his brain exposed. A photographer was called to the scene to take pictures of the deceased. The next day, the corpse was subjected to autopsy where the cause of death was determined to be respiratory arrest secondary to busted skull due to multiple gunshot wounds coming from a highly powerful firearm such as an armalite.

At the time of his death, Lauro was a jeepney driver in Manila earning about P400.00 a day. He is survived by his wife and their five (5) children, the oldest at that time being only 12 years old. His family spent about P24,000.00 for his 4-day wake and burial expenses.

Consequently, appellants were charged with murder qualified by treachery, evident premeditation, abuse of superior strength, and taking advantage of nighttime.[1] Pat. Mendoza was not charged because he died prior to the institution of the case. Pleading not guilty, appellants were tried, convicted and sentenced to suffer the penalty of reclusion perpetua and ordered to indemnify the victim's heirs.[2]

On appeal, appellants contend that it was error for the trial court to convict them based on circumstantial evidence, to appreciate the above-mentioned qualifying and aggravating circumstances, to rule that there was conspiracy among them and in rejecting their defense of alibi.

The appeal lacks merit. First, jurisprudential annals are replete with rulings that conviction may be had even on circumstantial evidence so long as a combination of all the circumstances proven produces a logical conclusion which suffices to establish appellants' guilt beyond reasonable doubt.[3] Simply put, for circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.[4] Facts and circumstances consistent with guilt and inconsistent with innocence constitute evidence which, in weight and probative force, may surpass even direct evidence in its effect upon the court.[5]

The three requisites necessary to sustain a conviction based on circumstantial evidence provided in the Rules of Court[6] and in settled jurisprudence[7] are:

a.) there is more than one circumstance;

b.) the facts from which the inferences are derived are proven; and

c.) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

The foregoing elements concur in the case at bar. More specifically, these circumstances are:

1. after the deceased hurled a challenge for the stone thrower to come out, the four accused suddenly emerged from the dark;

2. two of them immediately held the victim by the arms and dragged him towards the barangay hall;

3. in the process of dragging the deceased, two of the appellants fired their rifles to the ground to dissuade witnesses from coming to his aid;

4. moments later, bursts of gunfire were heard coming from the direction of the barangay hall;

5. soldiers responded and the lifeless body of the deceased was found near the barangay hall with his skull riddled with rifle shots;[8]

A combination of the foregoing circumstances clearly shows that appellants were the culprits and were thus responsible for the death of the victim. The Court agrees with the trial court's disquisition, to wit:

First, there was a stoning of the house of Dominador Santos on the night of October 27, 1985 between the time of 9:00 to 10:00 o'clock p.m. while a family celebration was in progress to celebrate the arrival of Lauro Santos and his family; after the stone-throwing incident, Lauro Santos went out of the house shouting a sort of a challenge against whomsoever were throwing stones at the house of his father; then four (4) men all of a sudden came out of the darkness, grabbed and pulled Lauro Santos to the road towards the barangay hall, and these persons were identified to be the three accused, together with Pat. Benjamin Mendoza. Pat. Mendoza and Ramon Ortiz were firing their guns to the ground while Antonio Ortiz and Marionito del Rosario were pulling Lauro Santos towards the barangay hall; later on another burst of firing was heard. The records will show that there were no other armed men in the vicinity at the time Lauro Santos was taken away. On the contrary, the accused were the last persons seen taking away Lauro Santos. Later on, when police/PC soldiers arrived, they found the dead body of Lauro Santos besides (sic) the barangay hall with his head busted by multiple gunshots.[9]

All these circumstances constitute an unbroken chain which leads to a fair and reasonable conclusion, pinpointing the appellants, to the exclusion of all others, as the perpetrators of the crime.[10] The circumstances proven fulfill the test of moral certainty as to produce conviction in an unprejudiced mind.[11] Likewise, the evidence on record also shows that the late Pat. Mendoza would have been held equally responsible with the appellants herein for the death of Lauro had he not died prior to the institution of the criminal case.


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The information alleged that the killing was attended by the qualifying circumstance of, among others, treachery. However, aside from the fact that appellants suddenly grabbed the victim by his arms and fired their armalite, no other evidence was presented to show that appellants employed means to ensure the execution of their criminal design without risk to themselves. Likewise, the circumstance of premeditacion conocida, which requires proof of (1) the time when the offender determined to commit the crime, (2) an act manifestly indicating that the culprit has clung to his determination and (3) a sufficient lapse of time between the determination and execution to allow him cool reflection on the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to hearken its warnings[12] was not established. The records and the transcripts of stenographic notes are barren of any proof tending to show any prior reflection on, followed after some time by persistence in, the criminal resolution of the three appellants and Pat. Mendoza. Evident premeditation must be based on external acts, and must be evident, not merely suspected, indicating deliberate planning. Otherwise stated, there must be a demonstration by outward acts of a criminal intent that is notorious and manifest.[13] The generic aggravating circumstance of nighttime cannot also be considered there being no proof that appellants purposely sought darkness to perpetuate their evil design.[14] The only evidence on record is that the crime happened at night, and this is not sufficient to appreciate this circumstance. The only clear circumstance that qualifies the killing to murder in this case is the abuse of superior strength, given the blatant inequality of strength between the victim and his four aggressors, as well as the degree of force and the weapons used by the latter.[15]

Although no evident premeditation attended the crime, conspiracy among the four assailants was proven by proof beyond reasonable doubt.[16] The appellants and Pat. Mendoza were together when two of them held the victim, while one was firing his rifle. All of them dragged the latter towards the barangay hall. To establish conspiracy, it is not necessary that there be proof of the previous agreement to commit the crime, it being enough that the malefactors shall have acted in concert pursuant to the same objective.[17] At the very instant the plotters agree, expressly or impliedly, to commit the crime and decide to pursue it, each and everyone of the conspirators is criminally liable for the crime committed by anyone of them.[18] The act of one is the act of all.[19]

Appellants' defenses of denial and alibi were correctly rejected by the trial court, notwithstanding the corroborative testimonies of several other persons they presented. At the time of the incident, appellant Marionito claims that he was in Palayan City, appellant Antonio said that he was sleeping in his sister-in-law's house in the same barangay while appellant Ramon posits that he was in front of his residence, also in the same barangay. The different alibis proffered by each appellant fall not only because they are without credible corroboration[20] but more so because they failed to pass the test that the accused must prove that they were somewhere else when the crime was committed and that they could not have been physically present at the place of the crime or in its immediate vicinity at the time of its commission.[21] Since alibi can be easily manufactured, usually unreliable and the common refuge of the guilty, the party that invokes it must establish the same by positive, clear and satisfactory evidence to be given credence.[22]

In the case at bar, appellants failed to discharge the burden of proving the essential elements concerning time and place for their alibi to be believed.[23] The distances between their alleged respective locations as against the locus criminis is not far as to preclude their physical presence in the latter place. Moreover, the proven circumstantial evidence sufficiently and positively identified appellants as the persons responsible for the death of the victim herein.[24] Alibi is worthless in the face of the positive identification of the accused.[25] Although conviction must rest on the strength of the prosecution's evidence, the inherent weakness of appellants' defenses of denial and alibi which are easy to fabricate or concoct,[26] is all the more weakened when juxtaposed with the trial court's observations concerning the inconsistencies in their testimonies. As correctly found by the trial court:

The testimony of Antonio Ortiz is in material contradiction with his alleged report as borne by the police blotter.


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In his testimony, he stated that between 7:30 to 8:00 p.m. of October 27, 1985, while at the house of his sister-in-law, Leticia Ortiz, he was watching a passenger jeepney roaming around with unidentified armed men firing their guns, then stopped in front of his uncle's (Ramon Ortiz) house and shot up his house. In the police blotter brought along by Gaudencio Pestaño, he said it was 8:30 p.m. of October 27, 1985 and did not mention about the passenger jeepney roaming around with unidentified armed men firing their guns. The report as contained in the police blotter gave the impression that Ramon Ortiz' house was directly attacked by armed men. Also, in his testimony, he said that when the armed men attacked the house of Ramon Ortiz, he rode the jeep of his brother-in-law, Pat. Benjamin Mendoza, whose whereabouts he did not know at that time, and went to the police station in Cabanatuan City to report the incident. In the police blotter, however, it was made to appear that Pat. Mendoza was also at the place aiding Ramon Ortiz at the time of the alleged attack.

Ramon Ortiz, also one of the accused also testified that from late afternoon on October 27, 1985 up to night time at around 8:00 p.m. when the alleged shooting incident happened, he was entertaining some visitors in his house, namely: Barangay Captains Pedro Rivera and Bernardino Gonzales, of Barangay Valdefuente and Buliran, Cabanatuan City, respectively, who were then members of the Disaster Coordinating Council. They were there to make a survey on the damage caused by the recent typhoon that hit the area. From the testimony of Ramon Ortiz, and corroborated by the testimony of Pedro Rivera, one of his visitors, everything appears to be peaceful in their barangay until his house was shot-upon by unidentified armed men, contrary to the statement of Antonio Ortiz who claimed that he noticed and watched a passenger jeepney roaming around the barangay with unidentified armed men firing their guns. From the testimony of Antonio Ortiz, it would appear that there were some firing before the said passenger jeepney allegedly stopped in front of the house of Ramon Ortiz and fired at the direction of the house. Yet, Pedro Rivera testified that he heard only 3 shots fired one after the other and also stated that he only heard a vehicle passed by which they believe was a jeep because it was dark. Antonio Ortiz, however, who claimed that he was only 20 meters away categorically stated that the passenger jeepney with unidentified armed men firing their guns stopped in front of the house of Ramon Ortiz. If the statement of Antonio Ortiz about the passenger jeepney roaming around with armed men firing their weapons were true, then how come that Ramon Ortiz, the Chief of the barangay tanod who was in his house at about the time of the alleged firing was peacefully entertaining his visitors. Being the Chief of the barangay tanod, he should have been the first to have been alarmed and alerted about the presence of a passenger jeepney roaming around the barangay with around six unidentified passengers firing their guns even before his own house was finally attacked by the said armed men. Likewise, Pedro Rivera stated that their purpose in going to Bagong Sicat in the afternoon of October 27, 1985 was to conduct a survey in the damaged caused by the typhoon that recently hit the area. The most logical thing for them to have done was to see the barangay captain, and for that matter Barangay Captain Matias Ortiz, the elder brother of Ramon Ortiz, and for sure, even without conducting a survey, they could have taken all the necessary information they wanted from the barangay captain. Instead, they went to the house of Ramon Ortiz, the chief of barangay tanod and spent their time in a drinking session.[27]

Ultimately, the issue boils down to the credibility of witnesses. It has been repeatedly held, however, that the matter of appreciating evidence and assessing the credibility of witnesses is an undertaking that rests primarily with the trial court[28] because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the reviewing court.[29] The lower court's findings will not be disturbed on appeal considering its clear vantage point in resolving questions affecting credibility.[30]

In the case at bar, there is no cogent reason not to apply said rule. It is not shown that the court a quo had overlooked or disregarded relevant facts and circumstances which when considered would have altered the outcome of this case[31] or justify a departure from its findings and conclusion that:

All this material contradictions in the testimony of the accused, Antonio Ortiz, Ramon Ortiz and Pedro Rivera,[32] therefore, creates grave doubts as to their credibility. Their statements do not appear to be natural and spontaneous and are not, therefore, worthy of belief. It does not have the impression of truth.[33]

Next, appellants contend that they were not positively identified by the prosecution witnesses because of the brownout in their area which lasted for more than a month as a result of the typhoon. They insist that the night was dark while the prosecution claims it was bright. In support of its claim, the prosecution presented a Weather Specialist from the PAGASA,[34] to which the defense countered with the testimony of another employee from the PAGASA. Thus, the issue regarding the brightness of the moon on that night arose. Courts can take judicial notice that the moon was almost full on a certain night[35] but not whether the moon was shining bright on that night in a particular area. Evidence is necessary to establish brightness of the moon in a certain place. Worth quoting is the trial court's summary of the testimony of the two PAGASA witnesses and its conclusion:

One issue that was brought out was whether or not the moon was bright on the night of October 27, 1985. The prosecution witnesses, Marilyn Santos, Corazon Santos Quiambao and Solita Tubaran stated that they were able to recognize the persons of the accused on that night because the moon was bright on that particular hour of 9:00 to 10:00 p.m. of October 27, 1985. The defense also claimed that the night was dark as an after-effect of the recent typhoon that hit the area. Mr. Elmor Escosia, Weather Specialist II, of the PAG-ASA, was presented by the prosecution to testify on the nature or condition of the moon on the night of October 27, 1985, who submitted a report (Exh. "J") containing, among others, that "at 8:00 p.m., October 27, 1985, the moon was about 98 percent illuminated. Full moon having occurred on October 29, 1985 at 1:38 a.m. Further, Mr. Elmor Escosia stated that at the same date and time, the moon was at 47 degrees or a little over 9:00 o'clock on the face of the clock. This findings (sic), according to Mr. Escosia was based on scientific computations on the astronomical almanac distributed worldwide. On the other hand, the defense also presented Mrs. Rosa Barba, another employee of the PAG-ASA who testified on the weather condition prevailing in Nueva Ecija to include Cabanatuan City on October 27, 1985, based on the weather report gathered by the Muñoz Station of the PAG-ASA. From her testimony, typhoon Tacing entered the Philippine Area of jurisdiction on October 23 to 31, 1985. However, on October 25, 1985, the said typhoon was already traversing the China Sea going to South Japan. The typhoon did not directly hit Nueva Ecija, but the province was, however, affected by the said typhoon. That on October 27, 1985, it was already calm, there was no wind direction, but there were rainshowers. At 8:00 p.m., it was calm and there was no wind, but there were rainshowers. During the early hours of October 27, 1985, starting at 1:15 intermitently (sic) up to 5:13 p.m., there were rainshowers, but from 8:00 p.m., it was already calm, no wind direction, there were rainshowers, and distant lightning was also recorded. The visibility was, however, good at around 8:00 p.m. and the sky coverage was at figure 8. At figure 9, it means the visibility is obscured and they use figure 9 only in the area of Baguio City. If there is a full moon, the visibility is affected by the presence of clouds but the sky coverage on that night of October 27, 1985 was not total.

The testimonies of both Mr. Escosia and Mrs. Barba, appears to complement each other and after a careful consideration of their report and testimony it would appear to confirm the fact that there was a bright moon on the night of October 27, 1985 as testified to by Marilyn Santos, Corazon Santos Quimbao and Solita Tubaran, which fact enabled them to identify the persons of the accused as the ones who took away Lauro Santos, pulled him towards the barangay hall where he was later on found dead with a busted skull due to multiple gunshots.[36]

As for the penalty, at the time of the commission of the crime, murder was punishable by reclusion perpetua to death. There being neither aggravating nor mitigating circumstances, reclusion perpetua is the proper penalty.[37]

On the civil liability, appellants having acted in conspiracy, their liability in favor of the heirs of the victim is accordingly joint and solidary. Record shows that the sum of P24,000.00 was spent for the burial expenses of the


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deceased. The award of P50,000.00 for the life of the victim should be awarded as civil indemnity. However, the award of P100,000.00 "by way of moral and exemplary damages"[38] is reduced to P50,000.00 as moral damages. Exemplary damages is deleted because of the absence of aggravating circumstance.

WHEREFORE, PREMISES considered, the decision appealed from, convicting accused-appellants of the crime of murder as defined in Article 248 of the Revised Penal Code, with neither aggravating nor mitigating circumstances, is AFFIRMED subject to the MODIFICATION that the award of moral damages is reduced to P50,000.00 and the award of exemplary damages is DELETED.

**SO ORDERED.**

Puno, and Pardo, JJ., concur.

Davide, Jr., C.J., (Chairman), and Kapunan, J., on official business abroad.

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[1] The Information dated March 12, 1986 reads: "That on or about the 27th day of October, 1985, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding and abetting with one another with intent to kill, with evident premeditation, treachery, abuse of superior strength and taking advantage of nighttime, did then and there, wilfully, unlawfully and feloniously shoot one LAURO SANTOS hitting the latter on different parts of his body thereby inflicting upon the latter serious physical injuries which directly caused the death of the said LAURO SANTOS" (Rollo, p. 2).

[2] The dispositive portion of the Regional Trial Court (RTC-Branch 30, Cabanatuan City) Decision dated March 11, 1994 penned by Judge Federico B. Fajardo, Jr., provides: "WHEREFORE, premises considered and the guilt of all the accused RAMON ORTIZ, ANTONIO ORTIZ and MARIONITO DEL ROSARIO having been proved beyond reasonable doubt, this Court hereby sentences all of them to suffer the penalty of RECLUSION PERPETUA, with all its ACCESSORY PENALTIES; to pay to the heirs of LAURO SANTOS, jointly and solidarily, the sum of P24,000.00 as actual damages; the sum of P50,000.00 for the life of the victim, LAURO SANTOS; the sum of P100,000.00 by way of moral and exemplary damages and to pay the cost of this suit."

[3] People v. Lopez, G.R. No. 131151, August 25, 1999.

[4] People v. De Guia, 280 SCRA 141 (1997).

[5] People v. Alberca, 257 SCRA 613 (1996) citing People v. Abitona, 240 SCRA 335 (1995). See also People v. Balisteros, 237 SCRA 499 (1994).

[6] Section 4, Rule 133, Revised Rules on Evidence.

[7] People v. Rivera, G.R. No. 117471, September 3, 1998; People v. Quitorio, et al., 285 SCRA 196 (1998); People v. Berroya, 283 SCRA 111 (1997); People v. Abrera, 283 SCRA 1 (1997); People v. Doro, 282 SCRA 1 (1997); People v. Dabbay, 277 SCRA 432 (1997); People v. Bonola, 274 SCRA 238 (1997); People v. Grefaldia, 273 SCRA 591 (1997); People v. Contante, 12 SCRA 653 (1964).

[8] Transcript of Stenographic Notes (TSN) March 18, 1987, pp. 4-8 and July 7, 1987 pp. 3-9; See also Appellee's Brief, pp. 11-12; Rollo, pp. 190-191.

[9] RTC Decision p. 26, Rollo, p. 50.

[10] People v. Sanchez, G.R. No. 120655, October 4, 1998; People v. Andal, 344 Phil. 889 (1997); People v.

Cedenio, 233 SCRA 356 (1994); People v. Estrellanes, Jr., 239 SCRA 235 (1994).

[11] People v. Berroya, 283 SCRA 111 (1997); People v. Pagaura, 267 SCRA 17 (1997); People v. Perez, 263 SCRA 206 (1996); People v. Quindipan, 253 SCRA 421 (1996).

[12] People v. Gravino, 122 SCRA 123 (1983).

[13] People v. Narit, 197 SCRA 334 (1991).

[14] People v. Cayago, G.R. No. 128827, August 18, 1999 citing People v. Ronquillo, 247 SCRA 793 (1995) and People v. Rosario, 246 SCRA 658 (1995).

[15] People v. Plasencia, 249 SCRA 674 (1995).

[16] People v. Geralaga, 331 Phil. 441 (1996).

[17] People v. Sazon, 189 SCRA 713 (1990) cited in People v. Derilo, 338 Phil. 350 (1997).

[18] People v. Monroy, 104 Phil. 759 (1958).

[19] Pecho v. People, 331 Phil. 1 (1996).

[20] People v. Aliposa, 263 SCRA 471 (1996).

[21] People v. Sancholes, 338 Phil. 242 (1997); People v. Sumaoy, 263 SCRA 460 (1996).

[22] People v. Gargar, G.R. Nos. 110029-30, December 29, 1998; People v. Ravanes, 284 SCRA 634 (1998); People v. Salcedo, 273 SCRA 473 (1997).

[23] People v. Hillado, G.R. No. 122838, May 24, 1999.

[24] People v. Grefaldia, G.R. No. 121631-36, October 30, 1998.

[25] People v. Abangin, G.R. No. 125939-40, October 12, 1998.

[26] People v. Vasquez, 345 Phil. 380 (1997); People v. Uson, 224 SCRA 425 (1993). See also People v. Sancholes, 338 Phil. 242 (1997).

[27] RTC Decision, pp. 23-24; Rollo, pp. 47-48.

[28] People v. Anciano, 189 SCRA 519 (1990); People v. Solares, 173 SCRA 203 (1989) and cases cited therein.

[29] People v. Mahinay, G.R. No. 122485, February 1, 1999 citing People v. Tan, Jr., 264 SCRA 425 (1996).

[30] People v. Manuel, 234 SCRA 532 (1994).

[31] People v. Villones, G.R. Nos. 122976-77, November 16, 1998; People v. De Guia, 345 Phil. 360 (1997) citing People v. Prado, 251 SCRA 690 (1995); People v. Lo-ar, 345 Phil. 429 (1997); People v. Dio, 44 SCRA 559 (1972); People v. Matrimonio, 215 SCRA 613 (1992).

[32] Pedro Rivera, the Barangay Captain of Barangay Valdefuente, Cabanatuan City up to 1986, was not an accused but a witness for the defense.

[33] RTC Decision, p. 24; Rollo, p. 48.

[34] Philippine Atmospheric Geophysical and Astronomical Services Administration.

[35] See People v. Villanueva, 161 SCRA 511 (1988).


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[36] RTC Decision, p. 25-26, Rollo, p. 49-50.

[37] Revised Penal Code, Article 63, 2nd par. (2).

[38] RTC Decision, p. 30; Rollo, p. 54.


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