

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GARI BIBAT Y DESCARGAR, DEFENDANT-APPELLANT.

G.R. No. 124319. May 13, 1998

Ponente: PURISIMA, J.

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PURISIMA, J.:

Appeal interposed by accused Gari Bibat y Descargar from the judgment rendered by Branch IV of the Regional Trial Court of Manila, finding him guilty of the crime of Murder in Criminal Case No. 93-123648.

Filed on July 23, 1993 by Assistant Prosecutor Alfeo T. Siccuon, the Information indicting accused for Murder, alleges:

“That on or about October 14, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of one LLOYD DEL ROSARIO Y CABRERA, by then and there stabbing him with bladed weapon hitting him on the chest and abdomen, thereby inflicting upon the latter mortal stab wounds, which are necessarily fatal and which were the direct and immediate cause of his death thereafter.

Contrary to law.”

With the accused entering a negative plea upon arraignment thereunder, with assistance of the counsel de oficio, Atty. Alejandro G. Yrreborre, Jr., trial ensued with the prosecution presenting Nona Avila Cinco, P03 Julian Bustamante, Florencio Castro and Rogelio Robles, as its witnesses.

Aside from accused, Marte Soriano, Lino Asuncion III, and Rogelio Robles (who was recalled to the stand by the defense), testified for the defense.

As synthesized by the trial court of origin :

“From the record and evidence presented, it appears that the accused Gari Bibat stabbed to death one Lloyd del Rosario on October 12, 1992 at around 1:30 p.m. along G. Tuazon cor. Ma. Cristina Sts., Sampaloc, Manila. The victim was on his way to school waiting for a ride when he was stabbed. Thereafter the suspect fled while the victim was brought to the United Doctors Medical Center (UDMC) where he was pronounced dead on arrival. The incident was witnessed by Nona Avila Cinco, a laundry woman, who testified that on October 14, 1992, while she was at Funeraria Gloria waiting for her bettor, she saw a person about one meter away talking to the accused. Said person told the accused “O pare, anduon na. Puntahan mo na. Siguruhin mo lang na itumba mo na.” to which the accused answered: “Oo ba. Ganito ba, ganito ba?” (as the witness was speaking, she was demonstrating with her arms.)[1]

After hearing the accused, she (witness) left towards Honrades Street to see another bettor. She first went inside a house and after a while, she went outside where she saw the accused along Honrades Street, entering an alley. She walked along with the accused. She and the accused were even able to look at each other.

While the victim was going out of a gate, the accused hurried towards the victim and took a pointed object from a notebook, then stabbed the victim in the left chest twice.

She was only about 4 to 5 meters away from the scene of the crime.

Thereafter, the accused fled, the victim shouted for help. Upon hearing the shouts of the victim, the accused returned and stabbed the victim again in the middle part of the chest.

She (witness) then left the scene of the crime after the accused ran away.

She reported the matter to the authorities only on July 20, 1993 because she was afraid.”[2]

xxx

Florencio Castro testified among others that he saw the accused together with four others inside the Gloria Memorial Homes along G. Tuason St. on October 14, 1992. One of them used the phone inside said place to call somebody. The rest stayed beside the one calling. He saw one of them open a notebook where a stainless knife was inserted. He heard the one using the phone, asking “kung nasaan.” Thereafter, the group went out and left towards the direction of Balic-Balic.

Rogelio Robles, testified among others that the accused Gari Bibat had been going to his place at 424 Berdad St., Sampaloc, Manila, for a long time already because their Samahang Ilocano (SI) president, Tonton Montero, is his (witness) neighbor. Before the incident occurred, Tonton Montero told him (witness) about a rumble in school whereby somebody died. The group of the accused was planning to take revenge against the victim, Lloyd del Rosario (see TSN, pp. 7-8, 6/30/94), thus

“PROS. EUGENIO:

Q -

Now, do you know personally what this group of Gari Bibat and his companions plan to do regarding that trouble related to you by your neighbor, Tonton Montero?

A -

What I know, the person against whom they will take revenge is living from a far place. I did not know that he is from our place.

Q -

Did they ever mention, during that meeting the name of the person whom they will take revenge?

A -

In the beginning, no, sir, but later they told me.

Q - What was the name, if they did mention to you the name?

A - The one who was killed, Lloyd, sir.

Q - The same Lloyd del Rosario, the victim in this case?

A - Yes, sir, Lloyd del Rosario.”

He further testified that he (witness) only knows Lloyd del Rosario by the face because the latter is from his place. He only knew what had happened to Lloyd after that fateful incident because 6 or 7 of the members of

the group arrived, all with a “tusok” and they even kept two (2) guns in his (witness) house. Gari Bibat was one of the 6 or 7 people he saw on that day, with a “tres-cantos” or “veinte nueve” tucked in his (Bibat’s) waistline. (see pp. 11-12, TSN, 6/30/94). He further narrated that he actually saw the killing of the victim, (see pp. 22-24, Ibid). that even before the day Lloyd died, they (accused and companions) already hid some guns and “tusok” in his house. (see pp. 20, TSN, Ibid.)”

xxx

xxx

xxx

“Accused Gari Bibat testified among others that on October 14, 1992, he was staying in his house at 629 Reten St., Sampaloc, Manila; at that time it was his mother’s birthday; that he was reviewing his lessons from 7:00 o’clock to 10:00 o’clock in the morning in preparation for his final oral exams on October 14, 1992; that Marte Soriano, a friend of his and a neighbor were in his house; that after lunch, they (he and Marte Soriano) left for school at 12:35 noon; that they did not pass by Funeraria Gloria; that he and his friend were able to reach the school; that he had a review of with his classmates up to 1:45 o’clock in the afternoon, afterwhich they proceeded to their room for the final exams; that their examination lasted from 7:30 to 4:30 o’clock in the afternoon; that he passed the subject with a grade of 2.25; that he does not know Nona Cinco but only later in the precinct; that he saw Rogelio Robles who was also detained at the Manila City Jail; that when he asked why Rogelio Robles testified against him, Robles told him that it was merely concocted because the complainant is Robles’ neighbor whom he cannot refuse; that he does not know Tonton Montero; that he did frequent Verdad St., near Rogelio Robles’ house, neither did he go there on October 14, 1992 between 1:00 and 2:00 o’clock in the afternoon; that he is not a member of Samahang Ilocano fraternity but the United Ilocandia fraternity, a school fraternity; that he could not remember of his fraternity being involved in any school rumble as the same is a very peaceful group which promotes brotherhood; that they did not have a quarrel with the victim who is already dead because the latter is not studying at Arellano University; that with respect to the death of Lloyd del Rosario, the same is an added charge (ipinatong) to him and that he was just implicated therein; that he knows nothing about it.

On cross examination, he testified that he neither saw the two prosecution witnesses before nor did he know of any grudge which said witnesses have against him; and that he does not know of any reason why they would testify against him and identify him as one of the killers of Lloyd del Rosario.

Marte Soriano, testified among others that he was at the house of Gari Bibat at Reten St., Sampaloc, Manila, attending the birthday (party) of Gari’s mother on October 14, 1992; that Gari Bibat was reviewing his studies at that time in preparation for an oral examination. After taking lunch, he, together with Gari, went to school (Arellano University) at around 12:00 noon. There, he reviewed his lessons in preparation for his exams while Gari Bibat had a group study with his classmates until 2:00 P.M. when Gari went inside the classroom. He knew that Gari Bibat had an exam that day at 2:00 P.M. because he (witness) is also studying at Arellano University. The next time he saw the accused was two (2) days after October 14, 1992.

Lino Asuncion III, testified among others: that he is a classmate of Gari Bibat at Arellano University; that their common subject on MWF is Math 2, English 2, Computer 2; that they had a last/final oral examination in Computer 2 on October 14, 1992; that he saw Gari Bibat in school on that day at about 1:00 P.M.; that he and Gari Bibat took the said last final oral exam; that they both left the room at the same time at 4:30 P.M.

Rogelio Robles - (was recalled to the stand to testify contrary to what he had previously stated in court). He testified inter alia that he did not really see what transpired on October 14, 1992 at 1:30 o’clock in 6th (sic) afternoon; that he only assisted the parents of the victim because they come from the same place; that the father of the victim handed to him the handwritten statement which he (witness) based his previous testimony;

that he did not actually see the killing.”

On December 27, 1995, the court a quo handed down its decision in question; disposing, thus:

“Wherefore, with all the foregoing, the Court finds the accused GARI BIBAT Y Descargar, guilty beyond reasonable doubt of the crime of MURDER and hereby sentences him to suffer the penalty of reclusion perpetua; to indemnify the heirs of the victim in the amount of P49,786.14 as actual damages; and to pay P50,000.00 as and for moral damages, with costs.

SO ORDERED.”

Appellant places reliance on the assignment of errors, that:

I

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF THE ALLEGED EYEWITNESSES NONA AVILA CINCO AND ROGELIO ROBLES.

II

THE TRIAL COURT ERRED IN FAILING TO CONSIDER THE VERSION OF ACCUSED-APPELLANT THAT HE WAS NOT AT THE SCENE OF THE CRIME WHEN THE SAME HAPPENED.

III

THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION.

FIRST ISSUE:

CREDIBILITY OF PROSECUTION WITNESSES

The Court discerns no basis for disturbing the finding and conclusion arrived at below on the credibility of the prosecution witnesses.

“In the matter of credibility of witnesses, we reiterate the familiar and well-entrenched rule that the factual findings of the trial court should be respected. The judge a quo was in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying. It is doctrinally settled that the evaluation of the testimony of the witnesses by the trial court is received on appeal with the highest respect, because it had the opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value that if considered might affect the result of the case.”[3]

As well explained by the Solicitor General, “Persons do not necessarily react uniformly to a given situation, for what is natural to one may be strange to another.[4] Verily, there is no standard form of human behavioral response when one is confronted with a strange and startling experience.[5]

It was thus natural for Nona Cinco to just have stayed at the sidelines. She is a woman who could not have prevented the armed appellant from stabbing the victim, anyway. The suddenness of the happening and Nona Cinco’s fear for her own life must have prevented her from shouting for help.”[6]

Delay in divulging the name of the perpetrator of the crime, if sufficiently reasoned out, does not impair the credibility of a witness and his testimony nor destroy its probative value. It has become judicial notice that fear of

reprisal is a valid cause for the momentary silence of the prosecution witness.[7]

In the case at bench, witness Nona Avila Cinco gave an eyewitness account of the killing complained of in a categorical and straightforward manner.

Appellant belittles the fact that Nona Cinco remembers the stabbing incident to the minutest details. According to him, “this is alright if the crime just happened, or after the happening of the crime, the witness FORTHWITH reported the matter to the proper authorities. Unfortunately, the witness reported the said incident after NINE (9) LONG MONTHS.”

It does not appear that it was impossible for Nona Cinco to have a detailed recollection of the stabbing sued upon. Even before the incident, she already saw the accused with some companions inside Funeraria Gloria and overheard the plan to kill someone. At that time, she was only about one (1) meter from the accused and his companions. And when she proceeded to Honrades Street, she and the accused walked along with and even looked at each other.

At the time when the stabbing in question was taking place, Nona Cinco was only four to five meters away. The possibility of her recalling even the minutest details cannot therefore be ruled out.

Appellant faults Nona Cinco for reporting the stabbing incident to the police authorities only after nine (9) months, and for her apparent indifference during the incident, doing nothing even while witnessing a cruel and gruesome crime.

Appellant also theorizes that Nona Cinco was lying when she testified that she was taking bets for a PBA game on October 14, 1992, a Wednesday. Claiming that PBA games are held only on Tuesdays, Thursdays and Saturdays; appellant concludes that “She lies on a simple or minor thing, all the more, she can lie on a bigger scale.”

On the other hand, the Solicitor General pointed out that: “There are 100 combinations which bettors can try their luck on the so-called PBA game “ending” and, therefore, 100 corresponding bets should be collected for maximum profit. It was not farfetched, therefore, for Nona Cinco to collect bets a day or two before the actual PBA games which would decide the winning bet.”

Besides, the lie alluded pertains to an insignificant matter which does not affect the material details of the stabbing incident, and the unequivocal eyewitness account of the killing of the victim, Lloyd del Rosario. “The maxim or rule ‘falsus in uno, falsus in omnibus’ does not lay down a categorical test of credibility. It is not a positive rule of law of universal application. It should not be applied to portions of the testimony corroborated by other evidence particularly where the false portions could be innocent mistakes. Moreover, the rule is not mandatory but merely sanctions a disregard of the testimony of the witness if the circumstances so warrant. To completely disregard all the testimony of a witness on this ground, his testimony must have been false as to a material point, and the witness must have a conscious and deliberate intention to falsify a material point.”[8]

SECOND ISSUE:

THE DEFENSE OF ALIBI

The accused relies on the defense of alibi, an inherently weak defense.[9] In a long line of cases, this court has held that “alibi is generally considered a weak defense because of the facility with which it can be fabricated. Thus, courts have always looked upon it with suspicion. Well-settled is the rule that for alibi to prevail, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that he was somewhere else.”[10]

Appellant failed to convince the court that it was physically impossible for him to be at the scene of the crime at

G. Tuazon cor. Ma. Cristina Sts. He claimed that during the stabbing incident at around 1:30 p.m., he was reviewing for an oral examination in his subject of Computer 2 at the Arellano University. But as the trial court noted, the situs of the crime was not far from Arellano University such that “granting arguendo that the accused was initially at the Arellano University, he could have easily sneaked back to the scene of the crime considering that the two places are just near each other.”[11]

To buttress his theory that he was actually reviewing for his final oral examination in Computer 2 at the very time the crime occurred, he alleged that he received a grade of 2.25 in said subject. But aside from his testimony and that of Lino Asuncion, no other evidence was presented to substantiate this submission. Appellant should have, at least, exhibited his class card or grading sheet to show that he did really take an examination in that subject.

Furthermore, positive identification, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[12]

In the instant case, prosecution witness Nona Cinco positively identified appellant as the culprit. Another prosecution witness, Rogelio Robles, testified to the actual killing of the victim by appellant. Although the latter recanted, the lower court correctly held that “the later retraction made by Rogelio Robles does not by itself render his previous testimony false or perjured because the same testimony appears to be credible and worthy of belief.”[13] Then too, affidavits of recantation are considered as exceedingly unreliable because they can be easily secured from poor and ignorant witnesses usually for monetary consideration and most likely to be repudiated afterwards.[14]

THIRD ISSUE:

THE PRESENCE OR ABSENCE OF EVIDENT PREMEDITATION

Appellant argues that the trial court erroneously appreciated evident premeditation against him. Assuming for the sake of argument that he is the felon, the crime he committed is not MURDER but HOMICIDE,[15] he maintains.

Appellant correctly states the rule that the circumstance which would qualify the killing to murder must be proved as convincingly as the crime itself.[16]

Here, we are of the irresistible conclusion that the attendance of evident premeditation to qualify the killing complained of to murder is borne out by the evidence.

There is evident premeditation when the following requisites are met:

- The time when the offender determined (conceived) to commit the crime;
- An act manifestly indicating that the culprit has clung to his determination; and
- A sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.[17]

The essence of premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[18]

The appellant, in his brief, implies that the first requisite of evident premeditation was not sufficiently proven,

contending, that:

“xxx the aggravating circumstance of evident premeditation was appreciated by the trial court based solely on the testimony of witness Rogelio Robles. The said witness testified that accused-appellant and several others often met in his (Rogelio Robles) house. In one of their meetings, accused-appellant and his companions hid some guns and “tusok” in the said witness’ house. Other than these testimonies, the trial court proffered no other rationale to justify the application of evident premeditation.”[19]

At first glance, it may seem that the first requisite of evident premeditation, [i.e. the time when the offender determined (conceived) to commit the crime], was appreciated by the lower court solely on the basis of the testimony of Rogelio Robles.

Appellant theorizes that the testimony of Robles is not believable; ratiocinating, thus :

“xxx such testimonies which were retracted by Rogelio Robles cannot by any yardstick be considered credible in itself. It simply defy human experience. For evidence to be believed, it is basic that it must not only proceed from the mouth of a credible witness, but it must be CREDIBLE IN ITSELF. (Emphasis supplied; Layug v. Sandiganbayan and People of the Phil., supra; Tuason v. C.A., supra; Lee Eng Hong v. C.A., 241 SCRA 392) If it were true that accused-appellant and several others planned the subject killing, they would not be crazy enough to have openly discussed the same in the presence of another person (TSN, June 30, 1994, p. 9). They would be very discreet about it because even the most unlearned or unschooled person would know that killing is against the law of man and of God. If indeed they have planned it, they did it in complete secrecy. More, there is no explanation why of all places, accused-appellant and his group met at Rogelio Robles’ house. The latter is only the neighbor of the alleged president of the former’s organization. Worse, accused-appellant and his group hid some guns (Ibid., p. 11) and “tusoks” (Ibid., p. 22), in Rogelio Robles’ house. Any person who is in his right frame of mind would not allow anybody to use his house as an “armory” so to speak or for any illegal purposes.”

Appellant faults Rogelio Robles for his utter lack of concern knowing fully well that the appellant and his companions were planning to kill someone and even allowed them to hide guns and “tusok” in his house. But the reason for the apparent indifference of Robles could be gleaned from the following revelation :

“ATTY. CALIMAG

Q -

And when they left your house and took the “tusok” and left the guns, you know very well from Tonton Montero that they are going to kill somebody, am I right?

A -

In school. I did not know that the one they will kill is from my place.

Q -

Now, my question – you know that they are going to kill somebody, what did you do, if any as a concerned citizen?

A -

What if they turn their ire on me.

COURT:

Aside from that English translation, you put on record the Tagalog answer of the witness: “a – Eh, kung ako naman ang pagbalingan.”

“ATTY. CALIMAG

Q - Now, Mr. Witness, why it took you so long to come out and testify, if you really know the truth about this matter?

A - Because the parents of the victim were still mad or angry, what would happen to me if I tell them early, what if they said that I am a part of it.

Q - Why, what do you think about yourself, are you not a part of it, Mr. Witness? Because you failed to report this matter immediately to the police officer?

A - I kept it to myself for fear that my brother and sisters might be involved, what will happen to me.”

Fully aware that the appellant and his companions were armed with guns and “tusok”, it was but natural for Robles to just observe the protagonists and not get involved. Fear for his own life and that of his family may have overcome whatever humanitarian inclination he had as a concerned citizen.

Besides, even without the testimony of Rogelio Robles, the presence of the first requisite of evident premeditation appears to have been thoroughly and sufficiently established. The determination or conception of the plan to kill the victim could be deduced from the outward circumstances that happened on the fateful day of October 14, 1992. Records show that at 11:30 in the morning of October 14, 1992, prosecution witness Nona Cinco saw the accused with some companions at Funeraria Gloria. She personally heard the plan to kill someone. Another prosecution witness, Florencio Castro, who works at the Funeraria Gloria also saw the group of Gari Bibat in the said place. At around 1:30 in the afternoon, Nona Cinco saw the appellant for the second time. She saw the appellant hurry towards the victim, take a pointed thing from a notebook and with the use of such weapon, stabbed the victim on the chest. These overt acts clearly evinced that the appellant clung to his resolution to kill the victim.

From the time Nona Cinco heard the plan to kill someone at 11:30 up to the killing incident at 1:30 in the afternoon of the same day, there was a sufficient lapse of time for appellant to reflect on the consequences of his dastardly act.

As held in the case of *People v. Dumdum*[20] “the killing of the deceased was aggravated by evident premeditation, because the accused conceived of the assault at least one hour before its perpetration.” In the case under examination, two hours had elapsed from the time appellant clung to his determination to kill the victim up to the actual perpetration of the crime.

WHEREFORE, the Decision appealed from is hereby AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, and Kapunan, JJ., concur.

[1] TSN, September 30, 1993, pp. 8-9, cited in Decision, p. 2.

[2] Ibid., p. 18, cited in Ibid.

[3] People v. Morales, 241 SCRA 267, 273, February 13, 1995; citing People v. Jacalan, 230 SCRA 1, February 10, 1994, People v. Abo, 230 SCRA 612, March 2, 1994, and People v. Revillame, 230 SCRA 650, March 3, 1994.

[4] People v. Cabrera, 241 SCRA 28 [1995].

[5] People v. Paricia, 243 SCRA 557 [1995].

[6] Appellee's Brief, pp. 16-17.

[7] People v. Villanueva, 4 March 1995.

[8] People v. Pacapac, 7 September 1995, 248 SCRA 77, 89.

[9] People v. Bocatcat, Sr., 188 SCRA 175

[10] People v. Magana, G.R. No. 105673, p. 14, July 26, 1996; citing People v. Cortes, 226 SCRA 91, September 3, 1991; People v. Marquez, 153 SCRA 700, September 14, 1987; and People v. Nescio, 239 SCRA 493, December 28, 1994.

[11] Decision , p. 6.

[12] People v. Amonia, 248 SCRA 486, 493, September 21, 1995.

[13] Decision, p. 6.

[14] People v. Celedonia de Leon, et al., G.R. No. 110558, July 3, 1995.

[15] Appellant's Brief, p. 10.

[16] People v. Machete, 231 SCRA 272, cited in Ibid.

[17] People v. Leano, C.A. 36 O.G. 1120; People v. Diva, et al., G. R. No. L-22946, April 29, 1968; People v. Lagarto, 196 SCRA 611 [1991].

[18] People v. Durante, 53 Phil 363, cited in LUIS B. REYES, THE REVISED PENAL CODE: CRIMINAL LAW, BOOK ONE, Twelfth Edition (1981), p. 378, Emphasis in the original text.

[19] Appellant's Brief , pp. 10-11.

[20] 92 SCRA 198 [1978].

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