

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO GARCIA ALIAS ROMEO ALCANTARA Y GANDOL, ACCUSED-APPELLANT.

G.R. No. 118824. July 05, 1996

Ponente: MELO, J.

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MELO, J.:

Jose Zaldy Asiado died about three o'clock mid-morning of April 3, 1988 at Barangay Tula-Tula, Legazpi City. Postmortem findings of the City Health Department, Legazpi City disclosed the following:

External Findings:

- wound stab, 1/2 inch, antero lateral aspect, neck, left.
- wound stab, 1/2 inch, 2nd ICS, MCL anterior chest left.
- wound stab, 2 inches, MCL anterior chest, left.
- wound stab, 1/2 inch, coastal margin, MCL, anterior chest, left.
- wound stab, 1/2 epigastric region, abdomen.
- wound stab, 1 inch, 5th ICS, MCL, anterior chest, right.
- wound stab, 1/2 inch, coastal margin, MCL, anterior chest right.
- wound stab, 1/2 inch, coastal margin, anterior axillary line, anterior chest, right.
- wound stab, 1/2 inch, paraumbilical region, abdomen.
- wound stab, (2) 1/2 inch, hypogastric region, abdomen.
- wound stab, (2) antero lateral surface, upper third thigh, right.

Internal Findings:

Thoracic Cavity - Massive Intrathoracic hemorrhage with stab wound injury of the heart and lungs (left upper and right lower lobe).

Abdomen - Stab wound injury of the left upper lobe and right lobe of the liver.

Stab wound injury stomach.

Cause of Death:

Hypovolemic Shock, Massive Intrathoracic Hemorrhage, Secondary to Multiple Stab Wounds of the Body.

(p. 151, Record.)

In her affidavit executed before the Office of the City Prosecutor, Marlyn Asiado, the common-law wife of the victim Jose Zaldy Asiado, named her first cousin, Romeo Garcia, as the assailant. On the basis thereof, Assistant City Prosecutor Franco Q. San Vicente of Legazpi City issued a resolution dated June 20, 1988, recommending the filing of murder charges against said Romeo Garcia. The Information subsequently filed pertinently alleged:

That on or about the 3rd day of April, 1988, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there wilfully, unlawfully and feloniously, and with treachery and evident premeditation, attack, assault and stab one Jose Zaldy Asiado with a sharp bladed weapon, thereby inflicting upon the latter injuries which directly caused his death.

Contrary to Law.

(p. 2, Rollo.)

No bail was recommended but the accused fled right after the incident. He nonetheless was apprehended after 5 years and was thereupon arraigned whereupon he entered a plea of not guilty. Thereafter, Judge Vladimir B. Brusola of Branch 5 of the Regional Trial Court of the Fifth Judicial Region stationed at Legazpi City, found the accused guilty as charged, and imposed on him the penalty of reclusion perpetua and the payment of P50,000.00 as indemnity for the death of the victim (p. 41, Rollo).

The trial court arrived at its judgment of conviction by relying on the testimony of Joseph Ayhon and the victim's mother Angustia Asiado. The common-law wife of the victim, Marlyn Garcia Asiado, begged to be excused as a witness for the prosecution, via a hand written letter dated March 15, 1994 on the ground that she just gave birth and only wanted peace of mind and happiness with her new husband and family.

Joseph Ayhon, testifying in a categorical, candid, and spontaneous manner, as maybe concluded from the finding of the trial court, was able to establish that at 3 o'clock on the morning of April 3, 1988, he woke up early to perform his usual task of fetching water from the nearby "sagurong" (spring). He had passed by the Mayon Imperial Hotel's abandoned concrete water tank which was converted into the makeshift dwelling of the common-law spouses Jose Zaldy Asiado and Marlyn Garcia. He saw and met Marlyn running and panic-stricken and shouting for help because Jose had been stabbed by Romeo Garcia.

Ayhon further testified that because of curiosity, he directly went to the water tank. As he drew near, he immediately sensed the thrusting sound of a knife and a male voice which repeatedly uttered, "Buhay ka pa, buhay ka pa" (you are still alive, you are still alive). Thereupon, Ayhon peeped through the makeshift door of the water tank and saw the face of accused-appellant illuminated through the gaping hole of the water tank. Accused-appellant was atop the still recumbent body of the deceased.

The other witness, Angustia Asiado, mother of the victim, testified that on the early morning of April 3, 1988, Marlyn Garcia arrived at the former's residence, panic-stricken and shouting for help because her (Asiado's) son had been stabbed by Romeo Garcia. Both immediately rushed back to the water tank but found Jose Zaldy already dead.

Accused-appellant denied that he is Romeo Garcia. He claimed to be Romeo Alcantara y Gandol and that he did not know the victim Jose Zaldy Asiado, nor he did know his alleged first cousin Marlyn Garcia Asiado.

The trial court correctly rejected this preposterous theory of the defense, observing:

By this defense of the accused, he actually means that Romeo Garcia is another person, a different person from him. That it was another person whom Joseph Ayhon saw on top of the victim that early morning of April 3, 1988, that it was that other person, Romeo Garcia who killed the victim and not him because he is Romeo Alcantara y Gandol.

This denial of the accused cannot prevail over the positive identification of the witness Joseph Ayhon as the person whom he saw was on top of the victim, more especially the testimony of Angustia Asiado that the accused is Romeo Garcia and not Romeo Alcantara y Gandol because she knows the very person of the accused who claims to be Romeo Alcantara since childhood of the said accused. The details of the testimony on the person and family of the accused is more than credible enough to inspire belief that the accused who claims to be Romeo Alcantara y Gandol is one and the same person as Romeo Garcia.

Angustia Asiado knew the parents of the accused as Felix Alcantara Garcia (father) and Elena Atun Gandol (mother) because they resided at Malangka, Legazpi City and at that time said spouses had their first child, Zenaida. Then the accused Romeo Garcia was born, followed by Miriam and the last was Marlyn. Angustia Asiado pointed to the accused during her testimony in the evidence in chief and at rebuttal as the very same Romeo Garcia who is the son of the spouses Felix Alcantara Garcia and Elena Atun Gandol and whom she knew since childhood. The birth certificate (Exh. "D") secured by Angustia Asiado needs no further elucidation. There is no other Romeo Garcia whose parents are named Felix Alcantara Garcia and Elena Atun Gandol than the Romeo Garcia she pointed to in Court who gave the name of Romeo Alcantara.

The accused himself testified that his mother's name is Elena Atun Gandol and that his father's name is Felix Alcantara. In an effort to avoid showing that his father could have been a Garcia, accused reasons out that he does not know the middle name of his father. He also presented a brother of his mother, a certain Juan Atun Gandol who tried to cover up for the accused, but whose testimony the court finds ridiculous and unbelievable and given to confuse the personality of the accused. How can a brother such as the witness Juan Atun Gandol not know the name of a sister's husband who just live for many years in a house five meters away from his house. How can this witness not know the name of the father of the accused who is married to his sister and therefore his brother-in-law when his brother-in-law and the wife (his sister and mother of the accused) resided for many years beside the house of his parents where he lives? The marriage contract of the accused and the birth certificate of his children showing his name as Romeo Alcantara without a middle name are not evidence of his own birth data and cannot be relied upon with respect to his personality and status of birth.

All said and done, the court finds that the accused who in open court answers by the name of Romeo Alcantara y Gandol is actually the accused Romeo Garcia whose real and complete name is Romeo Garcia y Gandol, and he is no doubt, is the very person pointed to by the prosecution witnesses as the Romeo Garcia who killed Jose Zaldy Asiado on April 3, 1988, and that he assumed a different name thereafter to escape liability. When the accused fled and left the place of incident to avoid being caught as he did succeed for five years only show that he is indeed guilty of the crime.

(pp. 39-40, Rollo.)

Having thus failed to convince the trial court of his professed innocence, accused-appellant resorted to the instant appeal, contending:

The trial court gravely erred in finding the accused guilty beyond reasonable doubt of the crime of Murder on the basis of the alleged positive identification of the accused as the culprit by the prosecution witness Joseph Ayhon and the testimony of Angustia Asiado.

(p. 97, Rollo.)

As in most criminal cases, the linchpin in the resolution of the instant case is the credibility of the witnesses. Times without number, this Court has declared that the findings of the trial court on this matter should not be disturbed on appeal unless some facts or circumstances of substance and value have been overlooked which, if considered, might well affect the result of the case. This doctrine is premised on the undisputed fact that, since the trial court has the best opportunity of observing the demeanor of the witnesses while on the stand, it can discern whether the witnesses are telling the truth or not (*People vs. Galendez*, 210 SCRA 360 [1992]; *People vs. Lug-aw*,

229 SCRA 308 [1994]). We find no cogent reason to depart from this doctrine in the case at bar.

Accused-appellant zeroes in on the testimony of Joseph Ayhon, the only eyewitness presented by the prosecution. He contends that Ayhon's testimony is inconsistent, improbable, and extraordinary evidence; that Ayhon's unnatural reaction of placidly performing his usual task of fetching water after witnessing the stabbing incident without relating the startling incident to the barangay officials, police authorities, or his wife is allegedly out of the ordinary.

It is well-settled that there is no standard form of human behavioral response when one is confronted with a strange, startling, or frightful experience (*People vs. Raptus*, 198 SCRA 425 [1991]; *People vs. Lagota*, 194 SCRA 92 [1992]). Verily, it is even preposterous to say that any one could exactly determine how a person will or should react to a given situation.

It has also been repeatedly pronounced that the failure to reveal at once the identity of the perpetrator of a felony does not affect, much less impair, the credibility of witnesses (*People vs. Manlapat*, 196 SCRA 157 [1991]), more so if such delay has been adequately explained (*People vs. Manlapat*, 196 SCRA 157 [1991]).

In the case at bar, Joseph Ayhon adequately explained why he did not report the incident he witnessed to the police authorities, in this wise:

[ON RE-DIRECT EXAMINATION]

Q. Ah . . . one last question, your Honor. Why did you not report what you have witnessed to the policemen?

A. I did not report to the police because the victim has parents and wife."

(p. 21, TSN, August 17, 1993).

implying perhaps that he wanted to distance himself from the case, or that at least, the immediate relatives of the victim should be the ones to initiate any action. Such attitude is not now-a-days unnatural or out of the ordinary. Verily, it is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case. Indeed the natural reticence of most people to get involved especially in a criminal case, is now of judicial notice. (*People vs. Cortez*, 226 SCRA 91 [1993])

The failure of the defense to attribute any ill motive on the part of Ayhon to pin responsibility on accused-appellant, adds more credence to Ayhon's testimony. When there is no evidence to indicate that the principal witness for the prosecution was moved by improper motive, the presumption is that such witness was not so moved and that his testimony is entitled to full faith and credit (*People vs. Cabuang*, 217 SCRA 675 [1993]).

Ayhon's positive identification of accused-appellant as the perpetrator of the crime demolished the latter's denial. Even standing alone, such positive sole testimony is enough basis for conviction.

Accused-appellant likewise posits the view that in matters relating to pedigree, Angustia Asiado is allegedly disqualified to testify. There is no merit to this contention.

As correctly argued by the Office of the Solicitor General, the issue in this case is the identity of the accused, not matters relating to his pedigree. Hence, Angustia Asiado's rebuttal testimony of her long acquaintance with accused-appellant and his family and that she knows accused-appellant to be Romeo Garcia and his parents to be Felix Alcantara Garcia and Elena Gandol, is loaded with probative value. There is nothing objectionable in Angustia Asiado's testimony that she had known accused-appellant since the latter was an infant, if only to buttress the fact that the only "Romeo" referred to by Marlyn Garcia is accused-appellant and no one else (pp.

98-99, Rollo).

Accused-appellant likewise argued that no motive whatsoever has been shown or established or even insinuated by the prosecution that would drive him to commit so grave a wrong as killing a person. This argument deserves scant consideration. We have held so many times in the past that proof of motive is unnecessary where there is a clear and positive identification of the accused, as in the case at bar.

Accused-appellant insists that he is innocent. His conduct after the incident, however, negates his pretension. Flight is an indicium of guilt (*People vs. Javier* 229 SCRA 638 [1994]). Such behavior cannot be anything but positive and convincing evidence of consciousness of guilt (*People vs. Galit*, 230 SCRA 486 [1994]).

The trial court found the evidence considered altogether, as adequate to prove accused-appellant's guilt of the crime charged beyond reasonable doubt, to wit:

The evidence for the prosecution clearly established that common law spouses Jose Zaldy Asiado (the victim) and Marlyn Garcia Asiado were asleep in their water tank dwelling when at about three o'clock in the early morning of April 3, 1988, accused Romeo Garcia surreptitiously entered through the makeshift door and successively stabbed to death Jose Zaldy Asiado while the latter was lying down. Marlyn was shouting for help when she met Joseph Ayhon and told the latter that the accused Romeo Garcia stabbed her husband. She also told Angustia Asiado (victim's mother) that it was Romeo Garcia who stabbed her son. This narration by Marlyn Asiado to Joseph Ayhon and to Angustia Asiado that it was Romeo Garcia who stabbed Jose Zaldy Asiado is admissible in evidence as part of the *res gestae* (Section 36, Rule 130, Rules of Court) to establish the identity of the assailant and of the circumstances of the stabbing as it was given immediately subsequent to the stabbing of said Jose Zaldy Asiado. Joseph Ayhon saw the accused Romeo Garcia while the latter was still on top of the victim.

The attack was made by the accused at the victim's dwelling and in the early morning when it was still dark and considering the time of three o'clock in the morning, at the time when the victim was sleeping as he was in fact sleeping, and helpless in case of attack. Dwelling was therefore aggravating because the crime was committed in the dwelling of the victim. Nighttime would also be aggravating because three o'clock in the morning is dark and the accused purposely sought this time to avoid detection. Considering the testimony of the doctor that the stab wounds were inflicted with the accused on top of the victim who could either be sitting or lying down, it is safe to conclude that the victim was sleeping when stabbed successively, thereby helpless to repel any attack. There were eleven (11) stab wounds on the different parts of the body of the victim. All these circumstances, clearly prove that the crime committed was murder.

(pp. 76, 77-78, Rollo.)

Accused-appellant had been charged with and convicted of the crime of murder for the killing of Jose Zaldy Asiado. Article 248 of the Revised Penal Code provides that to be liable for murder, the accused must be proven to have committed the killing of another person under the attendant circumstances specified therein. Of these circumstances, the Information alleged treachery and evident premeditation to qualify the killing to murder.

It is unfortunate that the trial court failed to discuss the presence or absence of these qualifying circumstances. However, from the evidence on record, treachery cannot be appreciated.

For treachery to be appreciated, two (2) requisites must concur, namely, (1) that at the time of the attack, the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means, method, or form of attack employed by him (*People vs. Estillore*, 141 SCRA 456 [1986]). The mere fact that per the testimony of the doctor, several stab wounds were inflicted with the assailant on top of the victim who was either sitting or lying down does not show treachery, unless there is evidence that such form of attack was purposely adopted by the accused. Besides, there is nothing in the testimony of the prosecution witnesses, more

particularly Ayhon on how the assault began. As the Court held in *People vs. Tiozon* (198 SCRA 368 [1991]) treachery cannot be considered when the witness did not see the commencement of the assault. The importance of such testimony cannot be overemphasized, considering that treachery cannot be presumed nor established from mere suppositions (*People vs. Salvador*, 224 SCRA 819 [1993]). The same degree of proof to dispel reasonable doubt is required before any conclusion maybe reached respecting the attendance of alevosia (*People vs. Duero*, 136 SCRA 515 [1985]).

Neither may evident premeditation be considered, absent a clear showing of: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit had clung to its determination; and (3) sufficient time elapsed between the determination and the execution to allow him to reflect upon the consequences of his act (*People vs. Briones*, 219 SCRA 134 [1993]).

The generic aggravating circumstance of dwelling, although not alleged in the Information, may correctly be appreciated against the accused-appellant considering that it was fully established during the trial without objection on the part of the defense (*People vs. Grefiel*, 215 SCRA 596 [1992]; *People vs. Lagario*, 224 SCRA 351 [1993]). The trial court was, however, not correct in considering nighttime as an aggravating circumstance. For nighttime to be appreciated as an aggravating circumstance, there must be a convincing showing that the accused had purposely sought such period in order to facilitate the commission of the crime or to prevent its discovery or to evade the culprit's capture (*People vs. Rodriguez*, 193 SCRA 231 [1991]). There is no proof at all, much more a convincing one, to warrant appreciation of nighttime as an aggravating circumstance.

Absent treachery or evident premeditation in the killing of the victim, the crime committed can only be homicide, not murder. With the aggravating circumstance of dwelling and the absence of any mitigating circumstance, the penalty for homicide, which is reclusion temporal should be imposed in its maximum period. Applying the Indeterminate Sentence Law, the imposable penalty should range from 10 years and 1 day of prision mayor as minimum to 20 years of reclusion temporal as maximum.

WHEREFORE, the appealed decision is MODIFIED by finding accused-appellant Romeo Garcia alias Romeo Alcantara y Gandol, guilty beyond reasonable doubt of the crime of Homicide. He is sentenced to suffer an indeterminate imprisonment penalty of ten (10) years and one (1) day of prision mayor as minimum, to seventeen (17) years and four (4) months and 1 day of reclusion temporal as maximum, and to pay the amount of P50,000.00 as indemnity for the death of Jose Zaldy Asiado. Costs against accused-appellant.

SO ORDERED.

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

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