

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEODORICO CLEOPAS AND FLORENCIO PIRAME, ACCUSED.

G.R. No. 121998. March 09, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision dated January 5, 1995, of the Regional Trial Court of Tagbilaran City, Branch 1, in Criminal Case No. 8343 finding the accused Teodorico Cleopas and Florencio Pirame guilty of murder beyond reasonable doubt.[1]

The facts of the case, as found by the trial court, are as follows:

"The factual findings of the Court based on the testimony of the witnesses for the prosecution and the defense are, as follows, to wit:

- a) That in the morning of March 18, 1993 near the house of Demetrio Cleopas, father of the accused Teodorico Cleopas and Epifanio Cleopas at Barangay Tubog, Ubay, Bohol, the eye-witness Cipriano Supero saw the victim in the instant case Pedro Torrenueva while being held by the accused Florencio Pirame (sic) the accused Epifanio Cleopas struck him with an iron pipe and by the accused Teodorico Cleopas with a piece of wood, hitting the aforementioned victim Pedro Torrenueva on the forehead, which, as a consequence, fell on the ground dead;
- b) That to cover the discovery of the commission of the crime the dead body of the victim Pedro Torrenueva was buried in the well near the house of Demetrio Cleopas father of the accused Epifanio Cleopas who is still at large and the accused Teodorico Cleopas;
- c) That the testimony of the other witnesses for the prosecution SPO2 Sabeniano Atopan, Candida Cosip, Evelyn Torrenueva and Pedro Acquiart viewed in their totality with the testimony of the eye-witness Cipriano Supero points to the accused Teodorico Cleopas, Epifanio Cleopas and Florencio Pirame as the perpetrators (sic) of the crime as charged." [2]

On May 13, 1993, the three accused, Teodorico Cleopas, Epifanio Cleopas and Florencio Pirame, were charged with the crime of murder under the following information:

"That on or about the 18th day of March, 1993, in the municipality of Ubay, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused conspiring, confederating and mutually helping one another, with intent to kill, armed with stainless pipe and a piece of wood, with treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously, attack, assault and strike one Pedro Torrenueva who was unarmed and unaware thereof with the said stainless pipe and piece of wood thereby inflicting fatal injuries on the different parts of the victim's body which resulted to his immediate death; to the damage and prejudice of the heirs of the deceased to be proved during the trial of the case.

Acts committed contrary to the provisions of Art. 248 of the Revised Penal Code." [3]

Upon arraignment, Florencio Pirame and Teodorico Cleopas entered a plea of not guilty. Epifanio Cleopas was not arraigned, being at large.[4] Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses: (1) SPO2 Sabiniano Atupan, who led the police team that conducted the investigation of the killing; (2) Dr. Arnold Cagulada, the Municipal Health Officer of Ubay, Bohol, who examined the cadaver of the victim; (3) Candida Cusip,[5] an aunt of the victim, who testified why the victim ventured towards the house of accused Teodorico Cleopas on the day of the incident; (4) Evelyn Torrenueva, the wife of the victim, who corroborated the testimony of Cusip and testified as to the damages incurred by her due to her husband's death; (5) Pedro Acquiart, who joined the police in the search for the victim's body; and (6) Cipriano Supero, the alleged eyewitness to the killing who identified all the three accused as the victim's assailants.

In turn, the defense presented accused Teodorico Cleopas and appellant Florencio Pirame, who both testified on their behalf.

On January 5, 1995, the Regional Trial Court of Tagbilaran City, Branch I, rendered its decision finding Teodorico Cleopas and Florencio Pirame guilty of the crime of murder. It disposed:

"PREMISES CONSIDERED, the Court finds the accused Teodorico Cleopas and Florencio Pirame guilty of the crime of Murder punished under Article 248 of the Revised Penal Code and hereby sentences each one of them to suffer an imprisonment of RECLUSION PERPETUA, with the accessories of the law and to pay the cost.

The accused Teodorico Cleopas and Florencio Pirame are further ordered to indemnify the surviving spouse of the deceased victim Pedro Torrenueva in the amount of Fifty Thousand Pesos (P50,000.00) each and the amount of Twenty Three Thousand Two Hundred Forteen (sic) Pesos (P23,214.00) representing burial and incidental expenses and Fifty Thousand Pesos each (P50,000) representing moral and exemplary damages and in all instances without subsidiary imprisonment in case of insolvency.

It appearing that the accused in the instant case Teodorico Cleopas and Florencio Pirame have undergone preventive imprisonment they are entitled to the full time of their preventive imprisonment to be deducted from their term of sentence if they have executed a waiver otherwise they will only be entitled to 4/5 of the time they have undergone preventive imprisonment to be deducted from their term of sentence if they have not executed a waiver.

The foregoing separate Decision does not affect the accused Epifanio Cleopas who is still at large who will be tried separately as soon as he shall have been arrested.

SO ORDERED."[6]

Only Florencio Pirame appealed from the decision of the trial court. He assigns the following errors in his brief:

"I

THE TRIAL COURT COMMITTED GRAVE ERROR IN RELYING ON THE WEAKNESS OF THE DEFENSE EVIDENCE RATHER THAN ON THE STRENGTH OF THE EVIDENCE FOR THE PROSECUTION IN FINDING THE ACCUSED-APPELLANT PIRAME GUILTY OF MURDER BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT COMMITTED GRAVE ERROR IN GIVING CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESSES CIPRIANO SUPERO AND CANDIDA CUCIP IMPLICATING ACCUSED-APPELLANT FLORENCIO PIRAME IN THE CRIME OF MURDER DESPITE THEIR MANIFEST UNBELIEVABLE, IMPROBABLE AND UNRELIABLE TESTIMONY."[7]

In his brief, appellant alleges that the declaration of Demetrio Cleopas, both in the course of police investigation and in a sworn statement, to the effect that his two sons were responsible for the killing did not make any mention of him, hence, he should not have been implicated. Such declaration, appellant contends, as made in the sworn statement, should have been considered by the trial court as part of the *res gestae*. In addition, he urges that the trial court should have considered the testimony of accused Teodorico Cleopas, who testified that he did not see appellant on the date of the incident. He also contends that contrary to the trial court's view, there was no "uniting point" or corroboration between the testimonies of Cipriano Supero, the alleged eyewitness to the incident, and that of the other prosecution witnesses. Supero's testimony, he further claims, should not have been considered by the trial court as this witness was a coached and rehearsed witness, who testified only two months after the incident, and whose testimony is allegedly not worthy of belief. Appellant also asserts that while he invokes the weak defense of alibi, the evidence against him is likewise weak, and did not prove his guilt beyond reasonable doubt. Lastly, appellant contends that the trial court erred in finding him to be a co-conspirator of the other two accused.

In its brief, the Office of the Solicitor General contends that the positive identification by prosecution witness Cipriano Supero of appellant at the scene of the crime should prevail over appellant's denial and alibi. It further argues that a conspiracy to kill the victim was present.

Taken together, these contentions of appellant and the appellee point to one issue, which is the credibility of witnesses in this case. We find that credibility preponderates in favor of the prosecution, and against the appellant.

Appellant makes much of the testimony of prosecution witness SPO2 Atupan. This witness testified that in the course of police investigation, Demetrio Cleopas, father of accused Teodorico and Epifanio Cleopas, said that his two sons were responsible for the killing. Demetrio reiterated the same allegation in a sworn statement made before the Ubay Police on March 24, 1993,[8] which appellant also relies upon to support his claim of innocence. This particular allegation in the sworn statement, appellant urges, should be considered as part of the *res gestae*, as it "grew out of the main fact, shed light upon it, and which are (sic) unpremeditated, spontaneous, and made at a time so near, subsequent to the main act, as to exclude the idea of deliberation and fabrication." [9]

This assertion made by Demetrio Cleopas in his sworn statement is not part of the *res gestae*. *Res gestae* refers to those exclamations and statements made by either the participants, victims, or spectators immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.[10] The allegations made by Demetrio Cleopas in his sworn statement were not made immediately after the killing of the victim. They were made on March 24, 1993, or six days after the killing of the victim on March 18. As we have held that a statement given a day after the incident in answer to questions propounded in an investigation cannot be considered part of the *res gestae*, [11] so too with the declarations of Demetrio Cleopas in his sworn statement.

Moreover, resort to the very sworn statement invoked by appellant would reveal that Demetrio Cleopas himself was in no position to identify all the perpetrators of the crime. The pertinent portion of the statement reads as follows:

"Q: Do you remember where were you on March 18, 1993?

A: Yes, I was in our nipa hut near our house.

Q: What were (sic) the unusual incident that you have witnesses (sic) on that day: (sic)

A: On March 18, 1993 at 10:00 o'clock in the morning more or less, I heard a shout from my wife that's why

I went near to her and what I have seen was a man lying on the ground which in my belief was already dead.

Q: What was the cause of death of that person?

A: When I asked my son Epifanio Cleopas alias 'Paning' what was that incident and he answered that they mutually struck him because he boxed one on (sic) my son named Teodorico Cleopas @ 'Tido'y'. "[12]

It is clear that Demetrio Cleopas did not see the actual killing of the victim. He only learned of the details of the killing from his son Epifanio. Thus, SPO2 Atupan's testimony that Demetrio Cleopas named his sons as the perpetrators of the crime, without mention of appellant Florencio Pirame, and which declaration was based on Epifanio Cleopas' admission of guilt for the killing, is in effect hearsay twice removed. It cannot be used to absolve appellant of his participation in the crime. Further still, the testimony of accused Teodorico Cleopas that he never saw appellant on the date of the incident,[13] does not support the declarations of Demetrio Cleopas, as Teodorico's testimony cannot be expected to implicate a co-accused, being self-serving as it is.

Appellant next assails the trial court's dictum to the effect that the testimonies of the prosecution witnesses, viewed in their totality, point to the guilt of all three accused, including appellant.[14] He claims that it was only Cipriano Supero who testified that he saw appellant hold the arms of the victim while the other two accused hit him on the head with a stick and a steel pipe. This, he asserts, was not corroborated by any other prosecution witness, hence there was no "unifying point" in their testimonies.

That the testimony of Supero was not corroborated by any other witness is of no moment. It is axiomatic that the testimonies of witnesses are weighed, not numbered, and the testimony of a single witness may suffice for conviction if found trustworthy and reliable. That the prosecution had only one eyewitness to implicate appellant hardly negates its cause. There is no law, which requires that the testimony of a single witness needs corroboration except where the law expressly mandates such corroboration.[15] Indeed, the testimony of a single witness, when positive and credible, is sufficient to support a conviction even of murder. Hence, a finding of guilt may be based on the uncorroborated testimony of a single witness when the trial court finds such testimony positive and credible.[16]

On this score, appellant contends that the testimony of Cipriano Supero should not have been considered by the trial court, as Supero is allegedly a coached and rehearsed witness. In effect, appellant assails Supero's credibility. He points out that on direct examination, Supero initially stated that the killing took place "inside the house of Demetrio Cleopas", but later on modified his answer to clarify that the victim was killed "outside the house." [17] In addition, appellant emphasizes that it took Supero two months after the death of the victim to come out and volunteer to testify as to what he had seen transpire on the morning of March 18, 1993. Appellant asserts that this delay further proves that Supero was a rehearsed witness.

These contentions are without merit. The initial lapse in Supero's testimony as to whether the crime was committed inside or outside of the house of Demetrio Cleopas was eventually settled by the trial court when it asked clarificatory questions. Supero was nonetheless able to testify on the actual killing of the victim, as well as identify all the perpetrators of the crime. The earlier inconsistency in his testimony, slight as it is, cannot suffice to impeach this witness. Settled is the rule that inconsistencies in the testimonies of witnesses when referring only to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony. Although there may be inconsistencies on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailants. Slight contradictions in fact even serve to strengthen the sincerity of the witness and prove that his testimony is not rehearsed. They are safeguards against memorized perjury.[18]

Further still, the delay of Supero in volunteering to testify on the incident is of little consequence. At the time

Supero witnessed the killing, all he saw was the striking of the victim by the assailants while appellant held the victim's arms. The victim then fell to the ground, motionless. Thereafter, Supero left, fearful of what he had seen.[19] He did not divulge this to anyone else except his mother, for they were afraid of being involved in the matter.[20]

At the time he witnessed the incident, Supero was not aware that the victim had died as a result of the assault. He came to know that the victim died only two months after, when word spread that the body of the victim was discovered in the well of Demetrio Cleopas.[21] Upon learning of the victim's fate, he came forward to reveal what he had seen when he testified in open court. Hence, appellant cannot claim that Supero's report and testimony on the incident was belatedly made. Thus, the two-month delay in reporting the account of the eyewitness in this case does not give rise to any doubt on the veracity thereof. As we have held, the belated report and the reluctance of witnesses to testify in criminal actions is a matter of judicial notice.[22]

Against Supero's positive identification of appellant as the person who held the hands of the victim while accused Teodorico and Epifanio Cleopas struck him, appellant advanced the defense of alibi. He testified that he was harvesting palay the whole day at Barangay Corazon, San Miguel, Bohol on March 18, 1993.[23] The distance of the house of Demetrio Cleopas from his house, which is located at the center of Barangay Corazon,[24] was estimated by him to be seven kilometers.[25] We find this distance of seven kilometers to be less than sufficient for purposes of an air-tight alibi. Alibi is an affirmative defense and, considering that it is easy to concoct, when an accused relies thereon, he has the burden of proving it, i.e., that he could not have been at the scene of the crime at the time of its commission. For alibi to prosper, an accused must prove that not only was he absent at the scene of the crime at the time of its commission, but also that it was physically impossible for him to be so situated at said instance.[26] This, appellant failed to do, more so when his claim that he was harvesting palay on the day the killing took place was not corroborated by anyone else.

Appellant asserts that the trial court erred in finding appellant a conspirator, hence guilty of murder beyond reasonable doubt. We find the trial court's finding of the existence of a conspiracy to kill the victim well-taken. Cipriano Supero's testimony discloses that appellant held the victim's arms in a cross-wise manner while Epifanio and Teodorico Cleopas struck the victim on the forehead with a steel pipe and a long piece of wood, respectively. Thereafter, the victim fell to the ground.[27] These concurrent actions of appellant and his co-accused reveal a mutual intention and determination to kill the victim, an indicator of conspiracy. Conspiracy, in order to exist, does not require an agreement for an appreciable period prior to the commission of the crime; it exists if, at the time of the commission of the offense, the accused had the same purpose and was united in its execution.[28] The fact that appellant conspired in the commission of the crime charged was sufficiently and convincingly shown by his active participation in holding the victim to render him immobile, thus enabling the other two accused to consummate their dastardly act of killing the victim.[29]

We note, however, that the trial court in its decision did not make any definitive finding on the circumstances which qualified the crime to murder. While the information charging appellant and the other accused alleged that the commission of the crime was attended by treachery, evident premeditation and abuse of superior strength, the court did not expound upon or point to the existence of these aggravating circumstances in the case at bar. In other words, it did not state its basis for qualifying the crime to murder. We are thus required to determine if the crime at bar could be qualified to murder, to resolve this appeal. It is axiomatic that an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as errors by the parties, if their consideration is necessary in arriving at a just resolution of the case.[30]

In the present case, the prosecution alleged the attendance of treachery in the commission of the crime. The

requisites for treachery to be a qualifying circumstance are: (1) the employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) deliberate or conscious adoption of such means, method, or manner of execution.[31]

Cipriano Supero testified that appellant Florencio Pirame held the arms of the victim while Epifanio and Teodorico Cleopas struck the victim on the head, causing his death. The victim was defenseless during the attack as his hands were restrained by appellant, facilitating the beating of the victim by the other perpetrators. Clearly, the manner by which the victim was restrained and assaulted was deliberately and consciously adopted by his assailants to ensure his demise. Thus, there was treachery in the killing of the victim, as the offenders employed means, methods or forms in the execution thereof which tended directly and specially to insure its execution, without risk to themselves arising from the defense which the victim might take.[32]

The attendance of evident premeditation in the commission of the crime, though alleged in the information, is not supported by the evidence, as there is no showing as to when appellant and his co-accused determined to kill the victim. Likewise, abuse of superior strength, being absorbed by treachery,[33] cannot be considered as an aggravating circumstance in this case.

As treachery was present when the victim was killed, we find that the crime of murder was committed by appellant and his co-accused. At the time of the commission of the crime, the imposable penalty for murder was reclusion temporal in its maximum period to death. There being no aggravating or mitigating circumstances attending the killing, the applicable penalty would thus be the medium period of the imposable penalty, which is reclusion perpetua.[34]

We concur with the trial court's award of P50,000.00 each from appellant Florencio Pirame and co-accused Teodorico Cleopas as death indemnity to the victim's heirs, which is in line with current jurisprudence. We also find the amount of P23,214.00 awarded by the trial court as "burial and incidental expenses" supported by the records.[35] The award of P50,000.00 from each accused as moral and exemplary damages, however, is unsupported. The widow of the victim did not testify on any mental anguish or emotional distress, which she suffered as a result of her husband's death. The absence of any generic aggravating circumstance attending the crime likewise precludes the award of exemplary damages.

WHEREFORE, the instant appeal is DENIED. The decision of the Regional Trial Court convicting appellant Florencio Pirame of the crime of murder and sentencing him to reclusion perpetua, and to pay the widow of the victim P50,000.00 as civil indemnity and P23,214.00 as actual damages, as well as the costs is AFFIRMED, but the award of P50,000.00 as moral and exemplary damages is hereby DELETED, there being no legal and factual basis therefor.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 19-25.

[2] Id. at 80-81.

[3] Records, p. 27.

[4] Id. at 45.

[5] Also spelled as "Cucip" or "Cosip" in other parts of the Records.

[6] Supra, note 1 at 81-82.

- [7] Id. at 54.
- [8] Supra, note 3 at 13-14.
- [9] Rollo, pp. 67-68.
- [10] People vs. Manhuyod, Jr., 290 SCRA 257, 271 (1998)
- [11] People vs. Navarro, 297 SCRA 331, 350 (1998)
- [12] Records, p. 13.
- [13] TSN, December 29, 1994, p. 3.
- [14] Supra, note 9 at 81.
- [15] People vs. Daraman, 294 SCRA 27, 45 (1998)
- [16] People vs. De la Cruz, 298 SCRA 36, 44 (1998)
- [17] TSN, February 9, 1994, p. 4.
- [18] People vs. Sanchez, 302 SCRA 21, 51-52 (1999)
- [19] Supra, note 17 at 4-7.
- [20] Id. at 6-7.
- [21] TSN, February 9, 1994, p. 7; TSN, February 15, 1994, p. 2.
- [22] People vs. Realin, 301 SCRA 495, 511 (1999)
- [23] TSN, September 27, 1994, p. 7.
- [24] Id. at 8-9.
- [25] TSN, September 28, 1994, p. 7.
- [26] People vs. Villanueva, 302 SCRA 380, 394-395, 396 (1999)
- [27] TSN, February 9, 1994, pp. 5-6.
- [28] People v. Galapin, 293 SCRA 474, 490 (1998)
- [29] People vs. Dinglasan, 267 SCRA 26, 45 (1997)
- [30] Sociedad Europea de Financiacion, S.A. vs. Court of Appeals, 193 SCRA 105 114 (1991)
- [31] People vs. Gatchalian, 300 SCRA 1, 18 (1998)
- [32] People vs. Villamor, 292 SCRA 384, 397 (1998); People vs. Molina, 292 SCRA 742, 775 (1998)
- [33] People vs. Lapay, 298 SCRA 62, 81 (1998)
- [34] Luis B. Reyes, THE REVISED PENAL CODE, Book Two, p. 927 (1993 Ed.)
- [35] TSN, June 14, 1994, p. 6; Folder of Exhibits, p. 4.

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