

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR CRISPIN, ACCUSED-APPELLANT.

G.R. No. 128360. March 02, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Appeal from a decision of the Regional Trial Court of Palawan, Branch 52,[1] finding accused-appellant Edgar Crispin guilty of the crime of murder, sentencing him to suffer the penalty of reclusion perpetua with the accessory penalties provided by law, and ordering him to pay to the heirs of the victim civil indemnity of P50,000.00, actual damages of P80,000.00, and moral damages of P30,000.00.

The Information reads:

The undersigned hereby accuses FELIPE CRISPIN, EDGAR CRISPIN, EDMUND LOSIS, HENRY LOSIS and PAQUITO GOMEZ, of the crime of "MURDER" as defined and penalized under Article 248 of the Revised Penal Code, as amended, committed as follows:

That on or about the 4th day of May, 1994, at Sitio Little Caramay, Barangay Magara, Municipality of Roxas, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another with evident premeditation and treachery, while armed with bladed weapons and with intent to kill, and taking advantage of nighttime, did then and there wilfully, unlawfully and feloniously attack, assault and stab one MIGUEL BADENAS, hitting him on various vital parts of his body inflicting upon him multiple injuries, to wit:

x x x

which were the direct and immediate cause of the instantaneous death of said Miguel Badenas and thereafter the above-named accused threw the body of said Miguel Badenas into the river.

CONTRARY TO LAW.[2]

Of the five accused, only accused-appellant was arrested, arraigned and put to trial.

The evidence for the prosecution discloses that at about 8 o'clock in the evening of May 4, 1994, the five accused converged at the house of one Danilo de Asis in Sitio Little Caramay, Magara, Roxas, Palawan for a drink. At about 9 o'clock in the evening, Cesar Delima and the victim joined them. Cesar Delima left after an hour, claiming he was sleepy, and the others continued their drinking until midnight, when Danilo de Asis asked them to leave as it was already late in the evening. The group had consumed five bottles of beer.

Honorio Cabailo testified to witnessing the attack on Miguel Badenas. Cabailo stated that at the time in question, he was active in the campaign for the forthcoming barangay elections, and had just left the house of Ramon Balmonte in Sitio Caramay, for Sitio Capalad, also in Barrio Magara, to meet his fellow election campaigners. As he was walking towards Sitio Capalad, and from a distance of about five meters, he recognized Edgar Crispin and his cousin Felipe Crispin as well as the victim, all being his barriomates in Magara, Roxas, Palawan. Cabailo

further testified that while herein accused-appellant Edgar Crispin and Felipe Crispin stabbed Badenas, three other men whom he failed to identify blocked the way of the victim to prevent the latter from escaping.[3] Overcome with fear for what he saw, Cabailo proceeded to Sitio Capalad and did not learn about the death of Miguel Badenas until three days after, when a relative of Badenas told him that Badenas died of stab wounds.

The body of Miguel Badenas was interred immediately and without post-mortem examination after it was fished out of the river of Little Caramay, as it was already in a state of decomposition. About a month later, upon the request of Police Officer Joseph Carbonel, Chief of Police of Roxas, Palawan, the body was exhumed and examined on May 28, 1994 by Dr. Leo Salvino. The exhumation report[4] bore the following findings:

- Stab wound, 0.5 cm. penetrating the sternal area, entire anterior chest wall hitting the cardiac ventricle through and through;
- Stab wound, 0.5 cm. penetrating mid-clavicular area;
- Stab wound, mid-clavicular area;
- Stab wound, 0.6 cm. penetrating mid-clavicular area;
- Stab wound, penetrating mid-axillary area, 2.5 cm.;
- Stab wound, 2.5 cm., penetrating mid-axillary;

Back - stab wound, 2.5 cm., penetrating paravertebral area; and

Abdomen - stab wound, penetrating the entire abdominal cavity, upper quadrant

PROBABLE CAUSE OF DEATH: Cardiac Tamponade, Massive Hemo-pneumothorax

Testifying on the exhumation report, Dr. Salvino declared that he found at least nine stab wounds on the deceased's body, eight of which penetrated the body cavities. Based on the sizes of the wounds, he opined that it is likely that more than one person, using different kinds of sharp bladed instruments, have caused the injuries.

Danilo de Asis, the owner of the house where the five accused and the victim spent the night drinking, testified that the group left his house at about 12 o'clock in the early morning of May 5, 1994. He went to sleep as soon as the group left, and did not learn of the death of Miguel Badenas until four days later, when the body was fished out of the river.[5]

For his part, accused-appellant interposed the defenses of denial and alibi. He testified that while he knew his four co-accused, he was not with them on the evening in question since he was at the residence of his brother-in-law, Rogelio Gorada, also in Sitio Little Caramay, Magara, Roxas, Palawan. Accused-appellant stated that he and his friend, Nolito Bacaltos, arrived at Gorada's house at about 7:30 in the evening of May 4, 1994, shortly after which they began drinking beer. At about 8 o'clock in the evening, they finished drinking and ate supper. Then he and Bacaltos spent the night in Gorada's house, and left for their respective homes at around 6:30 the next morning. He claimed no knowledge of what happened to Miguel Badenas on the early morning of May 5, 1994, and came to learn of the latter's death on May 7, 1994 only.[6]

Nolito Bacaltos testified in support of accused-appellant's story. Bacaltos's elder sister, Editha, is married to Teodoro Crispin, an elder brother of accused-appellant. He corroborated the testimony of accused-appellant that they were together on the evening of May 4, 1994 at the house of Rogelio Gorada, spent the night there, and went home at about 7 o'clock the following morning.[7]

Finally, the defense presented Ramon Balmonte, the owner of the house where Honorio Cabailo was said to have

come from on the night that he witnessed the killing. Balmonte, who at the time he testified was a member of the Sangguniang Barangay of Magara,[8] said that he could not remember if Cabailo slept at his house sometime on the first week of May 1994, as he was always out of his house.[9]

The trial court rejected the denial and alibi of accused-appellant and convicted him of murder. While it held the circumstances of evident premeditation and treachery unsubstantiated by the evidence, it found the killing to be qualified to murder by the attendance of abuse of superior strength. It also ruled out the generic aggravating circumstance of nighttime, there being no evidence to show that the accused purposely sought nighttime to facilitate the commission of the offense.

Thus, the dispositive portion of the questioned Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the co-accused EDGAR CRISPIN guilty beyond reasonable doubt as co-principal of the crime of murder, and there being no modifying circumstances appreciated, and pursuant to Article 248 of the Revised Penal Code, as amended by R.A. 7659, in relation to Article 63(2) of the same Code, and not being entitled to the benefits of the Indeterminate Sentence Law, he is hereby sentenced to reclusion perpetua, with the accessory penalties of civil interdiction for life and of perpetual absolute disqualification; to pay the heirs of Miguel Badenas for the death of the latter,

- a. Civil Indemnity P 50,000.00
- b. Funeral Expenses and Wake 20,000.00
- c. Lost Income for his Family 60,000.00
- d. Moral Damages 30,000.00
- TOTAL P160,000.00

and the costs.

x x x

SO ORDERED.[10]

On appeal, accused-appellant raises the following assignments of error:

- The lower court erred in convicting accused-appellant of murder qualified by abuse of superior strength, when said qualifying circumstance is not alleged in the Information.
- The lower court erred in convicting accused-appellant despite the absence of proof beyond reasonable doubt.

In support of the first assignment of error, accused-appellant cited the Constitution[11] and decided cases[12] which held that an aggravating circumstance not alleged in the Information but proven in trial cannot qualify a crime but should only be treated as a generic aggravating circumstance. Hence, assuming the correctness of the finding of abuse of superior strength, accused-appellant should not be convicted of murder, but only homicide.

As regards the second assignment of error, accused-appellant contests the trial court's reliance on the testimony of eyewitness Honorio Cabailo, especially on Cabailo's claim that he recognized accused-appellant on a dark moonless night, by mere starlight. He pointed out that even the trial court acknowledged that it is likely for Cabailo's identification of the perpetrators to have been inaccurate since starlight, by itself, could not have provided him with sufficient illumination.[13]

Accused-appellant also assails the trial court's extensive reference to the sworn statement of Cesar Delima, taken

by the police of Roxas, Palawan, who also claimed to witness the five accused attack and kill Miguel Badenas.[14] While Cesar Delima was named in the Information as one of the principal witnesses, he did not appear when subpoenaed to testify.[15] Accused-appellant decries the fact that the trial court gave credence to the allegations of the sworn statement despite the prosecution's failure to present Delima as a witness, thus depriving the accused of his right to cross-examine him. He further contends that the sworn statement could not have been validly considered by the trial court, it not having been formally offered in evidence by the prosecution.

Without the affidavit of Cesar Delima, and considering the weakness of the testimony of purported eyewitness Honorio Cabailo, accused-appellant argues that the trial court had insufficient bases to find him guilty beyond reasonable doubt of the murder of Miguel Badenas.

The records and evidence before us convince us to agree with accused-appellant. Before the rule that positive identification prevails over mere denial and alibi may apply, it is necessary that the credibility of the eyewitness be first put beyond question. This Court has always recognized that the trial courts are the ones best-equipped to pass upon the credibility of witnesses, having had the opportunity to observe firsthand the demeanor and actuations of the witness while on the witness stand.[16] Where the trial court itself expresses doubts on the credibility of the eyewitness and looks to other evidence to secure the conviction, we are inclined to find less believable the identification by that eyewitness. The following portions of the RTC Decision serve to illustrate this point:

Doubt may indeed be entertained with respect to the identification of the five accused only by prosecution witness Honorio Cabailo. The slaying of Miguel Badenas purportedly took place at about 12 o'clock midnight of May 4, 1994.[17] It was not a moonlit night and the only source of light were the stars. Under the circumstances, the likelihood of a wrong identification may not altogether be precluded. Such being the case, the defense of alibi may gain some credence.

But apart from the testimony of Honorio Cabailo is that of Danilo de Asis who declared that co-accused Edgar Crispin was with Felipe Crispin, Edmundo Losis, Henry Losis and Paquito Gomez drinking Ginebra in his (Danilo de Asis's) residence from about 8 o'clock to 12 o'clock midnight of May 4, 1994. At about 9 o'clock that same evening Cesar Delima and Miguel Badenas also came and joined them in drinking.

Moreover, included and forming part of the records of the case is the records of the preliminary investigation, among which is a sworn statement by Cesar Delima, taken by the police of Roxas, Palawan, where he declared among others, that: xxx [18]

In its Brief, the OSG stated that it was not impossible for Cabailo to have properly identified the five accused despite the poor illumination since he saw the incident from a mere five meters away, and because he knew these people beforehand. However, these matters have formed part of the testimony of Honorio Cabailo, and have been taken into consideration by the trial court when it passed upon the overall credibility of Cabailo's testimony. The matter of assigning values to declarations at the witness stand is most competently carried out by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the witness's behavior and attitude at the trial, and the conclusions of the trial judge command great weight and respect.[19] When in the end, the trial court still declared that it found Honorio Cabailo's identification of the accused doubtful, we will not disturb such finding on appeal.

From the records of the case, we also note that the trial judge himself questioned Honorio Cabailo on whether there was sufficient illumination. Thus:

COURT: Since it was nighttime, it was dark already, how were you able to see them?

A: Eventhough it was nighttime the night was not totally dark because of the stars.

Q: Was there moonlight at the time?

A: There was no moonlight, sir.[20]

Hence, as clearly set out in the RTC Decision, above-quoted, the trial court's conviction of accused-appellant was not based on Cabailo's identification, as it in fact found the same to be unsatisfactory, but on the testimony of Danilo de Asis and the affidavit of Cesar Delima.

The affidavit of Cesar Delima details the attack and the killing by the accused of Miguel Badenas in the same way as Honorio Cabailo in his testimony, but with the significant distinction of having allegedly recognized the perpetrators with the aid of a flashlight. As mentioned earlier, Cesar Delima was named a principal witness in the Information, but he failed to testify despite being subpoenaed twice. In considering the affidavit as evidence, the RTC reasoned that the sworn statement formed part of the record of the case on preliminary investigation. We cannot uphold this.

An affidavit is hearsay and has weak probative value, unless the affiant is placed on the witness stand to testify on it.[21] Being hearsay evidence, it is inadmissible because the party against whom it is presented is deprived of his right and opportunity to cross-examine the person to whom the statement or writing is attributed.[22] The right to confront and cross-examine the witnesses against him[23] is a fundamental right of every accused which may not be summarily done away with. Another reason why the right to confrontation is so essential is because the trial judge's duty to observe and test the credibility of the affiant can only be met by his being brought to the witness stand.[24] That the affidavit formed part of the record of the preliminary investigation does not justify its being treated as evidence because the record of the preliminary investigation does not form part of the record of the case in the RTC.[25] Such record must be introduced as evidence during trial, and the trial court is not compelled to take judicial notice of the same.[26] The prosecution having failed to present Cesar Delima as a witness, his sworn statement was patently inadmissible and deserves no consideration at all.

As for the testimony of Danilo de Asis, all that it proves is that the five accused and the victim left de Asis's house together on that fateful night. In his testimony, de Asis plainly professed that he had no knowledge of the incidents that took place after they left his house.[27] The evidence that may be adduced from de Asis's testimony is plainly circumstantial, and no inference may be drawn from it as to the probable guilt of accused-appellant for the crime charged.

Settled is the rule that conviction should rest on the strength of the evidence of the prosecution and not on the weakness of the defense.[28] The identity of the offender, like the crime itself, must be proved beyond reasonable doubt.[29] Even though accused-appellant invokes the inherently weak defense of alibi, such defense nonetheless acquires commensurate strength in the instant case where no positive and proper identification has been made by the prosecution witnesses of the offender, as the prosecution still has the onus probandi in establishing the guilt of the accused.[30] The weakness of the defense does not relieve it of this responsibility.

After having ascertained the affidavit of Cesar Delima to be inadmissible, and going by the trial court's plain declaration that the identification by Honorio Cabailo of the accused is doubtful, it is clear that in the instant case the prosecution has failed to present sufficient evidence to prove the guilt of accused-appellant beyond reasonable doubt.

The acquittal of accused-appellant being apropos, we therefore find it unnecessary to pass upon the first assignment of error.

WHEREFORE, the Decision dated November 29, 1996 of the Regional Trial Court of Palawan, Branch 52, in Criminal Case No. 11926 convicting accused-appellant Edgar Crispin of murder is REVERSED, and

accused-appellant is ACQUITTED of the crime charged on the ground of reasonable doubt. The Court orders his RELEASE from commitment unless he is held for some other legal cause or ground. Costs de oficio.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima JJ., concur.

[1] Presided by Judge Filomeno A. Vergara.

[2] Rollo, 4-5.

[3] TSN, September 27, 1995, 5-6.

[4] RTC Decision; Rollo, 16-17.

[5] TSN, September 27, 1995, 17-20.

[6] TSN, November 16, 1995, 4-6.

[7] TSN, November 29, 1995, 3-9.

[8] TSN, February 14, 1996, 3-4.

[9] Ibid., 4.

[10] RTC Decision; Rollo, 28-29.

[11] Article III, Sec. 14(2) of the 1987 Constitution declares that the accused has a right "to be informed of the nature and cause of the accusation against him."

[12] People vs. Lacao, 60 SCRA 89; People vs. Navarro, 12 SCRA 530.

[13] RTC Decision; Rollo, 21.

[14] Ibid., 21-23.

[15] The RTC Decision explains that subpoena for Delima's appearance in the hearing of September 13, 14, 20 and 21, 1995 was issued on June 2, 1995 and served to him on September 3, 1995 through the sister of the victim, Belinda Badenas Bron. Another subpoena was issued by the court on September 20, 1995 through Ms. Bron, for the hearing of September 26, 1995, but he again failed to appear. The records fail to disclose the reasons for his failure to appear.

[16] People vs. Vidal, G.R. No. 90419, June 1, 1999; People vs. Peralta, 283 SCRA 81; People vs. Oliva, 282 SCRA 470; People vs. Tan, Jr., 264 SCRA 425.

[17] We think it is more accurate to say that the killing was committed at approximately 12 o'clock in the morning of May 5, 1994.

[18] The RTC Decision goes on to summarize the contents of Delima's sworn statement, thus: He left the house of Danilo de Asis at about 10 o'clock in the night of May 4, 1994. At about 12 o'clock midnight, he was in his house when he heard voices of people fighting outside. He went out of his house and, with the aid of a flashlight, saw the five accused attacking the victim. He attempted to stop them but they threatened him that they will kill him if he told anyone of what he saw. Rollo, 21-23.

[19] People vs. Magallanes, 23 SCRA 1275.

[20] TSN, September 27, 1995, 8.

[21] People vs. Silvestre, G.R. No. 127573, May 12, 1999; Carlos A. Gothong Lines vs. NLRC, G.R. No. 96685, February 15, 1999.

[22] People vs. Ola, 152 SCRA 1.

[23] Article III, Sec. 14(2), 1987 Constitution; Sec. 1, Rule 115, Revised Rules of Court.

[24] People vs. Estenzo, 72 SCRA 428; U.S. vs. Javier, 37 Phil. 449.

[25] Sec. 8, Rule 112, Revised Rules of Court.

[26] People vs. dela Iglesia, 241 SCRA 718.

[27] TSN, September 27, 1995, 17-20.

[28] *People vs. Rugay*, 291 SCRA 692; *People vs. Meneses*, 288 SCRA 95; *People vs. Solis*, 182 SCRA 182; *People vs. Hora*, 153 SCRA 21.

[29] *People vs. Ni-o*, 290 SCRA 155; *People vs. Clores*, 125 SCRA 67.

[30] *People vs. Ola*, *supra*; *People vs. Somontao*, 128 SCRA 415; *People vs. Tea-o*, 128 SCRA 149.

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