THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIE FLORO, ACCUSED-APPELLANT.

G.R. No. 120641. October 07, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Pagadian City, Branch 19, finding accused-appellant Rogelie Floro guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim, Tornino Salacop, in the amount of P50,000.00.

The information in this case alleged[2]:

> That on or about the 7th day of April, 1993 at about 8:30 o'clock in the evening, at Sitio Sirawak, Lison Valley, Pagadian City, Philippines, and within the jurisdiction of this Honorable Court, said accused did, then and there with malice aforethought and with deliberate intent to take the life of Tornino Salacop, willfully, unlawfully, feloniously and treacherously shoot the latter with a gun, first wounding him on the left arm and left leg, and afterwards, struck him repeatedly on the head, breaking the same, cutting his nose, all wounds collectively being necessarily mortal, causing the direct and immediate death of said Tornino Salacop.
>
> All contrary to law, and with qualifying circumstance of treachery or alevosia.
>
> CONTRARY TO LAW.

Accused-appellant pleaded not guilty, whereupon trial ensued.

The prosecution presented an alleged eyewitness, Carlito Bawan, and two other witnesses, Wilton Bawan and Benjamin Vidal, in support of its case.

Carlito S. Bawan testified that at about 8:30 p.m., on April 7, 1993, he and the victim were walking along a trail on a cassava plantation owned by accused-appellant, at Sitio Sirawak, Barangay Lison Valley, Pagadian City, when suddenly accused-appellant Rogelie Floro appeared from the plantation and shot the victim. Carlito was then about three meters behind the victim. The victim was hit on the left knee, the bullet penetrating his left thigh and injuring his left hand. Carlito said he got so scared that he ran away, but, at about five (5) meters away from the victim, he stumbled to the ground. When he looked back, he saw accused-appellant strike the victim on the head several times with the gun. Carlito identified the gun used as a 12-gauge homemade shotgun and recognized accused-appellant as the assailant. He said there was moonlight in the area, and he recognized accused-appellant who had been his neighbor for five (5) years. His house was about 150 meters away from the accused-appellant's house. In the morning of April 9, 1993, he went to his uncle, Wilton A. Bawan, and told him the whole incident. The two then reported the matter to barangay kagawad Benjamin Vidal who took them to barangay captain Charlie Babayson. Carlito told Babayson that accused-appellant killed the victim. Carlito, Wilton, and Vidal then went to the scene of the crime and saw the body of the victim still there. Before the shooting incident, Carlito said,

he used to see accused-appellant carry a 12-gauge homemade shotgun. He stated that he and the victim were first cousins.[3]

Wilton A. Bawan, uncle of the victim, testified that at 8:00 a.m., on April 9, 1993, he learned from Carlito, his nephew, about the killing of Tornino Salacop. He accompanied Carlito to barangay kagawad Benjamin Vidal, who accompanied them to the house of barangay captain Charlie Babayson. Wilton, together with Carlito and Vidal, then proceeded to Sitio Sirawak, Barangay Lison Valley, where they saw the body of the victim on the roadside. Wilton observed that the body had wounds on the left thigh, nose, and head. Wilton said he knew accused-appellant because they were friends.[4]

Benjamin Vidal, barangay kagawad of Sitio Sirawak, Barangay Lison Valley, Pagadian City, confirmed that in the morning of April 9, 1993, Wilton and Carlito came to his house to report the death of Tornino Salacop. He said he accompanied Wilton and Carlito to the house of barangay captain Charlie Babayson. From there they went to the scene of the crime and saw the body of the victim. It bore wounds on the head, nose, left hand, and left thigh. Vidal ordered the body immediately buried as it had been there for almost two days. Vidal said he had known accused-appellant prior to the incident as the latter was also a resident of Barangay Lison Valley.[5]

On the other hand, the evidence for the defense is as follows:

Accused-appellant Rogelie Floro denied the charge, claiming that on April 7, 1993, he was in the house of the Miñozas, his parents-in-law, at Sitio Sirawak, Barangay Lison Valley, Pagadian City. He testified that he stayed there from April 4 to April 8, 1993 to assist his father-in-law in harvesting cassava. He said he wanted to go home to his family in Sitio Sirawak on April 7, 1993, but because work on the farm was not yet finished, he could not do so. When asked about the weather condition on the night of April 7, 1993, he claimed it was cloudy and the sky was dark, although he did not know if it rained as he was already asleep by 7:00 p.m. However, he said that when he woke up the following morning, he noticed that the ground was wet. Accused-appellant's house was about two kilometers away from the farm of his father-in-law. The distance can be negotiated within one hour by foot. He claimed he decided to go home on April 8, 1993. His companions were his younger brother and a certain Carling, a neighbor of his father-in-law. He denied having known or met the victim and Carlito S. Bawan, but he admitted knowing Wilton A. Bawan who was also from Barangay Lison Valley. He had no previous quarrel with Wilton. He knew Benjamin Vidal, a barangay kagawad, and he also had no previous misunderstanding with him. He left the house in the afternoon of April 9, 1993 and met one Rodrigo Babao, a CAFGU member, who informed him that Tornino Salacop had been killed. He was allegedly told that the victim had been stabbed on the chest and on the thigh. Later, one Jimmy Paduga, another CAFGU member, also told him about the death of Tornino Salacop. Upon learning of the victim's death, he decided not to go home as he was afraid of the killer who might be in the farm of his father-in-law. Instead, accused-appellant claimed, he asked his family to move to the house of his parents-in-law where he stayed for two months until he was apprehended on June 26, 1993.[6]

Rodrigo Babao, a member of the CAFGU, testified that at about 10:00 a.m., on April 9, 1993, he learned about the killing incident from barangay kagawad Ernesto Lagnason. Earlier, Wilton A. Bawan related the incident to the barangay officials. He and Ernesto Lagnason went to the scene of the crime in Sitio Sirawak, Barangay Lison Valley and saw the body of Tornino Salacop. He also met Benjamin Vidal and Wilton Bawan there. He noticed that the victim had sustained one wound on his left thigh near the hip. The wound was round and about 1½ inches in diameter. The victim had some abrasions on the forehead. Babao knew that accused-appellant was residing in the house of his father-in-law. As to the weather condition on the night of April 7, 1993, Babao said that it was not raining. He also said that he asked Carlito and Wilton Bawan who the assailant was, but both stated that they did not know. He did not know if accused-appellant owned a shotgun.[7]

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Ernesto Lagnason, a barangay kagawad in Sitio Sirawak, Barangay Lison Valley, Pagadian City, corroborated Babao's testimony. He testified that at about 10:30 a.m. on April 9, 1993, he was informed by their barangay captain, Charlie Babayson, about the death of Tornino Salacop. He was accompanied by Wilton A. Bawan and Rodrigo Babao to the scene of the crime in Sitio Sirawak, Barangay Lison Valley and there saw the body of the victim. He knew the victim to be the nephew of Wilton A. Bawan. He noticed that the victim sustained a wound on his left thigh and had an abrasion on his forehead. The scene of the crime was a cassava farm. The plants were taller than the height of an average person, and their leaves were abundant. He observed blood stains coming from a nipa hut one meter away from where the body was found. The nipa hut was owned by accused-appellant's brother-in-law, Ranil Miñoza. As to the weather condition on the night of April 7, 1993, Lagnason claimed it was dark and drizzling.[8]

The defense also offered as documentary evidence the affidavits of prosecution witnesses Benjamin Vidal, Wilton A. Bawan and Carlito S. Bawan, which were duly marked as Exhs. 1, 2 and 3, respectively.

On rebuttal, Charlie Babayson, barangay captain of Sitio Sirawak, Barangay Lison Valley, was presented. He testified that in the evening of April 7, 1993, the moon was shining, and it was not raining. In the morning of April 9, 1993, he learned from Carlito S. Bawan and Wilton A. Bawan that accused-appellant had killed Tornino Salacop on the night of April 7, 1993. He asked Rodrigo Babao and Ernesto Lagnason to verify the report about the killing. He knew accused-appellant very well, because his wife was one of the sponsors in accused-appellant's wedding. After the wedding, accused-appellant resided at Sitio Dumalian which is part of Barangay Lourdes, near Barangay Lison Valley. He stated that he never had any misunderstanding with accused-appellant.[9]

On March 14, 1995, the trial court rendered its decision finding accused-appellant guilty of murder. The dispositive portion of its decision reads:

> WHEREFORE, in view of the foregoing discussion, this Court is convinced that accused Rogelie Floro is guilty beyond reasonable doubt of the crime of murder he is herein charged. There being neither aggravating nor mitigating circumstances attending the commission of the offense, this Court imposes upon accused the penalty of reclusion perpetua, conformably with the new doctrine adopted by the Supreme Court in People v. Muñoz, 170 SCRA 107, with all the accessory penalties prescribed by the law, and to pay the heirs of victim Tornino Salacop the sum of P50,000.00 by way of civil indemnity, without subsidiary imprisonment in case of insolvency. Accused having been a detention prisoner since June 18, 1993 up to the present, he is hereby credited four-fifth (4/5) of such preventive detention in the service of his sentence herein imposed.
>
> SO ORDERED.

Hence, this appeal. Accused-appellant contends that :

> I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT NOT ON THE BASIS OF THE STRENGTH OF THE PROSECUTION'S EVIDENCE BUT RATHER ON THE WEAKNESS OF THE EVIDENCE FOR THE DEFENSE.
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> II. THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.
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> III. ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF MURDER INSTEAD OF HOMICIDE.

These contentions have no merit.

First. The prosecution evidence fully establishes the guilt of accused-appellant. The eyewitness, Carlito S. Bawan, who was with the victim at the time of the shooting, identified accused-appellant as the assailant. He recognized

him, having been his neighbor for five years, and their houses were only 150 meters away from each other. No reason was shown for Carlito to falsely implicate accused-appellant. In fact, they had no previous quarrel. Hence, Carlito's positive and categorical declarations on the witness stand should be given full faith and credence. The fact that Carlito and the victim were first cousins does not detract from his credibility. It is settled that in the absence of a showing of an improper motive on the part of a witness, his testimony is not affected by his relationship to the victim.[10] The narration of Carlito that accused-appellant used a 12-gauge homemade shotgun in killing the victim was corroborated by the certificate of death (Exh. A) which stated that the immediate cause of death was gunshot wound. Carlito had a vantage position as he was only three meters away when the victim was shot by accused-appellant. Even defense witnesses Rodrigo Babao and Ernesto Lagnason testified that the body bore a round wound on its left thigh near the hip portion which was 1½ inches in diameter.

Second. Accused-appellant interposes the defense of alibi. He contends that even if he was in Sitio Sirawak, Barangay Lison Valley at the time of the incident, it was impossible for him to have committed the crime as he lived two kilometers away from the place where the killing took place.

We cannot give credence to his claim of alibi. As we have ruled:

> Extant in our jurisprudence are cases where the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers (People v. Lumantas, 28 SCRA 764 [1969]), or three (3) kilometers (People v. Binsol, 100 Phil. 713 [1957]) or even five (5) kilometers (People v. Manabat, 100 Phil. 603[1957]), and yet it was held that these distances were not too far as to preclude the possibility of the accused's presence at the locus criminis, even if the sole means of traveling between the two places at that time was only by walking (People v. Aparato, 80 Phil. 199 [1948]).[11]

For the defense of alibi to prosper, it is not enough to prove that accused-appellant was somewhere else when the offense was committed, it must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[12] In this case, accused-appellant testified that the distance between his house and that of his father-in-law was two kilometers away. Defense witness Rodrigo Babao testified that accused-appellant stayed in the house of the latter's father-in-law. Still another defense witness Ernesto Lagnason testified that they saw blood stains coming from the nipa hut owned by accused-appellant's brother-in-law, Ranil Miñoza, who was then living in the house of accused-appellant's father-in-law. The nipa hut was just a meter away from where the body was found. No explanation was presented to show that it was physically impossible for accused-appellant to be at the scene of the crime. For the defense of alibi to prosper, the requirement of time and place must be strictly met.[13]

Moreover, accused-appellant's claim of alibi cannot prevail over his positive identification[14] by Carlito. It is not even important to inquire into the motive of accused-appellant. Proof of motive is immaterial where there is direct testimony of a credible witness and where the culpability of the accused has been established beyond reasonable doubt.[15] In this case, Carlito readily identified accused-appellant as the assailant. They had been neighbors for five years and the shooting took place in his presence. The moon gave light to the area enabling him to witness the entire incident. He ran away out of fright, but he stumbled and fell on the ground. He thus saw accused-appellant hit the victim with the use of the shotgun. While defense witness Ernesto Lagnason testified that on the night of April 7, 1993, it was dark and drizzling, another defense witness, Rodrigo Babao, categorically stated that it did not rain in the evening of April 7, 1993. The barangay captain, Babayson, also testified that there was a full moon, and it did not rain. It has been held that the illumination from the moon[16] and even from the stars[17] is fair and sufficient to identify the perpetrators of crimes.

Indeed, the defense of alibi of accused-appellant was never corroborated by the testimonies of other defense witnesses. While he claimed that he was in his father-in-law's house on the night the victim was killed, neither

his father-in-law nor any other member of his household was presented to substantiate his theory. Thus, as against the alibi of accused-appellant, the straightforward narration by Carlito should be given weight. An affirmative testimony is far stronger that a negative testimony especially so when the former comes from the mouth of a credible witness.[18] Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[19] Alibi is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted.[20]

Moreover, CAFGU member Jimmy Paduga informed accused-appellant about the discovery of the victim's body in the afternoon of April 9, 1993, and he might have mentioned to accused-appellant that the latter was a suspect. When confronted on the witness stand as to why he did not go back to his family in Sitio Sirawak, accused-appellant offered no valid explanation, but stated that he was afraid of the killer. Such conduct constituted flight, which is evidence of guilt.[21]

Third. Accused-appellant argues that, if at all, he should have been held guilty of homicide and not of murder.

We find the killing in this case to be murder qualified by treachery. The two elements of treachery are present in this case, to wit: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and (2) the means of execution were deliberately or consciously adopted.[22] The evidence shows that while Carlito and the victim were walking on the trail, accused-appellant suddenly sprang from the cassava plants and shot the victim. The victim was unarmed and unsuspecting of any impending peril to his life and limb at the time he was shot by accused-appellant. The swift and unexpected attack by accused-appellant rendered the victim helpless. The rule that treachery may be shown if the victim is attacked from behind does not mean it cannot be appreciated if the attack is frontally launched. The suddenness of the shooting, without the slightest provocation from the victim who was unarmed and had no opportunity to defend himself, ineluctably qualified the crime with treachery.[23]

Fourth. The trial court ordered accused-appellant to pay the heirs of the victim Tornino Salacop the amount of P50,000.00 as civil indemnity.

We affirm the award of P50,000.00 as civil indemnity which is awarded without need of further proof other than the death of the victim.[24] We find, however, that, in addition, the heirs of the victim Tornino Salacop are also entitled to moral damages in the amount of P50,000.00 in accordance with our recent rulings.[25]

WHEREFORE, the decision of the Regional Trial Court of Pagadian City, Branch 19 is AFFIRMED with the MODIFICATION that, in addition to the award of P50,000.00 as civil indemnity to the heirs of the victim Tornino Salacop, accused-appellant is ordered to pay P50,000.00 as moral damages, and the costs.

SO ORDERED.

Quisumbing, and Buena, JJ., concur.

Bellosillo, (Chairman), J., on official leave.

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[1] Per Judge Franklin A. Villegas.

[2] RTC Records, p. 1.

[3] TSN, pp. 4-22, April 14, 1994; TSN, pp. 11-12, 15-17, April 15, 1994; Sworn Statement of Carlito S. Bawan dated April 12, 1993 (Exh. D); RTC Records, p. 4.

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[4] TSN, pp. 3-6, 8, Dec. 13, 1993; Sworn Statement of Wilton A. Bawan dated April 13, 1993 (Exh. B); RTC Records, p. 5.

[5] TSN, pp. 11-13, Dec. 13, 1993; Sworn Statement of Benjamin B. Vidal dated April 12, 1993 (Exh. C); RTC Records, p. 3.

[6] TSN, pp. 2-21, Jan. 13, 1995.

[7] TSN, pp. 2-20, Oct. 17, 1994.

[8] TSN, pp. 6-18, Oct. 18, 1994.

[9] TSN, pp. 2-7, 12-14, Feb. 13, 1995.

[10] People v. Guillermo, G.R. No. 113787, January 28, 1999.

[11] People v. Payot, G.R. No. 119352, June 8, 1999.

[12] People v. Atrejenio, G.R. No. 120160, July 13, 1999; People v. Verde, G.R. No. 119077, February 10, 1999.

[13] Supra; People v. Antonio, G.R. No. 118311, February 19, 1999.

[14] People v. Bahenting, G.R. No. 127659, February 24, 1999; People v. Alberca, 257 SCRA 613 (1996).

[15] People v. Verde, supra.

[16] People v. Lopez, G.R. No. 119380, August 19, 1999, citing People v. Oliano, 287 SCRA 158 (1998).

[17] Supra, citing People v. Vacal, 27 SCRA 24 (1969).

[18] People v. Daraman, 294 SCRA 27 (1998).

[19] People v. Cawaling, 293 SCRA 267 (1998).

[20] People v. Castillo, 273 SCRA 22 (1997).

[21] People v. Villamor, 292 SCRA 384 (1998).

[22] People v. Suplito, G.R. No. 104944, September 16, 1999; People v. Bautista, G.R. No. 96092, August 17, 1999; People v. Atrejenio, supra.; People v. Verde, supra.; People v. Gutierrez, G.R. No. 116281, February 8, 1999.

[23] People v. Atrejenio, supra., citing People v. Taclan, G.R. No. 123109, June 17, 1999; People v. Feloteo, 295 SCRA 607 (1998).

[24] People v. Suplito, supra.; People v. Bautista, supra.; People v. Panida, G.R. Nos. 127125 & 138952, July 6, 1999.

[25] People v. Suplito, supra.; People v. Atrejenio, supra.; People v. Panida, supra.

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