

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CIRILO OPOSCULO, JR. ALIAS "BONG", JAIME BARIL ALIAS "METONG", WILFREDO BARACAS ALIAS "ADIONG", ACCUSED-APPELLANTS.

G.R. No. 124572. November 20, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Pangasinan, Branch 54, Alaminos convicting accused Cirilo Oposculo alias "Bong", Jaime Baril alias "Metong" and Wilfredo Baracas alias "Adiong" of murder and sentencing each of them to reclusion perpetua and to pay P100,000.00 as moral damages and P50,000.00 as civil indemnity.

On February 7, 1991, 4th Assistant Prosecutor Serapio C. Bravo of Pangasinan filed with the Regional Trial Court, Pangasinan, Alaminos an information[2] charging accused and one Ernesto Fernandez, Sr., with murder, committed as follows:

"That on or about October 13, 1990, in the evening, at Barangay Alos, municipality of Alaminos, province of Pangasinan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, taking advantage of superior strength, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously hack and stab GLORITO AQUINO with a bladed weapon (knife), inflicting upon him injuries, to wit:

- Lacerated wound on the parieto-temporal region left side, obliquely with a 2-1/2" (6.35 cm), in length.
- Abrasion on the right nasal side.
- Penetrating stab wound about 1" (2.54 cm) in length, located on the supero-medial aspect of the right nipple, obliquely in direction, 4th RIS going medially toward the heart, penetrating the medial aspect of the right middle lobe, causing massive bleeding inside the cavity.
- Stab wound shallow, non-penetrating, horizontally about 2" (5.1 cm) located 1" (2.54 cm) infero-lateral of the left nipple, hitting the 5th rib.
- Stab wound about 1-1/2 (3.81 cm) in length, horizontally located 3-1/2" (8.9 cm) from the thoracic vertebrae.
- Second stab wound located below & laterally from the first stab wound on the same side about 5" (12 cm) from the first lumbar vertebrae.
- Left-hand-presence of abrasion on each knuckle on the dosal aspect.
- Punctured wound on the medial aspect of the right middle lobe which caused the death of GLORITO AQUINO as a consequence, to the damage and prejudice of his heirs.

CONTRARY to Article 248 of the Revised Penal Code."

On June 17, 1991, at the arraignment, accused pleaded not guilty to the crime charged.[3] Trial thus ensued.

The facts are as follows:

At around 5:00 p.m. of October 13, 1990, Glorito Aquino and his nephew Henry Cuevas arrived at a birthday party hosted by the Reyes family at Alos, Alaminos, Pangasinan.

Two hours later, or at around 7:00 p.m., they decided to leave and walked their way towards the house of Glorito which was more than a kilometer away.

As they were nearing the church, two persons, one was tall and thin and the other was shorter, came out of the church gate and talked to Glorito, who invited the two to walk with them. However, these two persons went back to the gate.

Moments later, Glorito and Henry stopped at a store owned by accused Ernesto Fernandez, Sr. to buy cigarettes. Five persons were drinking in front of the store. The two persons at the church gate then arrived. Glorito asked them why they did not walk with him and his nephew earlier. Accused Cirilo answered that they did not recognize him. As Glorito and accused Cirilo kept discussion on that issue, accused Ernesto went out of his store and held the hands of Glorito behind the latter's back. Accused Cirilo then went in front of Glorito and pulled out something from his waist. The five persons drinking stood up and mauled Glorito. Then accused Cirilo lunged at Glorito who shouted at his nephew Henry to run because he (Glorito) was hit.

Henry scampered for safety but after running about thirty (30) to forty (40) meters from the store, he looked back and saw Glorito running away and falling to the ground soon thereafter. Henry approached Glorito and attempted to bring him to the hospital, but Glorito was dead. So Henry rushed to Glorito's house to inform the latter's wife, Milagros Bulseco, of her husband's death.[4]

PNP SPO4 Victor Abarra, a cousin and neighbor of the victim Glorito, testified that at around 7:00 p.m. of October 13, 1990, he heard Glorito's wife and Henry Cuevas crying inside her house. He went to her house where he learned from Henry that accused Cirilo Oposculo stabbed Glorito. Victor Abarra then proceeded to the store of accused Ernesto and found the dead body of Glorito fifty (50) meters away from the store. He noticed bloodstains on the bamboo slots of the store.

Later in the evening, policemen arrived at the scene to investigate the incident. Senior Police Inspector Abarra called accused Ernesto from the latter's house and asked who the attackers of Glorito were. Accused Ernesto, pale and holding both his hands, replied that Glorito's assailants were accused Cirilo, Wilfredo Baracas and Jaime Baril.[5]

On his part, accused Cirilo interposed the defense of denial. He claimed that at around 7:00 p.m. of October 13, 1990, he was about to come out of the gate of Alos church when he noticed Glorito and Henry passing by. As accused Cirilo was walking, Henry who was walking just behind him touched his shoulders. Frightened as it appeared that Glorito and Henry were drunk, accused Cirilo hurried back to the church gate. He then went to the store of accused Ernesto to buy cigarettes. While he was at the store, accused Cirilo heard Glorito loudly complaining why he ran away. Glorito asked accused Cirilo five times why he ran away. Accused Cirilo apologized to Glorito. At this juncture, accused Ernesto went out of his store to pacify Glorito. Glorito then picked up a bottle of beer under the table where five persons were drinking at the time. Accused Cirilo continued apologizing to Glorito while accused Ernesto tried to intervene. As Glorito stepped sideward ready to hit accused Cirilo with the beer bottle, the latter ran away toward the church. Five meters away from the store, accused Cirilo heard bottles breaking and saw the five persons drinking thereat chasing Glorito. He never knew who killed

Glorito.[6]

Accused Ernesto essentially corroborated accused Cirilo's testimony. He claimed that around 7:30 p.m. of October 13, 1990, five persons came to his store and drank beer. Shortly, Glorito arrived with Henry. Both appeared drunk. When accused Cirilo was buying cigarettes, Glorito confronted him and repeatedly asked why he ran away when they met near the church earlier. Accused Cirilo kept apologizing to Glorito. Accused Ernesto went out of his store to pacify an angry Glorito upon seeing that the latter was brandishing a beer bottle at accused Cirilo. Glorito then threw the bottle, splinters of which hit the persons drinking who thereafter chased Glorito. Accused Ernesto denied embracing Glorito from behind, and claimed that he approached Glorito merely to prevent the latter from harming accused Cirilo. Accused Ernesto recalled having identified accused Jaime Baril and Wilfredo Baracas to the police investigators as the companions of accused Cirilo at the time of the incident. He also said that he did not know who stabbed Glorito.[7]

On the other hand, accused Wilfredo Baracas put up an alibi. He claimed that he slept at around 7:00 p.m. of October 13, 1990 in the house of his parents which is just 400 meters away from the Alos church, after coming from the ricefield and taking supper at around 6:30 p.m. He woke up at 5:00 a.m. the next day, October 14, 1990, and went to church at around 6:30 a.m. He knew accused Cirilo and Wilfredo since the two were his fellow members at a church organization. Both accused Cirilo and Wilfredo were also in the church that morning.

At around 7:30 a.m., Henry and some policemen arrived at the church. The policemen asked Henry if anyone among accused Cirilo, Jaime and Wilfredo was involved in Glorito's killing. Henry answered none of the three was involved. Accused Wilfredo further said that he came to know of Glorito's death only at the church that morning.[8]

Accused Jaime Baril also claimed that he was sleeping at around 7:00 p.m. of October 13, 1990 in his house which was about a kilometer away from the church. He was also at the church in the morning of October 14, 1990 and heard Henry's statement that none of the three accused participated in Glorito's killing.[9]

On March 20, 1996, the trial court disregarded the alibi of the three accused and thus rendered a decision convicting all of them of murder. The decretal portion of the decision reads:

"WHEREFORE, in consideration of the foregoing and in accordance with Article 248, Revised Penal Code, judgment is hereby rendered finding therefore accused Cirilo Oposculo, Alias "Bong"; Jaime Baril, alias "Metong" and Wilfredo Baracas, alias "Adiong" guilty beyond reasonable doubt of murder and are sentenced to suffer the single indivisible penalty of Reclusion Perpetua, together with all the disqualifications thereto provided and imposed by law; and to pay the sum of P100,000.00 as moral damages and in addition, the amount of P50,000.00 as civil indemnification payable to the Heirs of the deceased jointly, pursuant to judicial pronouncements.

That accused Ernesto Fernandez, by reason of insufficiency of evidence, is hereby ordered acquitted.

Accused Oposculo, Baril and Baracas are ordered confined to the National Penitentiary until further resolution by the courts; That all bail bonds posted by all the accused are hereby ordered cancelled.

SO ORDERED."[10]

In this appeal, accused-appellants raise a sole assignment of error, namely, that the trial court erred in finding them guilty beyond reasonable doubt of murder.

We sustain the conviction of accused-appellant Cirilo Oposculo, Jr. only.

We have examined the testimony of prosecution eyewitness Henry Cuevas and found nothing that would cast

doubt on the veracity of his account of how accused-appellant Cirilo drew a "balisong" from his waist and stab Glorito to death in front of accused Ernesto's store in the evening of October 13, 1990. The fact that Henry is the nephew of the victim Glorito does not destroy his credibility. Relationship per se does not automatically discredit a witness. In fact, kinship by blood or marriage to the victim would deter one from implicating innocent persons, as one's natural interest would be to secure conviction of the real culprit.[11] And in the absence of evidence that the prosecution's main witness harbored ill motives against the accused, the presumption is that he was not so moved and that his testimony was untainted with bias.[12]

Thus, insofar as the credibility of eyewitness Henry Cuevas is concerned, we advert to the rule that the matter of assigning values to declarations of witnesses at the witness stand is best and foremost competently performed or carried out by a trial judge who, unlike appellate magistrates, can weigh such testimony in light of the witness' behavior, demeanor, conduct and attitude at the trial.[13]

Consequently, accused Cirilo's denial of any involvement in Glorito's killing crumbles in the face of the credible testimony of Henry Cuevas positively identifying him as the one who stabbed Glorito to death. Positive identification, where categorical and consistent 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.[14]

We agree with the trial court that treachery attended Glorito's killing. Henry Cuevas testified that accused Ernesto embraced Glorito and held the latter's hands behind his back, and in that helpless position, accused Cirilo lunged his "balisong" at Glorito. Clearly, Glorito was placed in a situation where he was defenseless and at the complete mercy of his attacker, accused Cirilo. The method employed in the execution of the crime insured no risk to the assailant arising from the defense which the victim might put up. Plainly, this is treachery.[15]

With respect to accused-appellants Wilfredo Baracas and Jaime Baril, we acquit them.

Accused-appellants Wilfredo and Jaime were implicated in the crime on the basis of the testimony of SPO4 Abarra who, in turn, got his information as to their participation from accused Ernesto. Senior Police Officer Abarra's testimony is clearly hearsay evidence, as he had no personal knowledge of how Glorito's killing took place. The hearsay rule bars the testimony of a witness who merely recites what someone else had told him, whether orally or in writing.[16]

The trial court erred in admitting Senior Police Officer Abarra's testimony by applying the rule on *res gestae*. The rule of *res gestae* applies when the declarant himself did not testify provided that the testimony of the witness who heard the declarant complies with the following requisites: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.[17]

There are two (2) reasons why the rule of *res gestae* can not apply in this case. First, accused Ernesto, the declarant, testified in court and stated that he saw accused-appellants Wilfredo and Jaime with accused-appellant Cirilo at his store on that fateful night of October 13, 1990. But accused Ernesto did not say that accused-appellants Wilfredo and Jaime participated in Glorito's killing. And second, an appreciable amount of time had elapsed from the time of the killing and the arrival of Senior Police Officer Abarra at his store to whom he gave his statement identifying accused-appellants Wilfredo and Jaime as companions of accused Cirilo. Accused Ernesto could have contrived his story implicating accused-appellants Wilfredo and Jaime in the crime during the interregnum.

The rule is settled that conviction must rest on the strength of the evidence of the prosecution and not on the weakness of the defense. The identity of the offender, like the crime itself, must be proved beyond reasonable

doubt. Even though accused-appellants Wilfredo and Jaime invoke the inherently weak defense of alibi, such defense nonetheless acquires commensurate strength where they were not positively identified, as the prosecution still has the onus probandi in establishing the guilt of the accused. The weakness of the defense does not relieve it of this responsibility.[18]

Going now to the penalty, we need only to correct the trial court's award of P100,000.00 as moral damages. Current case law pegs the amount of moral damages awarded to the heirs of the victim in a murder case at P50,000.00.[19]

WHEREFORE, the decision of the Regional Trial Court, Pangasinan, Branch 54, Alaminos, in Criminal Case No. 2321-A for murder is hereby MODIFIED, as follows:

- The conviction of accused-appellant Cirilo Oposculo, Jr. alias "Bong" for murder is AFFIRMED. He is sentenced to reclusion perpetua, with all its accessory penalties of the law, and to pay the heirs of the deceased Glorito Aquino P50,000.00 as moral damages and another P50,000.00 as civil indemnity, and costs; and
- In the absence of proof beyond reasonable doubt, accused-appellants Wilfredo Baracas alias "Adiong" and Jaime Baril alias "Metong" are ACQUITTED, with costs de oficio. The Court ORDERS their immediate release from custody unless they are held for other causes. The Director of Corrections is directed to notify this Court within ten (10) days from receipt of his compliance with this order.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Ynares-Santiago, JJ., concur.
Puno, J., no part.

[1] In Crim. Case No. 2321-A, Decision, dated March 29, 1996, Judge Jules A. Mejia, presiding, Original Record, pp. 378-391.

[2] Original Record, pp. 1-2.

[3] Original Record, p. 237.

[4] TSN, August 7, 1991, pp. 15-32.

[5] TSNs, August 13, 1991, pp. 2-14; November 22, 1991, pp. 3-20.

[6] TSN, November 6, 1991, pp. 14-29.

[7] TSN, September 11, 1991, pp. 2-27.

[8] TSN, September 4, 1991, pp. 2-11.

[9] TSN, August 29, 1991, pp. 3-6.

[10] Original Record, pp. 390-391.

[11] People v. Carillo, G.R. No. 129528, June 20, 2000; People v. Mansueto, G.R. No. 135196, July 31, 2000; People v. Dimailig, G.R. No. 120170, May 31, 2000.

[12] People v. Tortosa, G.R. No. 116739, July 31, 2000; People v. Galano, G.R. No. 111806, March 9, 2000.

[13] People v. Daroy, G.R. No. 118942, July 18, 2000; People v. Librando, G.R. No. 132251, July 6, 2000.

[14] People v. Arellano, G.R. No. 122477, June 30, 2000; People v. Araneta, G.R. No. 137604, July 3, 2000.

[15] People v. Agpawan, G.R. No. 123853, August 25, 2000; People v. Aglipa, G.R. No. 130941, August 3, 2000; People v. Repollo, G.R. No. 134631, May 4, 2000.

[16] People v. Caranguian, G.R. No. 124514, July 6, 2000.

[17] People v. Mansueto, G.R. No. 135196, July 31, 2000; People v. Palmones, G.R. No. 136303, July 18, 2000.

[18] People v. Crispin, G.R. No. 128360, March 2, 2000; People v. Caverte, G.R. No. 123112, March 20, 2000; People v. Maing, G.R. No. 122112, May 12, 2000.

[19] People v. De La Tongga, G.R. No. 133246, July 31, 2000; People v. Francisco, G.R. No. 121682, April 12, 2000; People v. Suplito, G.R. No. 104944, September 16, 1999.

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