

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR MIRA, JURY GONZALES, PLACIDO GONZALES, JR., ACCUSED, NESTOR MIRA, ACCUSED-APPELLANT.

G.R. No. 123130. October 02, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 41, in Criminal Case No. 3424 finding appellant, Nestor Mira, guilty of the crime of murder, sentencing him to suffer the penalty of reclusion perpetua or life imprisonment (sic) and ordering him to pay the heirs of the victim the amount of P50,000.00 as indemnity. Co-accused Jury Gonzales and Placido Gonzales, Jr., remain at-large.

Appellant is a 50-year-old farmer residing in San Mariano, Roxas, Oriental Mindoro. Co-accused Jury Gonzales and Placido Gonzales, Jr., are the brother and father, respectively, of his common-law wife, Rosalita. The victim, Pedro Soguilon,[1] was a 42 year-old farmer who tilled his mother's land located beside the Gonzaleses.

For the prosecution, the Solicitor General summarizes the facts as follows:[2]

In the afternoon of May 30, 1987 about 4:30 in the afternoon, Adriano Madeja was in the land of the Soguilon situated in the boundaries of Barangays Ogbot and Labonan, Bongabong, Oriental Mindoro. Madeja was then hauling sand for use in constructing a toilet in the house of the Soguilon. At that time, Madeja saw Pedro Soguilon some fifty (50) meters away, patching up the rice paddies (pilapil). Then Pedro (sic)[3] Gonzales, Placido Gonzales, Jr. and appellant Nestor Mira appeared. Suddenly and without a warning, as Pedro Soguilon was doing his work stooping down, appellant Nestor Mira hacked Soguilon with a long bolo hitting him on the nape. After that initial attack, Soguilon ran towards Adriano Madeja who saw Jury Gonzales shoot him with a shotgun hitting him at the right face and upper back including the neck, causing him to fall to the ground on his face. In that position, Placido Gonzales approached and stabbed Soguilon at his back. (TSN, 1-10-94, pp. 3-9)

The following day, Madeja informed Teodula Soguilon that Pedro Soguilon was ganged up by Nestor Mira, Jury Gonzales and Placido Gonzales, Jr. right in her ricefield.

For the defense, appellant in his Brief,[4] makes the following summation of the facts:

The defense, thru the testimony of the accused and corroborated by German Garga, claims that on the date and time of the incident in question, Mira was inside the house of his father-in-law, Placido Gonzales, Sr. together with other persons having a drinking spree. There were visitors inside the said house since it was the last day of prayer offering for the death of the wife of his father-in-law. The group started drinking at around 4:00 o'clock in the afternoon then later they heard a gunfire. The accused and his group were standing outside the said house when at around 50 meters from their place they saw Jury Gonzales holding a firearm, and running towards the direction of his residence. A few moments after reaching his house, Jury Gonzales came out, no longer carrying the firearm but with a bag around 12 inches in length and one fourth inches in width, and proceeded to the place of the group. There, German Garga inquired as to 'what happened' and Jury answered 'nakadisgrasya ako'. Upon hearing such reply, German Garga asked Jury to surrender to the authorities but the

latter did not heed such advice and left the place carrying his bag. Since then and up the present, Jury Gonzales has not been seen anymore by Nestor Mira. (TSN, Sept. 29, 1994, pp. 1-16; TSN., Oct. 19, 1994, pp. 1-31).

On February 24, 1988, appellant and his two co-accused were charged with Murder under the following Information -[5]

That on or about the 30th day of May, 1987 at around 4:30 o'clock in the afternoon, at the boundary of barangay Ogbot and barangay Labunan, municipality of Bongabong, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, while armed with a bladed instrument and a gun, with a decided purpose to kill, did then and there, wilfully, unlawfully and feloniously attack, assault, hack, shot with a gun and stab therewith one Pedro Soguilon, inflicting upon the latter hacked, stabbed and gunshot wounds in different parts of his body which caused his instantaneous death.

That in the commission of the crime the qualifying circumstances of treachery, abuse of superior strength and evident premeditation are present.

Contrary to law.

On March 18, 1993, after more than five years from the filing of the Information, appellant was finally arrested. His co-accused have eluded arrest to date. Upon arraignment, appellant entered a plea of not guilty.[6]

During trial, the prosecution presented the following witnesses: (1) Teodula Soguilon, mother of the victim; (2) Celso Molina, Barangay Captain of Labonan, Bongabong, Oriental Mindoro; (3) Dr. Edgardo Hernandez, Municipal Health Officer of Bongabong, Oriental Mindoro, who conducted the autopsy on the body of the victim; (4) Ex-Sgt. Danilo Malaban, whose testimony was dispensed with when the defense admitted that he conducted the investigation on the first witness, Atilano Arrojo; and (5) Adriano Madeja, eyewitness to the incident.

Teodula Soguilon testified that the Gonzaleses had ill-feelings towards her family because of a dispute over the irrigation of their nearby lands. The enmity worsened when she filed a criminal case for theft of a pig against Jury Gonzales. She presented in court a copy of the decision[7] of the Municipal Trial Court finding accused Jury Gonzales and two other persons guilty of the crime of theft. Teodula likewise testified that it was Atilano (Arrojo) and Adriano (Madeja) who informed her of the killing of her son by appellant and his two co-accused. She also testified as to the damages sustained as a result of the death of her son.[8]

Celso Molina testified that, upon being informed by the victim's mother of the incident, he immediately went to the scene of the crime. He found the body of the victim sprawled face down on the ground. With the help of townmates, he brought the body to the victim's residence. The following day, he reported the incident to the Police Station of Bongabong and requested the Municipal Health Officer to conduct an autopsy.[9]

Dr. Edgardo Hernandez testified that the victim sustained the following injuries:[10]

- (1) Six (6) multiple gunshot wounds at the neck, deltoid muscles and right face 1/2 cm. wide and the pillet lodges inside the body.
- (2) Stab wound, 3 cm. long 1 cm wide and 3 cm depth at the middle back of the body.
- (3) Hacked wound 5 cm long 2 cm wide and 4 cm wide and 4 cm depth cutting the skull at the occipital region.

Dr. Hernandez explained that the wounds in No. (1) were probably caused by a shotgun, wound No. (2) by a sharp pointed instrument such as a knife, and wound No. (3) by a bolo. Dr. Hernandez testified that the cause of death was "external and internal hemorrhage secondary to wound." He further testified that it was possible that the wounds were inflicted by two to three assailants.[11]

Adriano Madeja testified that on May 30, 1987, at around 4:30 P.M., while he was hauling sand at the land of the Soguillons, he saw the victim some 50 meters[12] away from him, shoveling the rice paddies. He saw appellant and the two co-accused approach the victim. Suddenly, appellant stabbed the victim several times with a long bolo on the "lower portion of the head, back portion nape." The victim managed to stand up whereupon he was again stabbed by appellant. The victim ran towards the direction of Madeja. Co-accused Jury Gonzales pursued him and shot him. The victim fell face down on the ground ("nadapa"). Co-accused Placido Gonzales, Jr., approached the victim and finished him off with a long knife. Aghast, Madeja remained rooted on the spot. Appellant saw Madeja. Thereafter, appellant and the two accused ran away. Madeja rushed home and brought his family to his relatives. The following day, he went to the house of the victim and inquired from the widow whether she intended to file a criminal case against the assailants. Madeja informed her that if needed, he would testify in the case. However, his statement was only taken down some seven years later, or on May 3, 1993. Madeja testified that he knew appellant; he was a friend, and so were the two co-accused.[13]

For the defense, appellant and German Garga testified. Appellant denied any participation in the killing, and pointed to accused Jury Gonzales as the possible assailant. Appellant claimed that at the time of the incident, he was in the house of his father-in-law, Placido Gonzales, Sr., having a drinking spree with Garga, Placido Jr. and some other persons. Appellant and Garga testified that they heard a gun shot. When they went out to investigate, they saw accused Jury Gonzales running towards them, carrying a firearm. Garga asked Jury what happened. Jury replied "Naka-disgrasya ako," then went out of the house carrying a bag. German advised Jury to surrender to the authorities, but Jury fled. Appellant, Garga and the others then continued their drinking session.[14]

On April 11, 1995, the trial court rendered a decision[15] finding appellant guilty of the crime of murder. The dispositive portion of the decision states:

WHEREFORE, after weighing carefully the evidence presented by both the prosecution and the defense, this Court finds herein accused NESTOR MIRA guilty beyond reasonable doubt of the crime of murder as charged in the information and accordingly sentences him to suffer the penalty of reclusion perpetua or life imprisonment (sic) as provided in Art. 248 of the Revised Penal Code of the Philippines and to pay the heirs of the victim indemnity in the sum of P50,000.00 without subsidiary imprisonment.

SO ORDERED.

Appellant now contends that the trial court erred in:[16]

I. ... PINNING THE BLAME FOR THE DELAY IN THE TRIAL OF THE CASE ON THE ACCUSED WHO WAS REPORTEDLY IN HIDING.

II. ...GIVING CREDENCE TO THE TESTIMONY OF AN ALLEGED EYEWITNESS, ADRIANO MEDEJA, WHO EXECUTED HIS SWORN STATEMENT ONLY AFTER SIX (6) YEARS FROM THE TIME THE INCIDENT HAPPENED.

III. ... CONVICTING THE ACCUSED DESPITE FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Appellant, in sum, assails the credibility of the sole eyewitness Adriano Madeja. Appellant claims that Madeja knew the whereabouts of appellant, but did not move "heaven and earth" to have him arrested. Further, appellant avers he was arrested on the basis of an affidavit executed by one Atilano Arrojo, but this person had died before trial. Hence, the affidavit should have been considered as mere hearsay and in effect, the warrant of arrest ought to have been recalled. Appellant says that it is highly suspicious that Madeja only surfaced as witness after the death of the star witness, Atilano Arrojo. Further, the delay of six (6) years in executing his written statement casts

doubts as to his credibility. Lastly, while Madeja testified that appellant delivered two hacking blows at the victim, the Medico-Legal expert testified that the victim sustained only one (1) hack wound.

The Office of the Solicitor General, for the State, emphasizes that appellant's act of fleeing from the scene of the crime and going into hiding for five years is an indication of guilt. Prosecution witness Madeja's delay in executing a written statement does not negate his credibility considering that the following day after the incident he already told the relatives of the victim of his willingness to testify, if needed. Further, the defense could attribute no improper motive for him to testify falsely against appellant. All told, his testimony is worthy of full faith and credit. The positive and credible testimony of a lone witness is sufficient to support a conviction even in a charge of murder. Appellant's defense of alibi was therefore rejected by the trial court properly.

The decisive issues, in our view, concern the credibility of the sole prosecution eyewitness and the sufficiency of evidence to convict appellant.

On the issue of credibility, we have often held that the assessment of credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court are held binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[17] We generally respect the trial court's appraisal of the witness and his credibility since, as an appellate court, we do not deal with live testimony of witnesses but only the cold pages of a written record.[18] The Court, however, is not precluded from making its own review and assessment of the evidence on record.

In this case, prosecution witness Madeja explained that the day after the incident, he already informed the wife of the victim that he was willing to testify in the case, if needed. However, the family of the victim declined his offer at that point. Barangay Captain Molina also informed him that one Atilano Arrojo would already testify in the case. When Arrojo died prior to trial, it was only then that Madeja was approached to testify. This explanation we find plausible. As consistently held by us, a witness' delay in testifying does not affect his credibility,[19] particularly where such delay is sufficiently explained.

Appellant points to an inconsistency in Madeja's testimony that appellant hacked the victim twice, while Dr. Hernandez testified that the victim only sustained one hack wound. A close reading of the transcript of stenographic notes (TSNs) reveals that what Madeja actually stated was that the victim was repeatedly hacked by appellant. An eyewitness to a horrifying event cannot be expected, nor faulted, if he is unable to be completely accurate in picturing all that has transpired and every detail of what he has seen or heard.[20] What is important, in our view, is that the witness was consistent in relating the principal occurrences and in identifying the perpetrators of the crime. Madeja's testimony is corroborated by the medical findings of Dr. Hernandez as to the location of the injuries sustained by the victim. Further, no ill-motive for his testimony against appellant could be attributed to Madeja who even considered appellant a friend. Where there is nothing to indicate that a witness was actuated by improper motives, his positive and categorical declarations on the witness stand under solemn oath deserves full faith and credence.[21]

Appellant's defense of alibi cannot prevail over his positive identification by prosecution witness Madeja. Positive identification, where categorical and consistent, prevails over unsubstantiated denials because the latter are negative and self-serving, and thus, cannot be given any weight on the scales of justice.[22] If appellant was really innocent, knowing he was wanted by the authorities, he should not have fled for six years. Flight strongly indicates a guilty mind and betrays the existence of a guilty conscience.[23]

Was the evidence sufficient to convict appellant? The testimony of prosecution witness Madeja, as corroborated

by the medical findings of the Municipal Health Officer, suffices for conviction. It is settled that the testimony of a single, trustworthy and credible witness is sufficient for conviction.[24] In criminal cases, the quantum of proof required is proof beyond reasonable doubt. This does not mean such degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[25]

Now, what crime was committed by appellant? The trial court found that both treachery and abuse of superior strength attended the killing without, however, specifying which circumstance qualified the killing to murder. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[26] The two conditions for treachery to be present are: (1) that at the time of the attack, the victim was not in a position to defend himself and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[27] The victim here was unarmed, unaware of any danger to his person as he was tending to the rice paddies. The victim was not afforded any opportunity to ward off the attack because of the suddenness of the attack. Clearly, the time and place of the attack was deliberately chosen by appellant and co-accused to ensure the execution of their criminal design. All three assailants were armed--with a gun, bolo and knife, respectively--while the victim was unarmed. This circumstance clearly shows the inequality of forces, resulting in the demonstrated superior strength of the assailants, who took full advantage of such superiority. However, this aggravating circumstance should be deemed absorbed in treachery.[28] Evident premeditation was not proven by clear and convincing evidence.

Thus, we conclude that the crime committed by appellant is murder. The killing was attended by treachery, a qualifying circumstance. At the time of the commission of the crime in 1987, the penalty for murder was reclusion temporal in its maximum period to death. There being no mitigating or aggravating circumstances, the penalty should be imposed in its medium period, which is reclusion perpetua. We must stress, however, that reclusion perpetua is not identical with life imprisonment.[29] This important distinction should be stressed to avoid imprecise fallos by judges who treat the two indiscriminately.

As to damages, the trial court correctly awarded P50,000.00 as indemnity for the death of the victim. In addition, the records adequately show P20,000.00 was incurred for the funeral expenses of the victim,[30] hence the award of actual damages in that amount is proper. The mother of the victim likewise testified as to the mental anguish and sleepless nights she suffered as a result of the death of her son, hence we award to her the amount of P50,000.00 as moral damages.[31]

WHEREFORE, the decision of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 41, in Criminal Case No. 3424 finding appellant NESTOR MIRA guilty of the crime of MURDER is AFFIRMED with MODIFICATIONS. Appellant is hereby sentenced to suffer the penalty of reclusion perpetua, and ordered to pay the heirs of the victim the amount of P50,000.00 as indemnity, P20,000.00 as actual damages, and P50,000.00 as moral damages.

Further, let alias Warrants of Arrest be issued for the apprehension of the co-accused JURY GONZALES and PLACIDO GONZALES, JR., with the directive to the police authorities to exert utmost efforts to serve at the soonest possible time said warrants, returnable to the Regional Trial Court, in order that duo may be brought before the bar of justice.

Costs against appellant.

SO ORDERED.

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

- [1] Sometimes spelled as "Suguillon" in the TSNs.
- [2] Rollo, pp. 102-103.
- [3] Should be "Jury," TSN January 10, 1994, p. 5.
- [4] Supra, note 2 at 67-68.
- [5] Records, pp. 1-2.
- [6] Id. at 14.
- [7] Exhibit "A," "A-1 to A-10"; Records, pp. 72-80.
- [8] TSN, September 16, 1993, p. 5; TSN, September 17, 1993, p. 11.
- [9] TSN, October 25, 1993, pp. 3-8.
- [10] Exhibit "D," "D-1," Records, p. 84.
- [11] TSN, October 26, 1993, pp. 12-13, 16.
- [12] On direct examination, witness Madeja's statement was taken down as "50" meters by the stenographer, TSN, January 10, 1994, p. 6. On cross-examination, it was "15" meters, TSN, January 11, 1994, pp. 12.
- [13] TSN, January 10, 1994, pp. 5-10; TSN, January 11, 1994, pp. 6-9, 12.
- [14] TSN, September 29, 1994, pp. 2-15; TSN, October 19, 1994, pp. 3-9, 20-24, 27.
- [15] Records, pp. 237-247.
- [16] Rollo, pp. 62-63.
- [17] *People v. Bermas*, 309 SCRA 741, 774-775 (1999).
- [18] *People v. Patalin, Jr.*, 311 SCRA 186, 203 (1999).
- [19] *People v. Obosa*, G.R. No. 132069, May 31, 2000, p. 9.
- [20] *People v. Bihison*, 308 SCRA 510, 517 (1999).
- [21] *People v. Benito*, 303 SCRA 468, 477 (1999).
- [22] *People v. Bahenting*, 303 SCRA 558, 566 (1999).
- [23] *People v. Mangahas*, 311 SCRA 384, 402 (1999).
- [24] *People v. Tolibas*, G.R. No. 103506, February 15, 2000, p. 9.
- [25] Section 2, Rule 133, Rules of Court.
- [26] Article 14, Revised Penal Code.
- [27] *People v. Gutierrez*, 302 SCRA 643, 665 (1999).

[28] Ibid.

[29] *People v. Hernandez*, 304 SCRA 186, 196 (1999); *People v. Penillos*, 205 SCRA 546 (1992); Administrative Circular No. 6-92.

[30] Exhibits "B," "B-1," "B-2"; Records, pp. 81-82.

[31] *People v. Noay*, 296 SCRA 292, 308 (1998).

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