

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GEORGE GONDORA, ACCUSED-APPELLANT.

G.R. No. 118770. December 06, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a case of murder.

Appellant George Gondora alias "Bogie" alias "George Gongora", together with "Totoy" and "Onio"[1] were charged with the crime of murder in an information which reads as follows:

"The undersigned Assistant City Prosecutor accused GEORGE GONDORA Y MINA, JOHN DOE @ TOTOY and PETER DOE @ ONIO, the true names and real names identities of the last two accused are still unknown of the crime of MURDER committed as follows:

"That on or about the 19th of May, 1992, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, evident premeditation and treachery, suddenly attack and assault and repeatedly stab one Antonio Malinao, Jr. on the vital parts of the latter's body, thereby inflicting upon the latter mortal wounds which caused his death.

"Contrary to law."[2]

"Totoy" and "Onio" remain at large. upon arraignment appellant pleaded not guilty to the charge.[3] After trial, the lower court convicted the appellant of the crime of murder and sentenced him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P50,000.00.[4]

The facts, as summarized in the People's Brief, and which we adopt are as follows:

"In the morning of May 19, 1992, at about 9:30 a.m., Antonio Malinao and his common-law wife Edma Malinao went to Villa Barbara, Tramo Street, Pasay City collect a loan from a certain "Junior". However, they were not able to collect said loan, and were merely asked to return the next day (TSN, August 6, 1992, pp. 6-7).

"While on their way home passing via an alley suggested by Junior, two (2) persons, one known as "Bogie", herein appellant and another known as "Totoy Killer", suddenly appeared from nowhere. The latter boxed Antonio Malinao, and when he fell down, appellant repeatedly stabbed him. Simultaneously, Totoy Killer stabbed Antonio (TSN, Ibid, p. 7).

"Edma Malinao pleaded for mercy and tried to embrace the [assailants], but was instead pushed and kicked aside. Thereafter, the two (2) [assailants] ran towards opposite directions and escaped (TSN, Id., pp. 2-3).

"With the help of a tricycle driver, Edma Malinao brought Antonio to the Manila Sanitarium. Thereat, Dr. Prudencio Sta. Lucia, Jr. found the victim with a dilated pupil, 0/0 blood pressure and 0/0 cardiac rate. Said doctor pronounced Antonio dead (TSN, July 17, 1992, pp. 5-6; August 6, 1992, p. 3).

"Dr. Sta. Lucia thereafter examined the deceased and found twenty (20) different stab wounds all over the different parts of the body of the victim, namely:

"Firstly Stab Wound - was located on the right chest along the interior auxilliary (sic) line which is about 1.5 cm. in width and located also along the fifth rib.

"The Second Stab Wound - is located on the anterior portion of the arm which is about 1 cm. in width.

"The Third Stab Wound - is located on the prominal portion of the forearm which is 2 cm. in width.

"The Fourth Stab Wound - is located on the anterior chest or along the 8th rib about 2 cm.

"The Fifth Stab Wound - is located on the subcontrol on the right anterior chest about 1 cm. in width.

"The Sixth Stab Wound - is located on the left parasternal line at the left or third intercentral space about 2.5 cm. in width.

"The 7th Wound is located on the posterior auxilliary (sic) area on the right side and about 1.5 cm.

"The 8th wound is located at the mastoid left on the right side about 2 cm. in width.

"The 9th wound [is located this] is a triangular wound or altrasion located at the right shoulder.

"The 10th wound is about 2.5 cm. located on the 11th rib on the posterior back on the right.

"The 11th wound is a 3 cm. wound located on the sub-coastal margin on the posterior back of the chest on the right.

"The 12th wound is 3 cm. in width located on the posterior lumbar area.

"The 13th wound is a 2.5 cm. wound located on the posterior forearm.

"The 14th wound is 2 cm. located on the medial aspect of the forearm.

"The 15th wound is 3 cm. located on the posterior aspect of the forearm.

"The 16th wound is 2.5 cm located on the anterior aspect of the superior alia spine.

"The 17th wound is 3 cm. located on the left wrist.

"The 18th wound is 3 cm. located on the right forearm.

"The 19th wound is 1.5 cm. located on the right side of the neck; and

"The 20th wound is 3 cm. located on the dermal aspect of the right arm (tsn, p. 1 barrientos, July 17, 1992)

(Exhibits "A", "B", to S-8). (TSN, July 17, 1992, pp. 6-7)."[5]

Appellant seeks a reversal of his conviction via this appeal on the following assignment of errors:

"I THE TRIAL COURT ERRED ON (SIC) CONVICTING THE ACCUSED SOLELY ON THE UNCORROBORATED AND BIASED TESTIMONY OF WITNESS EDMA MALINAO, THE COMMON-LAW WIFE OF VICTIM ANTONIO MALINAO, JR.;

"II THE TRIAL COURT ERRED IN NOT TAKING INTO CONSIDERATION THE TESTIMONY OF WITNESS [ROWENA][6] OLANDAY

"III THE SAID COURT ALSO DID NOT TAKE INTO CONSIDERATION THE TESTIMONY OF ACCUSED GEORGE GONDORA;

"IV THE TRIAL COURT ACTED IN A HOSTILE AND UNJUST ATTITUDE AGAINST THE ACCUSED, THEREBY DEPRIVING HIM OF HIS RIGHT OF PRESUMPTION OF INNOCENCE." [7]

The issue raised in the foregoing assignment of errors ultimately boils down to a question of the factual findings and assessment of the credibility of the witnesses by the trial court. Hence, we shall discuss them together.

Appellant contends that the trial court erred in rendering a judgment of conviction based on the biased and uncorroborated testimony of witness Edma Malinao. We find the contention bereft of merit. The rule is to accord much weight to the impressions of the trial judge, who had the opportunity to observe the witness directly and to test their credibility by their demeanor on the stand.[8] Although the judgement of conviction was primarily based on the testimony of Edma Malinao, we do not find any reversible error committed by the lower court in arriving at its findings. The rule is that witnesses are to be weighed, not numbered.[9] It has never been uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness.[10]

Concretely, appellant points to certain alleged inconsistencies in the testimony of Edma Malinao. Appellant alleges that in one of her sworn statements, Edma Malinao mentioned that the victim was suddenly and immediately stabbed by two men (at pagtapat sa amin ay walang sabi-sabing bigla na lang sinaksak si Tony)[11], while in another affidavit, she stated that one of the assailants boxed the victim first before the latter was stabbed by them simultaneously (At sinuntok noong isang lalaki and aking asawa at siya ay bumagsak. Pagbangon ng aking asawa ay pinagsasaksak siya ng dalawang lalaki sa bahagi ng katawan ng aking asawa).[12] The inconsistency refers to minor details and has no bearing on the credibility of the witness. It is rather immaterial to dwell exhaustively on whether the victim was boxed first when the cause of the death of the victim is the multiple stab wound inflicted on his person. On this point, Edma Malinao consistently testified and remained unwavering in her stand that appellant and Totoy Killer, repeatedly stabbed the victim to death. A certain latitude must be given to whatever minor mistake the witness might have said about the actual confrontation. For apart from the shock and the numbing effect of the whole incident, the rapidity with which the sequence of events took place must have taken its toll on the accuracy of the witness' account.[13]

Appellant likewise makes issue of the fact that in Edma Malinao's third affidavit[14], she mentioned that the motive for the commission of the crime was allege quarrel between one "Onio" and the victim, when no such declaration was made in the previous affidavits. Again, appellant's claim is not worthy of credit. For one, the imputed inconsistency is misplaced as there is no inconsistency at all, but rather, an omission which relates to the apparent motive for the killing. Such motive is inconsequential in view of the positive identification of the perpetrators of the crime. Moreover, we attribute the omission to state the motive of the crime to the apparent reluctance of witness Edma Malinao to divulge the illegal dealings of her common-law husband. We note that the deceased was into the business of dealing illegal drugs and the same must have been the cause of his death.

The above alleged inconsistencies pointed out by appellant were all contained in the three (3) affidavits executed by Edma Malinao in connection with the filing of the case. The contradictions, if any may be explained by the fact that an affidavit can not disclose the whole facts, and oftentimes and without design, incorrectly describe, without the deponent detecting it, some of the occurrences narrated. Being taken ex parte, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries.[15] It has thus been held that affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to her.[16]

We have thus gone beyond the affidavits and reviewed the witness' account as reflected in the transcript of

stenographic notes and a reading of the same would bear out that the trial court correctly assessed the credibility of witness Edma Malinao. She testified as follows:

"Q:

Where were you at that time your husband was stabbed?

A:

I was together with my husband.

Q:

How many person (sic) actually stabbed your husband?

A:

They were two, sir.

Q:

How far were you at the time when your husband being (sic) stabbed by these two male individuals?

A:

I was beside him, one foot away.

Q:

Were was (sic) these two persons going to, as testify (sic) a while ago stabbed your husband?

A:

They just suddenly came from our sides.

xx x x x x x x x

Q:

After these two male individual (sic) appeared nowhere before you, what was the initial happening afterwards?

A:

The other one boxed my husband and he fell down.

Q:

Who boxed your husband?

A:

The person who suddenly appeared in front of us.

Q:

You mentioned awhile ago that you knew their names because they were gambling mates in sakla of your husband, tell the Court what are the names of these two male individuals?

A:

Totoy Killer and Boogie.

Q:

This Totoy Killer is the one who appeared before you?

A:

Totoy Killer was the one who boxed my husband and who was in front of us.

Q:

And what happened to your husband after it (sic) was boxed by Totoy Killer?

A:

My husband fell flat on his back face up and at the same time stabbed by Boogie.

Q:

Who stabbed your husband?

A:

Totoy Killer boxed my husband while Boogie simultaneously stabbed my husband.

x x x x x x x

Q:

What was your reaction while your husband was being continuously stabbed by Totoy Killer and Boogie?

A:

I was trying to embrace each one of them as I was pleading to stop it, "tama na".

Q:

While you were pleading and begging from Totoy Killer and Boogie to stop from further stabbing your husband, did these two people hear your advice?

A:

No, they did not listen to me instead they kicked me.

(Witness pointing to his (sic) left knee with black scar.)

Q:

Who actually kicked you at that time?

A:

I did not notice who kicked me.

x x x x x x x"[17]

Moreover, Edma Malinao is the common-law wife of the deceased and her relationship, as such, adds to the weight of her testimony since she would then be interested in seeing the real killers brought to justice rather than falsely implicating innocent persons.[18] This Court has held that it is not to be lightly supposed that relatives of the deceased would callously violate their conscience to avenge the death of a dear one by blaming it on persons whom they believe to be innocent thereof.[19] Relationship per se does not give rise to a presumption of ulterior

motive, nor does it ipso facto impair the credibility or tarnish the testimony of a witness. It has been correctly observed that the natural interest of witnesses who are relatives of the victims in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for, otherwise, the latter would gain immunity.[20] In the absence of ill-motive on the part of the witness, and none was shown, relationship between her and the victim does not undermine her credibility[21] and so [her] testimony is entitled to full faith and credence.[22]

Appellant likewise assigns as error, the fact that the court did not give credit to the testimony of defense witness Rowena Olanday. It is worthy of note that nothing in said testimony would exculpate appellant from the charge. The same merely consists of failure to identify the assailants probably for failure of memory or fear for her own safety. Nevertheless, on material points, we cannot say that the testimony of Olanday favors herein appellant. On the contrary, an obvious contradiction in the stories given by Olanday and that by appellant casts doubt on the latter's credibility. While Rowena Olanday testified that two malefactors aided each other in the commission of the offense,[23] appellant's testimony is to the effect that Totoy Killer was the lone assailant.

Our finding is that, on substantial points, Rowena Olanday's narration of events jibes with the story as told by Edma Malinao. Both of them testified that there were two assailants who came from different directions; that one of the assailants boxed the victim as the other one proceeded into stabbing him; that Edma Malinao shouted for help and pleaded with the assailants for mercy, and; that after the stabbing incident, the two assailants fled toward opposite directions. Rowena Olanday testified as follows:

"Q:

What happened next if you recall?

A:

We were about to go out of an alley when I met two male individuals.

Q:

What happened next if any when you met two male individual (sic)?

A:

I was following two persons a male and a female when suddenly two male individuals met them and boxed somebody.

Q:

You mentioned boxed somebody, who boxed who?

A:

One of the two male individual (sic) boxed the victim.

Q:

The two individual (sic) a male and a female you were following, do you know their identity?

A:

No. They were merely passing by.

Q:

When he was boxed by the person following them, what happened next?

A:

The other one handed the other a knife and this person repeatedly stabbed the victim.

Q:

This victim, did you know him?

A:

No. I do not know those persons, they just passed there.

Q:

After he was stabbed by that person, what happened next?

A:

The woman shouted asking for help.

x x x x x x x x

Q:

At the scene of the incident, was (sic) there other people?

A:

After the said victim was repeatedly stabbed by (sic) seven times, the person who stabbed the victim and his companion fled afterwards. They went out of their way. They went on their opposite direction."[24]

Rowena Olanday's testimony, we observe, does not help appellant's cause. The same merely consists of narrating the factual circumstances of the case, which as we already noted, corroborates the narration of Edma Malinao. Rowena Olanday's failure to identify the assailant is not enough basis to render a judgment of acquittal. The mere fact that her testimony was offered by the defense does not mean that the same tilts the scale in favor of appellant. Rowena Olanday's failure to reveal the identity of the assailants is not equivalent to a negative identification. Rowena Olanday simply said she cannot recall the assailants. She never said that the appellant is not one of them. Moreover, the identity of the assailants have been sufficiently established by the testimony of Edma Malinao.

On the other hand, the testimony of appellant consists merely of denials without any other evidence to sustain his claim and defense. We have consistently ruled that denials, if unsubstantiated by clear and convincing evidence, are negative self-serving evidence which deserve no weight in law and cannot be given greater evidentiary weight over the testimony of credible witnesses who testify on affirmative matters. As between the positive declarations of the prosecution witness and negative statements of the accused, the former deserves more credence.[25]

Finally, accused-appellant contends that the judge acted in a hostile and unjust manner tantamount to depriving him of his right to be presumed innocent. We are not persuaded. The records reveal nothing irregular, hostile or unjust in the manner the trial court judge conducted the trial. Accused-appellant was afforded the opportunity to cross examine the prosecution witnesses and present evidence on his behalf. It has thus been held that:

"Judges are not mere referees like those of a boxing bout, only to watch and decide the results of the game; they should have as much interest as counsel in the orderly and expeditious presentation of evidence, calling the attention of counsel to points at issue that are overlooked, directing them to ask questions that would elicit the

facts on the issues involved, clarifying ambiguous remarks by witness, etc.

A judge may properly intervene in the trial of a case to promote expedition and unnecessary waste of time or to clear up some obscurity.[26]

WHEREFORE, premises considered, the decision of the lower court is hereby **AFFIRMED** in toto.

SO ORDERED.

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

- [1] Both Totoy's and Onio's true names are unknown.
- [2] Information dated June 11, 1992; Records p. 8.
- [3] Certificate of Arraignment, Records p. 15.
- [4] Decision dated March 5, 1993, p. 8; Rollo, p. 32.
- [5] Appellee's Brief, pp. 2-5.
- [6] Appellant mistakenly referred to this witness as Edna Olanday.
- [7] Appellant's Brief, p. 5; Rollo, p. 70.
- [8] People vs. Errojo, 229 SCRA 49; People vs. Lug-aw, 229 SCRA 524.
- [9] People vs. Amaguin, 229 SCRA 166.
- [10] People vs. Jumao-as, 230 SCRA 70; People vs. Gonzales, 230 SCRA 291.
- [11] Sworn Statement dated may 19, 1992; Records p. 299.
- [12] Sworn Statement dated June 5, 1992; Records p. 294.
- [13] People vs. Pastoral, 226 SCRA 219.
- [14] Sworn Statement dated June 10, 1992, Records p. 297.
- [15] People vs. Andaya, 152 SCRA 570; People vs. Perez, 224 SCRA 529.
- [16] People vs. Empleo, 226 SCRA 454.
- [17] TSN dated August 6, 1992, pp. 6-9.
- [18] People vs. Dominguez, 217 SCRA 170.
- [19] People vs. Boniao, 217 SCRA 653.
- [20] People vs. Enciso, 223 SCRA 675.
- [21] People vs. Caras, 234 SCRA 199.
- [22] Pesfople vs. Hubilo, 220 SCRA 389.
- [23] TSN dated December 15, 1992, p. 3.7
- [24] TSN dated December 15, 1992, pp. 2, 8.
- [25] People vs. Guibao, 217 SCRA 64.

[26] Ventura vs. Yatco, 105 Phil. 287.

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