

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO CABAYA, MAMERTO ORBASAYAN, ACCUSED, ROLANDO CABAYA, ACCUSED-APPELLANT.**

*G.R. No. 127129. June 20, 2001*

Ponente: BUENA, J.

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**BUENA, J.:**

For the death of Disan Dubria, an information for murder was filed against Mamerto Orbasayan, Romeo Samperoy, Remy Orbasayan and appellant Rolando Cabaya. The information[1] reads:

"That on or about the 26[th] day of January, 1993 at about 9:00 o'clock in the evening, more or less, at Barangay Colongolo, Municipality of Surallah, Province of South Cotabato, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, treachery and abuse of superior strength, while armed with a bladed weapon and a gun conspiring, confederating together and helping one another, did then and there wilfully, unlawfully and feloniously attack, assault, stab and shoot DISAN DUBRIA, hitting and wounding him on the different parts of his body which caused his instantaneous death.

"CONTRARY TO LAW."

Upon arraignment, all the accused, except Remy Orbasayan who is still at-large, entered a plea of not guilty. Thereafter, trial ensued.

Prosecution witness Ulysis Calawigan, the victim's brother-in-law, testified that at around 7:00 in the evening of January 26, 1993, he went to the house of Juan Orbasayan to watch a television show. There, he saw Mamerto Orbasayan, Jr., Romeo Samperoy, Remy Orbasayan and appellant Rolando Cabaya with the victim having a drinking spree. Later, Calawigan went home. After having supper, he closed the gate of their house. While closing the gate, he saw Mamerto Orbasayan, Jr., holding the left shoulder of the victim while appellant Rolando Cabaya was holding the victim's right shoulder, apparently pulling the latter. The group was allegedly moving towards the direction of the United Church of Christ in the Philippines [UCCP for brevity] which is about 300 meters away from Calawigan's house.[2]

In the same evening, Jelly Bahi-an, sister-in-law of the victim, claims that she was at the UCCP church accompanying the UCCP pastor who will be sleeping at the parsonage. At about 8:30 that evening, she heard a cry for help which prompted her to go out of the parsonage. Outside, she allegedly saw the victim being held on both hands by two unidentified persons. Thereafter, appellant Rolando Cabaya, Jr. stabbed the victim. When the victim fell, accused Mamerto Orbasayan, Jr., shot him in the chest.

For their part, the four accused denied the charge filed against them and invoked the defense of alibi. They alleged that at about 6:00 in the evening of January 26, 1993, they were at the house of Juan Orbasayan at Colongolo, Surallah, South Cotabato drinking tuba. Later, at around 6:30 in the evening, the victim arrived together with Calawigan. The two ordered tuba and joined in the drinking. After about 30 minutes, the victim left, followed later by Calawigan. The rest of the accused stayed behind and continued their drinking until 10:00 in the evening.

After trial, Mamerto Orbasayan, Jr. and appellant Rolando Cabaya were found guilty of the crime of murder to which they were sentenced to suffer reclusion perpetua and were ordered to solidarily pay the heirs of the victim the sum of P50,000.00 as death indemnity, while Romeo Samperoy was acquitted of the charge. The dispositive portion of the trial court's decision reads:

"WHEREFORE, the Court finds the accused Rolando Cabaya and Mamerto Orbasayan, JR. guilty beyond reasonable doubt of the murder of Disan Dubria and each of them is hereby sentenced to the penalty of reclusion perpetua and to solidarily indemnify the heirs of Disan Dubria the sum of P50,000.00 for the victim's death.

"The accused Romeo Samperoy is hereby acquitted.

"SO ORDERED."[3]

On account of the judgment of conviction, appellant Cabaya now comes to us alleging that the trial court erred in

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- GIVING CREDENCE TO THE BIASED AND INCREDIBLE TESTIMONIES OF THE VICTIM'S BROTHER-IN-LAW AND SISTER-IN-LAW WHO DID NOT NAME THE ACCUSED-APPELLANT AS ONE OF THE ASSAILANTS IMMEDIATELY AFTER "WITNESSING" THE KILLING;
- CONVICTING THE ACCUSED-APPELLANT DESPITE THE EXISTENCE OF A SERIOUS AND WELL-FOUNDED REASONABLE DOUBT AS TO HIS GUILT.

Prosecution witness Jelly Bahi-an testified that she was able to see the perpetrators of the crime. The trial court accorded full faith and credence to her testimony as to the commission of the crime and the identity of the perpetrators, rejecting the defenses of denial and alibi proffered by the four (4) accused. It ruled:

"xxx xxx Bahi-an testified also that the two accused Rolando Cabaya and Mamerto Orbasayan were the assailants of the victim Disan Dubria.

"Bahi-an could not be wrong on the identities of accused Rolando Cabaya and Mamerto Orbasayan, Jr. as she had known them for about 20 years before she had testified. The place of the killing was favorably lighted.

"In corroboration to Bahi-an's testimony is the testimony of Ulysis Calawigan that when he closed the gate of his house he saw Disan Dubria held by two persons who were the accused Rolando Cabaya and Mamerto Orbasayan, Jr. as if forcing the victim to follow them. And all the accused were passing by his house that evening going to the UCCP church. Calawigan in his sworn statements also identified accused Rolando Cabaya and Mamerto Orbasayan, Jr. to have placed their hands over the shoulder of the victim when they passed by Calawigan's house.

"With the presence of light on the way to the UCCP church from the house of Juan Orbasayan where one passes by the house of Ulysis Calawigan, there is no doubt of an apparent visibility of witnesses Bahi-an and Calawigan to identify all the accused.

"xxx xxx xxx

"The Court finds the testimony of Jelly Bahi-an credible. She had not been shown to be biased as against the two accused Rolando Cabaya and Mamerto Orbasayan, Jr. whom she had known for already 20 years at Colongolo. Her identifying them to have stabbed and shot the victim was favored with the lights present that evening just near where the crime was committed on the road just outside the fence she peeped through. No ulterior motive has been shown to have actuated her to testify against Rolando Cabaya and Mamerto Orbasayan, Jr., thus her testimony shall be given full faith and credit.

"Likewise, the court believes the testimony of Ulysis Calawigan who had, as early as of January 28, 1993

given statements to the police pointing at the two accused Rolando Cabaya and Mamerto Orbasayan, Jr. to have placed their hands in the victim's shoulder and appeared to have used force in making the victim go with them towards the UCCP church. Besides, Calawigan appeared to have told the truth and nothing more was added in his testimony to what he revealed in his sworn statements. It is not in conformity with human behavior or experience for a relative to implicate an innocent person so as to make the guilty escape punishment. Calawigan is a bother-in-law of the victim.

"The defense of the accused is alibi. They claimed that they were at the house of Juan Orbasayan still drinking tuba when a gunburst was heard at about 8:00 o'clock that evening. The house of Juan Orbasayan was only about eight hundred meters to the UCCP church where the victim was killed. With that distance it was not impossible for the accused to repair to said place then to kill the victim and immediately be back at Juan's place.

"Besides, alibi cannot prevail over the positive identification by the prosecution witnesses of the authors of the crime. And a witness would not falsely impute to an accused a serious criminal offense if it is not the untarnished truth.

"Between the positive testimonies of the two witnesses of the prosecution and the denial of the accused and their witnesses of the killing of the victim, greater weight is given to the former." [4]

Appellant assails the above findings of the trial court in giving credence to the testimony of the prosecution witnesses. Generally, appellate courts will not disturb the trial court's assessment of the credibility of witnesses in the absence of proof that some fact or circumstance of substance has been overlooked, or its significance misinterpreted which, if properly appreciated, would affect the disposition of the case.[5] Upon examination of the records, we find cogent reason to depart from the general rule.

Prosecution witness Jelly Bahi-an asserts that she saw a man being held by two (2) persons when stabbed by appellant Cabaya. When the man fell to the ground, Mamerto Orbasayan shot him.[6] She did not initially recognize the victim. She only identified the victim when the latter fell down.[7]

The incident happened on the road outside the UCCP parsonage. The parsonage is adjacent to and two meters away from the UCCP church.[8] Enclosing the church and parsonage is a concrete fence, about five feet tall[9] which is cemented up to the waistline,[10] with bamboo slots placed vertically.[11] Fronting the church on the northern part is a road.[12] There is also a road on the eastern part which is 3 meters away from the wall or fence enclosing the church property.[13] The incident happened on the eastern road.[14]

According to Bahi-an, the victim being held by two persons was 3 meters away from the fence.[15] She claims that she was able to recognize appellant Cabaya stab the victim, and see Mamerto Orbasayan shoot the victim because of the light coming from the electric bulb in front of the church,[16] and which is three (3) meters from where the victim was stabbed and shot.[17] As estimated by the trial court, the bamboo pole with the electric bulb was about 1½ meters from the ground[18] and the electric bulb was placed below the top of the bamboo pole.[19] That electric pole was near the gate of the church which is found on the north road.[20] Thus, there was no light on the eastern part.[21]

The incident happened at the junction along the road on the northern boundary and the road on the eastern boundary of the church property.[22] The road where the witness Bahi-an saw the victim was a descending road.[23] Only a single electric post lights the area which is only 1½ meters high, found at the northern part of the road.

The trial court gave credence to the testimony of witness Bahi-an as to the identity of the perpetrator because of the light present near the crime scene.[24] She testified that the victim was about 3 meters away from the electric

post. Assuming that the bamboo pole with the electric bulb can illuminate such distance, the possibility, nonetheless, of positively identifying the victim and the accused is still clouded. The victim was only identified after he fell. Even then, when the victim fell, the possibility of proper identification of the perpetrators becomes elusive as to the witness' perspective or view because the road where the incident happened is a descending one. Reading from the testimonies of the witness, it was not clear when she was able to recognize the victim, whether in the act of falling on his back, or lurching forward frontally. From the records on hand, it was only stated therein that the recognition was made only when the victim fell down.

Even assuming arguendo that the witness was able to identify the victim, it is still doubtful on whether she was able to recognize the assailant. Recognition or identification of the victim by the witness does not necessarily follow that the same witness had recognized or identified the assailants. The post-mortem examination revealed that both the stab and gunshot wounds were inflicted frontally. The victim received one gunshot wound with serrated borders on the left chest and a stab wound on right chest below the right nipple.[25] The nature of the wound inflicted on the victim reveal that the assailants were in front of the victim. If the victim was facing the witness when attacked, necessarily, the person who inflicted the stab wound and the one who shot the victim, appellants Cabaya and Mamerto Orbasayan, respectively, were in front of the victim with their back towards the witness. Under such circumstance, since the assailants were not facing the victim, it was not clearly established by the prosecution as to when the proper identification was made. Unless the assailants looked back and faced the direction of the witness, only then can the witness speak of a trustworthy identification.

Also, the victim is the husband of witness Bahi-an's sister. The incident happened on January 26, 1993.[26] She only revealed what she saw a month later, or on February 26, 1993.[27] She said that she executed the sworn statement only after three weeks because she was afraid.[28] Thus, she testified to the following -

"Q:

After seeing what you witnessed you go (sic) back to that room where you sleep?

"A:

Yes, I returned but I cannot sleep because I was afraid.

"Q:

You did not go to the room of the preacher?

"A:

I did not, Sir.

"Q:

The following morning did you tell the story of what you saw to the preacher?

"A:

The following morning I woke up the preacher and then I asked permission from her that I will go home and I told her that somebody was killed there and the preacher told me that it was better I had not awaken her because she has nervous. (sic)[29]

"x x x x x x x x

"COURT

"Q:

What did you tell the preacher the following morning?

"A:

I told her: 'I will go home because there was somebody who was killed there.'

"Q:

No more?

"A:

Yes sir.

"Q:

You did not tell the preacher that Roberto Cabaya stabbed the person?

"A:

I did not.

"Q

You did not also tell the preacher that Mamerto Orbasayan shot that person who is now dead?

"A:

I did not.

"Q:

What time did you arrive in your home the following morning?

"A:

5:00 o'clock dawn.

"x x x x x x x x

"Q:

Did you talk to your parents when you arrived?

"A:

I informed my parents that Disan Dubria was killed.

"Q:

What more?

"A:

That is what I told them. I did not tell them that I saw the incident.

"Q:

You did not tell also your parents that Rolando Cabaya stabbed Disan Dubria?

"A:

I did not tell them.

"Q:

You did not likewise tell them that Mamerto Orbasayan shot Disan Dubria?

"A:

I did not.

"x x x x x x x x

"COURT:

"Q:

Did you go to your younger sister from your home, the wife of Disan Dubria?

"A:

She slept at the house of my mother.

"Q:

Did you talk to her that morning?

"A:

We have not conversed.

"Q:

You did not tell your sister that her husband is dead?

"A:

I did not converse with her."[30]

While it is true that there is no standard behavior for persons confronted with a shocking incident and that the workings of the human mind when placed under emotional stress are unpredictable and cause different reactions to men,[31] still, the relationship of the witness to the victim will logically impel her to spill the truth for the sake of her sister whose husband was murdered. The fear she wants this Court to believe was not sufficiently established to convince us of her long silence from the day of the incident. She did not even inform her sister that the latter's husband or her own brother-in-law was killed. The Court cannot help but cast a scrutinizing eye on the testimonies offered by the said prosecution witness. Evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.[32]

As for the testimony of prosecution witness Ulysis Calawigan, brother-in-law of the victim, the trial court believed his narration in view of the fact that he gave statements to the police two days after the incident or on January 28, 1993. However, what was narrated to the police and testified to in court was the fact that he allegedly saw appellant Cabaya as well as Mamerto "to have placed their hands in (sic) the victim's shoulders and appeared to have used force in making the victim go with them towards the UCCP church." [33] Such testimony is not a direct evidence nor does it point to any culpability though it could have been considered as circumstantial evidence. By itself, however, it is insufficient to satisfy proof beyond reasonable doubt. Circumstantial evidence is a proof of facts from which, taken collectively, the existence of a particular fact in dispute may be inferred as a

necessary or probable consequence.[34] Even then, certain guidelines must be followed in appreciating circumstantial evidence such that -

(1)

it should be acted upon with caution;

(2)

all the essential facts must be consistent with the hypothesis of guilt;

(3)

the facts must exclude every other theory but that of guilt; and

(4)

the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense.[35]

The fact that prosecution witness Calawigan saw the accused and the appellant with the victim is not alone sufficient to convict them of the crime charged. In fact, where the accused are charged of acting in conspiracy, as in this case, the Court has held that mere presence, even with approval but without active participation, is not enough for purposes of conviction.[36]

In criminal prosecutions, the identification of the offender is crucial to defeat the defense of alibi. Positive identification must nonetheless be established beyond reasonable doubt. Absent such clear and positive identification, the doctrine that the defense of alibi cannot prevail over positive identification of the accused must yield to the constitutional presumption of innocence. As every crime must be established beyond reasonable doubt, it is also paramount to prove, with the same quantum of evidence, the identity of the perpetrator. Necessarily, courts should not precipitately conclude that a person is guilty when his alibi appears weak[37] for it is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt. A guilty verdict must depend on the weight of the evidence for the prosecution and should not be allowed to draw strength from the weakness of the evidence for the defense. Our legal culture demands the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty or even property. The hypothesis of his guilt must flow naturally from the facts proved and must be consistent with all of them.[38]

Accordingly, the Court has no recourse but to reject the trial court's assessments on the credibility of the witness' testimony for being contrary to the ordinary course of nature and the ordinary habits of life.[39] When the prosecution's evidence does not fulfill moral certainty, the accused is entitled to an acquittal because the presumption of innocence is not rebutted. Therefore, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.[40]

Since the alleged culprits for the killing of the victim were not positively identified, motive becomes an important consideration. It has been ruled that motive assumes significance only when there is no showing of who the perpetrator of crime might have been.[41] With the weakness of the prosecution's evidence, it is necessary to prove motive because, if the inculpatory facts are capable of two interpretations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, it fails to meet the test of moral certainty and is insufficient to support a conviction.[42] From the records, no motive can be attributed to appellant.

Lastly, the imputed culpability of Mamerto Orbayasan and appellant Cabaya stems from the identification made by the prosecution witness which this Court has set aside on the ground of reasonable doubt. The former should

necessarily benefit from the acquittal of the latter who appealed. An accused who did not appeal benefits from a judgment obtained by those who instituted an appeal, if the same are favorable and applicable to him,[43] as in this case.

WHEREFORE, in view of the foregoing, the appealed decision dated September 14, 1994 is REVERSED and SET ASIDE. Appellant Rolando Cabaya and accused Mamerto Orbasayan are ACQUITTED. Their IMMEDIATE RELEASE from detention is hereby ORDERED, unless they are being held for some other lawful cause.

The Director of the Bureau of Corrections is DIRECTED to implement this Decision and to report to this Court immediately the action taken hereon, but not later than five (5) days from receipt hereof.

**SO ORDERED.**

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

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[1] Records, p. 1.

[2] TSN, January 28, 1994, p. 9.

[3] Rollo, P. 28, decision dated September 14, 1994, Regional Trial Court, 11[th] Judicial Region, Branch 26, Surallah, South Cotabato.

[4] Rollo, pp. 27-28.

[5] People vs. Pallarco, 288 SCRA 151 [1998].

[6] TSN, November 3, 1993, pp. 5-6.

[7] Ibid., p. 7.

[8] Ibid.

[9] Ibid., p. 13.

[10] Ibid., p. 9.

[11] Ibid.

[12] TSN, November 3, 1993, p. 13.

[13] Ibid., p. 14.

[14] Ibid., pp. 15-16.

[15] Ibid., p. 7.

[16] Ibid, p. 8.

[17] Ibid.

[18] Ibid., p. 12.

[19] Ibid., 12-13.

[20] Ibid., p. 16.

- [21] Ibid.
- [22] Ibid, p. 17; see pp.15-16.
- [23] Ibid, p. 17.
- [24] Rollo, p. 27, RTC Decision.
- [25] RTC Decision, p. 2, Rollo, p. 23; Exhibits B and B-1, Records, pp. 3-5.
- [26] TSN, November 3, 1993, p.10.
- [27] Ibid., p. 9.
- [28] Ibid., p.11.
- [29] Ibid., pp. 11-12.
- [30] Ibid., pp. 18-20.
- [31] People vs. Layaguin, 262 SCRA 207 [1996].
- [32] People vs. Eslaban, 218 SCRA 534 [1993].
- [33] Rollo, p. 27; RTC Decision, p. 6.
- [34] People vs. Fronda, 328 SCRA 185, 195 [2000].
- [35] Wharton's Criminal Evidence, Vol. II, p. 1643 cited in People vs. Orcula, Sr., G.R. No. 132350, July 5, 2000.
- [36] People vs. Berroya, 283 SCRA 111 [1997].
- [37] People vs. Pidia, 249 SCRA 687 [1995].
- [38] Pepito vs. CA, 310 SCRA 128 [1999]; People vs. Roche, G.R. No. 115182, April 6, 2000.
- [39] People vs. Dulay, 217 SCRA 132 [1993]
- [40] People vs. Villagonzalo, 238 SCRA 215 [1994]
- [41] People vs. Lozada, G. R. No. 130589, June 29, 2000 citing People vs. Padlan, 290 SCRA 388 [1998].
- [42] see People vs. Giganto, G. R. No. 123077, July 20, 2000.
- [43] Section 11(a), Rule 122.

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