

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS. AMBITONIO PALMA GIL, ACCUSED-APPELLANT.

G.R. No. 121193. January 22, 1998

Ponente: PUNO, J.

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PUNO, J.:

Accused Ambitonio Palma Gil appeals the decision of the Regional Trial Court, 11th Judicial Region, Branch 4, Panabo, Davao convicting him of murder and imposing upon him the penalty of reclusion perpetua with all accessory penalties provided by law.[1]

It appears that on September 8, 1992, an information[2] was filed against Ambitonio Palma Gil, to wit:

"That on or about June 4, 1992, in the Municipality of Samal, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, with intent to kill, armed with a bladed weapon, did then and there willfully, unlawfully and feloniously attack, assault and stab one Valeriano O. Martin, thereby inflicting upon him wound which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

"CONTRARY TO LAW."

Accused entered a plea of not guilty. The prosecution's evidence was received by Judge Mariano C. Tupas. On August 4, 1994, Judge Tupas retired and was succeeded by Judge Bernardo Saludaes. It was Judge Saludaes who received the testimony of accused and his witnesses.[3]

The prosecution established that the crime at bar was committed on June 4, 1992 at the seashore of Tinangisan, Aundanao, Samal, Davao. On that day, at about three o'clock in the morning, Bonifacio Martizano, together with his 14 year old son, Jorry, went to sea to catch fish. They brought along a petromax, a lamp powered by kerosene, and tied it on the front portion of their banca. To catch a specie of fish called "bolinao", which by nature is attracted to light, Bonifacio removed the cover of the petromax and allowed its light to spread out.

At about four o'clock, the Martizanos returned to the shoreline. At three (3) fathoms[4] away from the shoreline, they saw accused Gil stab Valeriano Martin at his back with a six-inch knife.[5] Martin fell on the ground, and the accused immediately paddled away in his banca. Bonifacio Martizano rushed towards the victim with the petromax. Terrified, he repaired to the house of his father-in-law, Pablo Adlawan, and reported the incident. They returned to the crime scene and found onlookers milling around Martin's body. The body was brought to Adlawan's house. Late in the afternoon, Eleuterio Martin, the victim's brother, informed the Samal Police Station of the incident.[6]

The victim's wife, Serafia Martin was also informed that her husband had been stabbed to death. At her parents' house, she found that her husband suffered a stab wound at the left back portion of his body. She was told that the accused perpetrated the crime.[7]

The town's sanitary inspector, Eduardo Parnas drew a sketch of the location of the stab wound.[8] On the basis of

said sketch, Dr. Leonila D. Ferrer, the Municipal Health officer of Babak, Samal, Davao issued a death certificate.[9]

The following morning of June 5, 1992, SPO2 Henry Bustamante and PO3 Bariga of the Samal Police Station investigated the stabbing report. They failed to inspect the body of the victim as it was already placed inside a coffin. SPO2 Bustamante interviewed Eleuterio Martin, as well as Bonifacio and Jorry Martizano. With the help of Baranggay Captain Virgilio Ang, they arrested the accused at his house.[10]

To exculpate himself, the accused offered an alibi. He alleged that at three o'clock in the morning of June 4, 1992, he went to the house of Agoncillo Mamontong, some 20 meters away from his house. They proceeded towards the shoreline to perform their duties as members of the Bantay Dagat. They were joined by Crispin Casinto, another Bantay Dagat member.

On June 5, 1992, he was surprised when police officers arrested him in his house. They detained him at the Municipal Building at Penaplata, Samal, Davao. After ten (10) days, SPO2 Bustamante inquired if he was willing to settle the case. He said he was not if it would cost money.[11]

Crispin Casinto corroborated accused Gil's alibi. Casinto claimed that they were together on duty as members of the Bantay Dagat at the time and date when the victim was stabbed. They were at the seashore of Tagpopong, Babak, Davao with Agoncillo Mamontong on the look out for illegal fishermen upon the orders of Barangay Captain Virgilio Ang. [12]

Agoncillo Mamontong also corroborated accused's alibi. He testified that he, Casinto and the accused were together from three o'clock to seven o'clock that morning of June 4, 1992 doing their duty as members of Bantay Dagat.[13]

The trial court found the accused guilty of murder beyond reasonable doubt. It held that the "alibi of the accused was weak and flimsy and very easy to concoct to suit one's self-serving purpose." It gave credence to the eyewitness accounts of Bonifacio and Jorry Martizano. It also considered the attempt of the accused to settle the case as an implied admission of guilt [14] and the existing grudge between the victim and the accused as possible motive for the stabbing.[15]

The dispositive portion of the Decision of March 3, 1995 states:

"WHEREFORE, consistent with all the foregoing findings, this Court finds the accused Ambitonio Palma Gil y Colong, 52 years of age, married to Rita, a fisherman by occupation and resident of Tagpopongan, Babak, Samal Island, Davao, guilty beyond reasonable doubt of the crime of murder, penalized under Article 248 of the Revised Penal Code, as charged in the information, and is hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalty provided by law, and to indemnify the widow, Serafia Martin, and Heirs (sic) of Valerio the amount of fifty thousand (P50,000.00) Pesos (sic), as indemnity for such death, Twenty Thousand (P20, 000.00) Pesos (sic), as and for moral damages, and Ten Thousand (P10,000.00) Pesos (sic), as and for exemplary damages, and Five Thousand (P5,000.00) Pesos (sic), for burial and necessary expenses in connection hereto, and to pay the costs.

In his appeal, accused assigns the following errors committed by the trial court:

"I

"THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCONSISTENT AND CONFLICTING TESTIMONIES OF THE PROSECUTION WITNESSES.

"II

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

"III

"ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF MURDER INSTEAD OF HOMICIDE."[16]

In support of his first and second assigned errors, the appellant stresses the inconsistent testimonies of Bonifacio and Jorry Martizanos to prove that they failed to positively identify him as the killer. Appellant also contends that they lied because of their relationship with the victim - Bonifacio is married to the sister of Valeriano's wife while Valeriano is Jorry's uncle.[17] He further claims that if the Martizanos were at the scene of the crime their natural reaction should have been to help the victim defend himself against the assailant.

In his third assignment of error, appellant contends that assuming he is guilty, he should be convicted for homicide and not for murder for treachery was not established by the prosecution. He claims that the stab wound at the back sustained by the victim was not proved by a proper medical certificate. Dr. Leonila Ferrer who issued the death certificate admitted that she did not see the victim's body.[18]

On the other hand, the Office of the Solicitor General explains that the alleged inconsistencies in the testimonies of the Martizanos cover minor details. What is telling, according to the Solicitor General, is the weakness of the alibi of the appellant. Appellant himself admitted that Tagpopong Beach is only 2,000 meters away from the scene of the crime and the distance could be negotiated by banca within 1 1/2 hours if one is going against the current of the sea and only 30 minutes, if one is going with the current. The appellant also admitted that in the early morning of June 4, 1992, the sea was clear, thus, appellant could have paddled his banca from Tagpopong to the scene of the crime. The Solicitor General also justifies the finding of treachery as the attack was sudden, behind the back, and deliberate as it was the result of a prior grudge.[19]

We find merit in the appeal.

It is a settled rule that the trial court's assessment of the credibility of witnesses deserves great respect. The reason for the rule as often stated is that trial judges have the sole opportunity to observe the demeanor of witnesses on the witness stand.[20] However, the rule is subject to well-established exceptions. Thus, findings of the trial court which are arbitrary[21] and misappreciations of material inconsistencies in the testimonies of witnesses are reviewed and corrected on appeal. We have also held that where one judge received the testimonies of witnesses but another judge penned the decision, the rule respecting findings of trial courts will not be rigorously applied since the rationale for the rule does not exist. In said cases, the findings of facts of the trial judge are treated with caution.

We shall now review the case at bar prescinding from these baseline propositions. We rule that the evidence of the prosecution was misappreciated by the trial judge especially the eyewitness account of the Martizanos and that its totality can not convict the appellant for murder.

First, the assertion of the Martizanos that they saw appellant stab the victim is difficult to believe. It is out of the ordinary for the appellant to stab the victim upon chancing upon him at the shore when fishermen were present and the place well-lighted by their petromax. Appellant should have known that he would be identified and his natural reaction after the stabbing would have been to hide. Yet, his actions after the incident were not consistent with one who had just killed a person. SPO2 Bustamante found him unperturbed in his house on the day after the stabbing:

"(Prosecutor Bijis)

"Q:

Now, since you were already informed of the name of the accused, what did you do next?

"(SPO2 Bustamante)

"A:

I relied on the information of the brother Eleuterio Martin but I also conducted initial investigation to possibly identify the responsible person or the suspect of the said crime.

"Q:

And what was the result?

"A:

During my investigation, one among the persons I have investigated was Bonifacio Martin and also his son Roy and during my initial investigation they really confessed that the suspect was Ambitonio Palma Gil.

"Q:

And what was the last step that you did?

"A:

I am basing to (sic) the information given to me by the witnesses and I sought the help of the barangay officials of Aondanao so that we have to proceed to Tinangisan, Babak to get the suspect, and upon our arrival thereat, we also sought the assistance of the Barangay Captain of that place by (sic) one Virgilio Ang and he guided us to the house of the suspect.

"Q:

Was the person of the suspect there?

"A:

Upon arrival in the house of the suspect, the suspect was upstairs and thereafter we were allowed to enter and immediately I told him that he was under arrest for having committed the crime.

"Q:

Did he resist the arrest?

"A:

No, he voluntarily submitted himself and thereafter we went to the Samal Police Station.

"Q:

While in his house, did you question him why you were there to arrest him?

"A:

I told him that he committed a crime.

"Q:

What was the answer?

"A:

At first he denied but still I effected the arrest because I have probable ground to arrest him based on the information given to me by the witnesses.[22]

Second, there are material inconsistencies in the testimonies of the Martizanos which make their assertion that they were present at the scene of the crime doubtful.

(1) Jorry Martizano testified that no other person was present in the area when they moved towards the shore except the appellant and the victim:

"(Atty. Ano-os)

"Q:

You said that you spotted the accused, you mean to say that you were already on the shore during that time?

"A:

We went down the banca.

"Q:

And when you went down the banca immediately you went out the banca?

"A:

No.

"Q:

Because you and your father were busy fixing the bolinao that you caught during that time?

"A:

Yes sir.

"Q:

And nobody from your family met you?

"A:

Nobody.

"Q:

So there were no other person present when you alighted from your banca except the accused?

"A:

Yes, sir.[23]

In contrast, Bonifacio testified that three people were in the area when the appellant stabbed the victim:

"(On cross-examination)

"(Atty. Ano-os)

"Q:

Now going back to the seashore, before you embarked you were just... There were no other persons around, correct?

"A:

None, sir.

"Q:

You mean to say that only you and your son were at sea?

"A:

Yes, sir.

"Q:

Now, when you went back nearby the seashore there were already persons around, correct?

"A:

Yes sir.

"Q:

About ten persons, correct?

"A:

Three persons were there.

"Q:

And you were able to see them when you were nearby the seashore already?

"A:

Yes, sir.

"Q:

And you could not see their faces.

"A:

Their faces were clear to me.

"Q:

And these persons were not bringing with them petromax, correct?

"A:

Yes, sir, they did not.

"Q:

So all that you can see on the seashore were just trees and persons, correct?

"A:

Yes, sir, the three persons.

"Q:

And the three persons when you asked them, were talking with one another, correct?

"A:

Yes, sir.

"Q:

Now, you said that you saw three persons on the seashore when you were still nearby the seashore that was when you were still getting the "bolinao" that you have gotten. You can still recall the shorts or the pants that the persons you saw were wearing?

"A:

Yes, sir.

"Q:

Now, you said that you saw the accused, what was the shorts of the accused?

"A:

He was covering his body with a towel up to the shoulder portion of his body.

"X x x.

"Q:

Still going along with the person you have seen hanging on his shoulder the towel, what was the pants of that person

"A:

He was wearing black pants.

"Q:

How far was that person from that of the rest.

"A:

The three persons were about to assist me in unloading the "bolinao". Ambitonio and Valeriano were in a different place.

"Q:

And who were these three persons.

"A:

The three persons were my brother-in-laws, Alfredo Marcos, Eddie Adlawan and Alejandro Adlawan. The brothers of my wife and Alfredo Marcos.

"Q:

Do you mean to say that you had a previous agreement with your relatives to meet in that seashore in that particular time after you went out fishing?

"A:

Yes, sir, they were waiting for us.[24]

(2) Jorry testified they caught one kilo of fish:

"(Atty. Ano-os)

"Q:

What was the value of the fish you caught?

"(Jorry)

"A:

Maybe, one (1) kilo.

"Q:

And where did you place it?

"A:

At that time, we have not yet gathered the anchovies.

"Q:

Now you said you have not yet gathered that bolinao, you know already that that was only one (1) kilo?

"A:

Yes, sir.

"Q:

So you have not gathered the fish?

(Pros. Bijis)

"Your Honor, the subject matter of this case is not the bolinao because the subject matter here is Murder.

(Atty. Ano-os)

"I intend to test the credibility of this witness." [25]

Again in contrast, Bonifacio testified that they caught five (5) kilos of "bolinao".

"(Atty. Ano-os)

"Q:

And meanwhile you were then busy catching "bolinao"?

"(Bonifacio)

"A:

Yes, sir, I gathered the fish net.

"Q:

And you concentrated on the "bolinao"?

"A:

Yes, sir.

"Q:

What was the volume of your catch?

"A:

Five kilos."[26]

(3) Jorry testified that the tide was low when the crime was committed, thus:

"Q:

Jorry Martizano, you said that you actually saw the way the accused stabbed the victim, correct?

"A:

Yes, sir.

"Q:

And how far were you and that of your father when you saw the accused stabbing the victim?

"A:

Very near.

"Court Interpreter:

Witness pointing the place from the witness stand to the place where the fiscal is sitting, which is more or less, two (2) to three (3) meters.

"(Atty. Ano-os)

"Q:

And that was still at the time when you were still on the banca riding, is that correct?

"A:

No more.

"Q:

Was it high tide or low tide?

"A:

Low tide.[27]

In contradiction, his father testified that it was high tide:

"(Atty. Ano-os)

"Q: You said you immediately alighted the banca when you saw your relatives (sic) being killed by the accused, which is which now?

"A: My brothers-in-law came after the incident already. I together with my in-laws were the ones who went to the house of my father-in-law to inform them.

"Q: Now, after you went to the house of your father-in-law you did not go back anymore to your banca and your fish, the "bolinao"?

"A: Yes, sir.

"Q: And because of the rushness of the urgency (sic) of the situation wherein you went to the house of your father-in-law you did not even care about the safety of your banca and that of your "bolinao"?

"Q: Yes, sir.

"A: And because of that you were not able to see anymore your banca when you returned to the house of your father-in-law?

"Q: After I returned from the house of my father-in-law I still saw my banca and it was already daytime when I returned.

"Q: Was it high tide or low tide when you left your banca and your fish?

"A: When I left the banca it was high tide.

"Q: And as a matter of fact you could even clearly see the waves moving to and fro during that time, correct?

"A: Yes, sir."[28]

The Martizanos should not differ in their observations about the tide. The rise and fall of the tide is significant to fishermen. It is critical to their activity, thus, they pay extra attention to the behavior of the tide. There is no reason for them to differ.

(4) They also contradicted each other on the wearing apparel of the appellant. Bonifacio stated that the appellant was wearing black pants with his body covered by a towel,

"(Atty. Ano-os)

"Q:

Now, you said that you saw the accused, what was the shorts of the accused?

"(Bonifacio)

"A:

He was covering his body with a towel up to the shoulder portion of his body.

"x x x.

"Q:

Still going along with the person you have seen hanging on his shoulder the towel, what was the pants of that person

"A:

He was wearing black pants."[29]

Jorry stated that the assailant was wearing a malong:

"(Atty. Ano-os)

"Q:

When you left your banca, you immediately went home or you went back to the banca afterwards, after you have spotted the person?

"(Jorry)

"A:

I did not go home.

"Q:

Did you not see him holding something?

"A:

I saw him holding something.

"Q:

By the way, what was he wearing, a T-shirt or Polo Shirt?

"A:

He was wearing a "Malong" at that time.

"Q:

Wearing a "Malong" all over?

"A:

Yes, Sir."[30]

These inconsistencies are not trivial for they are too basic to be the subject of differences. They make the testimonies of the Martizanos too tenuous to justify conviction of appellant for murder and a sentence of reclusion perpetua.

Third, the alleged grudge between the appellant and the victim was not established contrary to the finding of the trial court. In her testimony, the widow failed to prove the alleged grudge, thus,

"(Prosecutor Bijis)

"Q:

Do you know if there was no misunderstanding between the two?

"(Serapia Martin)

"A:

No, sir.

"Q:

Now, in connection with this case, you gave a statement before the police? Did you give a statement before the police in connection with the death of your husband?

"A:

Yes, sir.

"X X X.

"Q:

Now, in paragraph eight of your affidavit, I will read it and translate it. "When you were asked about Ambitonio Palma Gil, the accused, your answer is that "he had a personal grudges (sic) to my husband Valeriano Martin for two (2) years already, when in fact Ambitonio Palma Gil attempted to stab my husband sometime in the month of September, 1991".

"A:

Yes, Sir, it's true.

"Q:

What was the grudges all about?

"A:

I do not know."[31]

Fourth, the trial court erroneously considered the alleged attempt of appellant to settle the case through a certain Datu Romeo Dawang as an admission of guilt. Neither Datu Dawang nor the victim's relatives testified on the alleged settlement. In fact, the information was only elicited by the prosecution from defense witness Casinto during cross-examination, despite continuing objection by the defense lawyer. But it was not proven that appellant himself initiated the settlement, thus:[32]

"(On Cross examination by Fiscal Bijis)

"Q:

Now, as resident of Tagbobongan you knew that of Datu Romeo Dawang? (sic)

"A:

Yes, I knew Datu Romeo Dawang. (sic)

"Q:

He is a moslem? (sic)

"A:

A Samal native.

"Q:

And he is a datu-datu in that plae among the moslem (sic) communities?

"A:

Yes, sir.

"Q:

This Ambitonio Palma is also a native of that place?

"A:

Yes, sir.

"Q:

So, with you?

"A:

Yes, sir.

"Q:

And in fact, Datu Romeo Dawang called the people to settle this case amicably you know that?

"A:

Yes, sir.

"Q:

In fact, the accused Ambitonio offered P10,000.00 to settle the case you know that?

"Atty. Ano-os:

We would like to object, I think, this time we will object.

"Court:

Let him answer.

"X X X.

"A: Yes.

"Q:

When that offer was made you were there?

"A:

I was not present when they made that offer but I only heard it from Datu Dawang.

"Q:

And that offer of money was rejected by the wife?

"A:

I do not know.

"Q:

And it was the accused who offered the money?

"A:

What I heard is that it was Datu Dawang who offered the amount.

"Q:

And this Datu Romeo Dawang interfered to settle the case because he is interested that the case against Ambitonio Palma Gil be dismissed or withdrawn?

"A:

Yes, sir.

"Q:

To the extent that this Romeo Dawang sought your help to settle the case?

"A:

Datu Dawang was the one who requested them."[33]

Fifth, we note that the eyewitnesses in this case are relatives of the victim. The truth of their testimonies should be given the strictest of scrutiny.

In sum, the prosecution evidence leaves much to be desired to send the appellant to jail for life. A conviction in a criminal case must be supported by proof beyond reasonable doubt[34] which means a moral certainty that the accused is guilty. [35] Nothing less can deprive a person of his liberty for liberty is the most precious of man's freedoms.

IN VIEW WHEREOF, accused-appellant AMBITONIO PALMA GIL is ACQUITTED. The decision of the Regional Trial Court, Branch 4, Panabo, Davao in Criminal Case No. 92-208 convicting accused-appellant of murder is SET ASIDE. No costs.

SO ORDERED.

Regalado, (Chairman), Mendoza, and Martinez, JJ., concur.

[1] Decision penned by Judge Bernardo V. Saldares.

[2] Information dated August 31, 1992; Rollo, p. 1.

[3] Decision, p. 2, Rollo, p. 13.

[4] A unit of measure equivalent to 1.8 meters.

[5] TSN, April 27, 1993, pp. 12-19; April 29, 1993, pp. 5-9.

[6] Exhibit "D", Original

[7] TSN, April 28, 1993, pp. 2-10.

[8] Exhibit "A", "A-1", "A-2".

[9] Exhibit "B", "B-1" to "B-4".

[10] TSN, April 28, 1993.

[11] TSN, September 6, 1994, pp. 2-11.

[12] TSN, January 11, 1994, pp. 3-6.

[13] TSN, March 3, 1994, pp. 3-6.

[14] Ibid, pp. 15-16.

[15] Decision, p. 11; Original Record, p. 95.

[16] Appellant's Brief, pp. 1-2; Rollo, pp. 45-46.

[17] TSN, April 29, 1993, pp. 4-9.

[18] Appellant's Brief, p. 14; Rollo, p. 56.

[19] Appellee's Brief, pp. 17-18; Rollo, pp. 107-108.

[20] *People v. Manalo*, 229 SCRA 479 (1994); *People v. Abo*, 230 SCRA 612 (1994); *People v. Garnes*, 230 SCRA 270 (1994).

[21] *People v. Canceran*, 229 SCRA 581 (1994).

[22] TSN, April 28, 1993, p. 16.

[23] TSN, April 29, 1993, pp. 15-16.

[24] TSN, April 27, 1993, p. 25-26.

[25] TSN, April 29, 1993, p. 16.

[26] TSN, April 27, 1993, p. 23.

[27] TSN, April 29, 1993, p. 14.

[28] TSN, April 27, 1993, p. 29.

[29] *Ibid*, p. 24.

[30] TSN, April 29, 1993, pp. 16-17.

[31] TSN, April 28, 1993, p. 9.

[32] TSN, January 11, 1994, pp. 14-20.

[33] *Ibid*, pp. 18-19.

[34] *People v. Camba*, 232 SCRA 280 (1994).

[35] *People v. Argawanon*, 231 SCRA 614 (1994).

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