

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUISITO PAGLINAWAN, ACCUSED-APPELLANT.

G.R. No. 123094. January 31, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 4, Butuan City, finding accused-appellant guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim P10,000.00 as compensatory damages and P50,000.00 as indemnity.

The information against accused-appellant alleged:

That on or about the 20th day of March, 1989, at 9:30 o'clock in the evening, more or less, at Barangay Lingayao, Las Nieves, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to kill, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault, shoot and fire with an Armalite M16 Rifle, the house of Segundino Senados, Sr. inflicting mortal wounds to Jerry Senados, a seven (7) year old child of Segundino Senados, Sr. and Millianita Senados, who was sleeping thereat at that time and which directly caused his death.

CONTRARY TO LAW: Article 248, Revised Penal Code.

Five witnesses were presented for the prosecution: the spouses Segundino and Millianita Senados, the parents of the victim, PO3 Bernabe Pedregosa, Paquito Garcia, and Sgt. Romeo Minerva.

Segundino and Millianita Senados testified that on March 20, 1989, at around 9:30 in the evening, they were in their house in Lingayao, Las Nieves, Agusan del Norte, with their eight children. They were on the second story of their house, lying on the floor about to sleep. The second floor was lit by a 10-watt fluorescent bulb. There were no partitions nor beds. Suddenly, they heard a gunshot which struck the light source, throwing the entire room in darkness. After about five minutes, four bursts of gunfire directed at their house followed. These were made at short intervals, each burst lasting for about five minutes. Segundino told his wife and children to lie on their stomachs. Millianita said that while the firing continued, she called on the assailants to stop. When she touched one of her children, she felt blood on one of them. She also felt blood on her right foot.

When the firing finally stopped, Segundino and Millianita went towards one side of their house and peeped through a hole on the wall. They saw accused-appellant armed with an M16 Armalite rifle looking at their house. The couple said that they saw the face of accused-appellant clearly and recognized him because there was light from a 50-watt incandescent bulb on the ground floor of their house. After about two minutes, accused-appellant left.

When Segundino checked on the members of his family, he found his wife and his child Junior Senados injured, while another child, Jerry Senados, was dead. With the help of Nestor Patombon and other neighbors, Segundino was able to take his wife Millianita and child Junior to the hospital. Patombon was the detachment commander of

the Civilian Home Defense Force Unit (CHDFU) and a member of the 23rd Infantry Battalion of the Philippine Army.

On March 27, 1989, seven days after the incident, Segundino went to the police station and executed an affidavit identifying accused-appellant as the assailant. He said that earlier, on March 23, 1989, he had gone to the police station to give to the chief of police a statement, although this was not reduced into writing. Segundino and Millianita said they wanted to give information to the police and no one else, and did not think of telling Patombon anything about what they knew. Moreover, Segundino said, he was more concerned about the safety of his family. On the other hand, Millianita said that she did not then point to accused-appellant as the assailant for fear that he might flee before the police could make an arrest.[2]

Sgt. Romeo Minerva and PO3 Bernabe Pedregosa, station commander and member, respectively, of the Las Nieves police station, testified that, on March 24, 1989, at around 3:00 in the afternoon, they went to the town proper of Lingayao to investigate the strafing incident in the evening of March 20, 1989.

Sgt. Romeo Minerva testified that, based on information furnished by Segundino Senados the day before, he and Pedregosa looked for accused-appellant on March 24, 1989. They found accused-appellant in front of the house of Patombon and questioned him about the incident on March 20, 1989. Sgt. Minerva said that accused-appellant refused to talk in a public place but said he was willing to do so in his house. Accordingly, they proceeded to accused-appellant's house, about 50 meters away, where the latter allegedly confessed to the crime and said that he did it because of a land conflict with the Senados family.[3]

PO3 Pedregosa, on the other hand, testified that he went with Sgt. Minerva to Lingayao in response to a report made by the barangay captain of Lingayao that a strafing incident took place days earlier. He said he did not know who the suspect was, but when he and Sgt. Minerva passed by the house of Patombon and asked the people around about accused-appellant,[4] the latter approached them and then and there confessed that he was the one who strafed the house of the Senadoses.[5]

Both witnesses said they left accused-appellant and did not arrest him because they did not have any warrant for his arrest.

Paquito Garcia, a resident of Lingayao, testified that, on the night of March 20, 1989, he was in the house of a certain Esther Precioso in Barangay Lingayao when he heard gunshots. While he was walking home, he met one Cipriana Osinaga who asked him where the sound of gunshots came from. He answered that it seemed to have come from the direction of the Agusan River. While passing by the house of Francisco Olor, the latter also asked him where the gunshots came from, to which Garcia gave the same answer. About two minutes later, Garcia said he saw accused-appellant under the house of Francisco Olor. Accused-appellant was holding an M16 Armalite rifle. The house of Francisco Olor had a high flooring with no walls under it. Garcia said accused-appellant appeared agitated. When asked where the gunshots could have come from, accused-appellant answered that they might have come from the direction of the Agusan River. Garcia quoted accused-appellant as saying that he was on alert because he was marked for liquidation by the NPA. Garcia further testified that he had seen accused-appellant on previous occasions carrying an armalite rifle although he could not say the exact occasions.[6]

The defense presented two witnesses: Nestor Patombon and accused-appellant Luisito Paglinawan.

Nestor Patombon was the detachment commander of the CHDFU in Las Nieves and a member of the 23rd Infantry Battalion of the Philippine Army. He testified that on March 20, 1989, at around 9:00 in the evening, while he was watching television in his house, he heard gunshots which lasted for about five to seven minutes.

When he went out of his house to investigate, he saw five members of his unit, including accused-appellant. After a while, one of the Senados children arrived asking for help because their house had been fired upon. Patombon said he and his men then proceeded to the house of the Senadoses about 300 to 400 meters away. Upon arrival there, he asked Segundino Senados if he had seen the person who had shot at their house, but Segundino did not know because it was dark. Patombon said he went inside the house and saw Jerry Senados dead and Millianita Senados wounded. He and his men then took the injured to the hospital. Patombon testified that the Senadoses never pointed to accused-appellant as the culprit.[7]

Accused-appellant Luisito Paglinawan, on the other hand, testified that he was a member of the CHDFU in Lingayao, under Sgt. Nestor Patombon. In the evening of March 20, 1989, at around 9:30 p.m., he was sleeping in his house when he was awakened by the sound of gunfire. So, bringing with him his carbine, he went to the CHDF detachment half a kilometer away where his commander, Sgt. Nestor Patombon, and the other members of his unit were. They went to the place of the Senadoses and found Jerry Senados dead and Junior Senados and his mother Millianita Senados wounded. The injured victims were then taken to the hospital in Patombon's jeepney.

Accused-appellant confirmed that he was questioned by the two policemen for five minutes on March 24, 1989, but he denied he ever admitted that he committed the crime. He also denied being involved in any land conflict with the Senados family.

Several days after this incident, but before he was charged in court, accused-appellant went to Siquijor. After six months, he returned to Lingayao and it was then that he was arrested.

The trial court found accused-appellant guilty of murder qualified by treachery. The dispositive portion of its decision reads:

WHEREFORE, the Court finds accused Luisito Paglinawan guilty beyond reasonable doubt of the crime of murder charged in the information and imposes upon him the penalty of reclusion perpetua, there being no aggravating or mitigating circumstance attending the commission of the crime except treachery which qualified the offense to murder.

The accused is ordered to pay the Spouses Segundino and Millianita Senados compensatory damages in the sum of Ten Thousand (P10,00.00) Pesos representing burial expenses. In addition, the accused is likewise ordered to indemnify the heirs of Jerry Senados the sum of Fifty Thousand (P50,000.00) Pesos in accordance with the resolution of the Supreme Court dated August 30, 1990 (People vs. Yeban).

The accused is entitled to the full benefits of his preventive imprisonment conformably with Art. 29 of the Revised Penal Code, as amended. He shall serve his sentence at the Davao Prison and Penal Farm at Panabo, Davao del Norte.

IT IS SO ORDERED.

Accused-appellant assigns the following errors as having been allegedly committed by the trial court:

- THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR NOT TAKING INTO CONSIDERATION WHAT THE DEFENSE HAD PERSISTENTLY CLAIMED THAT THE FAILURE OF SPOUSES SEGIJNDINO AND MILLIANITA SENADOS TO REPORT FOR MANY DAYS THAT APPELLANT WAS THE ASSAILANT OF THEIR SON AND HAD SHOT MILLIANITA SENADOS' FOOT SHATTERED WHATEVER CREDENCE CAN BE GIVEN TO HER TESTIMONY ON THE IDENTIFICATION OF ACCUSED-APPELLANT.
- THE TRIAL COURT ERRED SERIOUSLY IN GIVING WEIGHT TO THE IDENTIFICATION OF ACCUSED BY THE SENADOS SPOUSES WHO THEY SAID STAYED FOR SOMETIME AT THE SCENE OF THE CRIME AFTER THE LAST BURST OF GUNFIRE EVEN AS THE ASSAILANT HAD

EARLIER SHOT A LIGHT BULB PRECISELY TO PREVENT BEING IDENTIFIED.

- THE TRIAL COURT COMMITTED GRAVE ERROR IN GIVING CREDENCE TO THE IDENTIFICATION OF APPELLANT AS THE ASSAILANT ON THE BASIS OF THE VOICE OF SEGUNDINO SENADOS DURING HIS TESTIMONY THAT, ACCORDING TO THE TRIAL COURT, EXUDED WITH CONFIDENCE EVEN AS IN THE SAME JUDGMENT OF CONVICTION, IT ALREADY RULED THAT THE PURPORTED CONFESSION OF APPELLANT WAS NOT ADMISSIBLE IN EVIDENCE.

- THE TRIAL COURT ERRED SERIOUSLY WHEN IT ALLUDED MOTIVE TO KILL THE SENADOS DESPITE THE WEAKNESS OF THE EVIDENCE UPON WHICH THE CONCLUSION WAS DRAWN.

- THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED IN THE ABSENCE OF THE QUANTUM OF EVIDENCE REQUIRED TO ESTABLISH GUILT BEYOND REASONABLE DOUBT.

First. Accused-appellant points out that the Senados spouses did not immediately point to him as the culprit but only did so seven days after the incident. He argues that this fact is fatal to the case of the prosecution, because it casts doubt on his identification as the assailant.

The contention is without merit.

It is settled that the delay of a witness in revealing the identity of the perpetrator of a felony does not affect his credibility if such delay is adequately explained.[8] In the case at bar, Segundino Senados had good reason for not telling Patombon that he had seen accused-appellant holding an M16 Armalite shortly after the strafing of their house.

Accused-appellant was a member of the CHDFU under Sgt. Patombon. Considering this circumstance, the Senados spouses, in their desire to save their family, could have decided to keep mum about what they know until such time that they saw the police. The immediate concern of Segundino and Millianita Senados after the strafing of their house was their safety and that of their children. One child had already died, and it was understandable that they were concerned that no further lives would be lost. At the same time, they needed the help of Sgt. Patombon, because he had a vehicle which they could use to transport the injured to the hospital. So, they had of necessity to ask him for help. There is thus nothing strange in their decision not to tell him the identity of the suspect.

Segundino testified thus:[9]

Q

While he was in your house with his men, you talked with each other you and Sgt. Patombon, is it not?

A

Yes, we talked.

Q

You told him that it was the accused in this case who shot your house?

A

No, sir. I did not tell him.

Q

Why did you not tell him when he was the first authority that you saw?

A

I have forgotten about it because my first reaction was to save my family.

Q

You wanted to seek justice, is it not?

A

Yes, of course.

Q

That was your thoughts also when Sgt. Patombon went to your house, is it not?

A

What was on my mind at that time, because I was confused, was to save my family and to bring the injured to the hospital, I did not think about justice yet.

Q

According to you Sgt. Patombon was the detachment commander of the CHDF Unit in Lingayao. Did he not ask you who shot at your house?

A

No, he did not ask.

Q

When he went to your house and stayed there for 5 minutes did he ask you who shot your house?

A

He was just silent, sir.

Q

Okay, did he ask you why you went to his house and asked for help?

A

No, he did not ask.

Q

How did he know that you would be requesting for the use of his jeep?

A

I told him about the shooting and he was aware of it because of the gunfires.

....

Q

The fact that according to you it was the accused who shot your wife wounding her on the foot, that hurt your feelings, is it not Mr. Senados?

A

Yes, very very much.

Q

And despite all these hurts and anguish that you feel, you never told the very first authority what you saw that it was the accused who was the person who shot at your wife and son, is it not?

A

All I can is that, at that time I was not able to tell them because I was concerned with my family and in bringing them to the hospital in Tungao.

....

Q

As you saw one of your children died and buried, you feel hurt and anguish, and as you saw your wife languishing in the hospital you also feel hurt and anguish. Now, who was the very first military officer whom you told about the incident?

A

I did not tell anything to any military, it was the police whom I told. I have never confided to the military.

....

Q

Let us now be certain because you might have forgotten the events at that time. The first time you reported to Sgt. Minerva, the Station Commander of Las Nieves, Agusan del Norte, was only on the 27th day of March, 1989, is that right?

A

I went there twice. It was on the second visit in Las Nieves when my affidavit was taken.

Q

When you reported for the first time to the police station of Las Nieves when was that?

A

Less than a week after the incident happened.

Q

Would you say on the 5th day after March 20, 1989?

A

I am not sure but what I am sure of is that on the second visit on the 27th, the affidavit was taken.

Q

The first time you reported to the police station, did you tell Sgt. Minerva that it was the accused who shot at your house killing your son and wounding your wife?

A

Yes, sir.

Q

Are you sure of that?

A

Yes, sir, I am sure.

Q

Are you sure that it was Sgt. Minerva to whom you made the report?

A

Yes sir, I am sure.

In the same manner, Millianita Senados testified:[10]

Q

According to you, you wanted to bring Paglinawan to justice because your son died and you were injured, and you were also afraid, so you wanted to tell first the military or police official who the author of the crime was, is it not?

A

Yes, Sir, we went to Minerva.

Q

Are you referring to the chief of police?

A

Yes.

Q

Did you tell Minerva that the person who shot at you and your son as well as your house was Paglinawan?

A

Yes, sir.

Q

When did you tell him?

A

When we were already there in Tungao and when my big toe was already healed, that's the time I told him.

Q

How many days after the incident?

A

About two (2) weeks after.

....

Q

Do you know that there was a member of the 23rd Army Battalion by the name of Nestor Patombon residing near your house?

A

Ernesto Patombon.

Q

But he was a member of the 23rd Army Battalion based in Lingayao, is it not?

A

Yes, Sir.

Q

You knew him to be an army officer, is it not?

A

Yes, Sir.

Q

In fact, it was Nestor or Ernesto Patombon whom you asked that you be transported to the Tungao Hospital, is it not?

A

Yes, Sir, because I requested his vehicle.

....

Q

You knew Patombon to be an army officer and that your son was already dead and you were wounded, you were angry and you were afraid, did you tell him who shot you and killed your son?

A

We did not tell anything to Patombon because we were in a hurry then to the hospital and besides it is in our minds that we will tell the incident to the chief of police.

Q

You told nobody other than Patombon that it was Paglinawan who shot your son before you went to the police?

A

Nobody.

....

Q

Listen carefully, don't smile because your son died, you were injured, you were angry, and you wanted that this people be brought to justice, did you not tell Patombon who is a military officer that it was Paglinawan who shot you and your son?

A

I did not tell Patombon. I reserved it to the chief of police because we intended to file a complaint against Paglinawan.

Q

There were other people within the vicinity when you took a ride on that jeep, is it not?

A

Yes.

Q

You did not tell anyone of them that it was Paglinawan who shot your son and shot you, is that correct?

A

I did not tell anybody because I am afraid that this Paglinawan might flee away. I just reserved to tell that to the chief of police.

Q

But Patombon is an army official why were you afraid that Paglinawan would escape?

A

I only intended to tell this incident to the chief of police, Minerva.

Q

As an express of your grief because your son died, did it not occur to your mind to tell just anyone that Paglinawan shot your son?

A

At that time, I will never tell anyone because Paglinawan might escape.

....

Q

Who were on that jeep aside from you and your son?

A

My cousin was with me.

Q

Could you give us the name of your cousin?

A

Antonio Ranuco, my cousin, my son junior together with my husband and the driver whose name I do not

know.

....

Q

Your cousin, Antonio Ranuco, was not in your house when it was shot at, is that correct?

A

Yes, Sir, he was on the road.

Q

You did not even tell your own cousin, Antonio Ranuco, that it was Paglinawan who shot at you and your son?

A

I did not for fear that he might reveal that information to others and Paglinawan may succeed in escaping.

Thus, the Senados spouses were justified in not pointing accused-appellant to Patombon. Moreover, there was no considerable delay in reporting the incident to the police. Segundino went to Sgt. Minerva three days after the incident to identify accused-appellant as the suspect. This was confirmed by Sgt. Minerva himself and that was the reason they looked for accused-appellant on March 24, 1989. The police officers acted on the lead furnished by Segundino. Accused-appellant himself admits that the two policemen questioned him on that day.

Second. Accused-appellant points to the fact that the assailant shot the 10-watt bulb on the second floor of the Senados house so that he would not be seen. If this were so, there was no reason he did not also shoot the incandescent bulb on the first floor.

There is no evidence to show that the assailant purposely shot the bulb on the second story of the house as to prevent his recognition. For aught that we know, the bulb was hit because the house was strafed. The purpose of the culprit was to kill the occupants of the house. It was only incidentally that the bulb also got hit.

Indeed, accused-appellant was positively identified as the culprit by the Senados spouses. The trial court correctly relied on the testimony of the Senados spouses that they saw accused-appellant in the premises of their house at the night of the incident. As the trial court said:

Situated on an elevated position on the second floor of their 2-storey house, with the 10-watt fluorescent lamp put off after having been hit by the first shot, Segundino and Millianita Senados, in the darkened room, have better means and opportunity of vision to see outside the house. The 50-watt incandescent lamp on the first floor provided the illumination of the premises where the assailant was standing. Let it be noted with significance, that accused Luisito Paglinawan is the husband of the niece of complainant Millianita Ranuco Senados. The offended party and the accused live in the same barangay and practically see each other often. Undoubtedly, accused Luisito Paglinawan is known to Millianita and her husband. . . . Their testimony was natural and the recollection of the horrible experience they have undergone appeared not to have been effaced from their memory as they recounted them with conviction and determination as if the gate of recall was pried open.

It is established that conclusions and findings of fact of the trial court, as well as the assessment of the credibility of witnesses, are binding on us except when there are facts and circumstances of weight and influence overlooked by the lower court which could alter the result.[11] This case does not fall under the exception.

Moreover, there was motive for accused-appellant to commit the crime. As Millianita Senados testified:

His motive is that the land that was the share of my brother Vicente was sold to Florencio Bajao. Then I redeemed the property from Florencio Bajao and in the case before Branch 1, the Court ruled that I should be the one to till his land. Thus, I took possession of the land depriving the father of the accused Evidejo Paglinawan from tilling the land as well as his father-in-law, Francisco Olor, from continuing their work on that land.

Third. Accused-appellant went to Siquijor and did not return to Barangay Lingayao until six months later and it was only then that he was finally arrested. It is now claimed that he went to Siquijor to claim his father's share in the land of his grandparents. This explanation is unsubstantiated. Moreover, his claim is doubtful because the fact is that his father was still alive.

The inescapable conclusion is that he fled to Siquijor after he was questioned by the police. Hence, the rule that the flight of an accused is evidence of his guilt fully applies.[12]

Fourth. The claim of the defense that members of the New People's Army (NPA) could have committed the crime lacks basis. The supposed "notice" from the NPA, written on a brown cardboard which was found in the premises of the Senados house claiming responsibility for what happened and warning the Senadoses to leave the place, cannot prevail over the positive identification of accused-appellant.

On the other hand, we think the trial court correctly rejected the admissibility of the alleged confession of accused-appellant to Sgt. Minerva and PO3 Pedregosa. This extrajudicial confession was taken without observing the proper procedure under Art. III, § 12(1) of the Constitution. It is, therefore, inadmissible.

Fifth. The trial court correctly appreciated the qualifying circumstance of treachery and rejected the allegation of evident premeditation. For as held:

[U]nder the facts of this case based on the evidence the prosecution presented, the Senados couple was not in a position to defend themselves as the assailant struck at a time when the occupants of the house have already retired, leaving in the wake of his attack a 6-year old boy dead and his mother wounded on the left foot. Undoubtedly, there is treachery when the assailant crept up to his victims who were unaware of the impending damage to their life and limb. The crime committed is murder.

....

To authorize a finding of premeditation, it must affirmatively appear from the overt acts of the accused that he has definitely resolved to commit the offense; that he has from then coolly and dispassionately reflected both on the means of carrying his resolution into execution and on the consequences of his design; and that an appreciable length of time has elapsed as to expect an aroused conscience to otherwise relent and desist from the accomplishment of the proposed crime. Definitely, the prosecution has not adduced proof to satisfy the requirements establishing this qualifying circumstance of premeditation. Mere presumptions and inferences are insufficient.[13]

Finally, it is noteworthy that the information filed in this case is only for the murder of Jerry Senados, the seven-year old child of Segundino and Millianita Senados. Though the prosecution established in the testimony of its witnesses that Millianita Senados and Junior Senados were injured, the court cannot hold accused-appellant liable for said injuries since he was not properly charged therefor. The Constitution is clear that an accused has the right to be informed of the nature and cause of the accusation against him.[14] Hence, a person cannot be convicted of a crime for which he has not been charged, otherwise, he would be denied the due process of law.

WHEREFORE, the decision of the Regional Trial Court, Branch 4, Butuan City, is AFFIRMED.

SO ORDERED.

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

[1] Per Judge Cipriano B. Alvizo, Jr.

[2] TSN, pp. 3-15, Nov. 20, 1991; TSN, pp. 2-23, Jan. 30, 1992; TSN, pp. 3-14, Sept. 22, 1992; TSN, pp. 2-10, Nov. 5, 1992.

[3] TSN, pp. 2-4, June 22, 1992.

[4] TSN, p. 4, April 30, 1992.

[5] TSN, pp. 3-5, April 30, 1992.

[6] TSN, pp. 3-10, June 4, 1992.

[7] TSN, pp. 4-11, April 30, 1993.

[8] See *People v. Flores*, 217 SCRA 613, 621 (1993).

[9] TSN, pp. 15-22, Jan. 30, 1992 (emphasis added).

[10] TSN, pp. 9-15, Nov. 5, 1992 (emphasis added).

[11] *People v. Ganan, Jr.*, 265 SCRA 260, 279 (1996).

[12] *People v. Gomez*, 251 SCRA 455, 471 (1995).

[13] *Rollo*, pp. 45-47.

[14] CONST., Art. III, §14.

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