

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO ORIO AND ROMEO ORIO, ACCUSED-APPELLANTS.

G.R. No. 128821. April 12, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Amancia Marcial was watching television when she heard somebody shout "Huwag pare, hindi tayo magkatalo!" Upon rushing to the window, she saw a man with a bolo menacingly approaching Domingo Francisco. A man armed with a fan knife, who must have heard the commotion, rushed out of his house and pounced on Domingo. After pinning Domingo to the wall, the two armed men stabbed and hacked him as he screamed, "Patay na ako! Hindi na ako lalaban!"

For the fatal hacking of Domingo Francisco, the brothers Romeo Orio and Rodolfo Orio were charged with Murder in an Information[1] which alleged –

That on or about the 28th day of June 1992, in the Municipality of Guiguinto, Bulacan, Philippines and within the jurisdiction of this Honorable Court, the said accused Rodolfo Orio and Romeo Orio, armed with [a] bolo and [a] fan knife (balisong), conspiring, confederating together and mutually helping each other, with intent to kill one Domingo Francisco, did then and there wilfully, unlawfully and feloniously, with treachery and with evident premeditation and abuse of superior strength, attack, assault, hack and stab with the said bolo and fan knife (balisong) they were then provided [with], hitting the latter on the different parts of his body, thereby inflicting upon him serious physical injuries which directly caused his death.

Contrary to law.

Upon arraignment, both accused pleaded not guilty to the charge.[2] Trial thereafter ensued. The court a quo rendered judgment,[3] the dispositive portion of which reads:

WHEREFORE, this Court finds accused Romeo Orio and Rodolfo Orio guilty beyond reasonable doubt of the crime of Murder and are hereby sentenced to the penalty of reclusion perpetua. Both accused are further ordered to indemnify the family of the deceased the sum of P50,000.00 and actual expense[s] for burial of P6,500.00, without subsidiary imprisonment in case of insolvency.

Upon promulgation, both accused should immediately be transferred to the National Penitentiary in Muntinlupa, Metro-Manila.

SO ORDERED.[4]

Dissatisfied, both accused interposed this appeal alleging that –

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS FOR MURDER DESPITE THE MANIFEST INCONSISTENCIES IN THE TESTIMONY OF THE PROSECUTION'S WITNESS.

II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF "ABUSE OF SUPERIOR STRENGTH" IN THE KILLING OF THE VICTIM DESPITE WANT OF EVIDENCE.

The prosecution's version of the incident is summed thus by the Solicitor General in the People's brief :

Appellants Rodolfo Orio and Romeo Orio are brothers and the victim, Domingo Francisco was their neighbor at Cruz, Guiguinto, Bulacan.[5]

Around 8:30 in the evening of June 28, 1992 while Domingo and his wife Donata were about to enter their house, Rodolfo suddenly blocked their way and pointed a bolo at Domingo. The latter shouted "Huwag, pare." Then suddenly, Romeo appeared, held Domingo's shoulder and stabbed him in the chest. Rodolfo, in turn, hacked Domingo several times on different parts of his body. Domingo fell to the ground but Rodolfo continued to hack him causing his intestines to come out. Thereafter, the duo fled.[6]

Domingo died of massive external hemorrhage due to multiple wounds on the chest and abdomen and extremity, penetrating the right lung, large and small intestines.[7]

The Orio brothers fled to their home province in Palapag, Samar, where they were arrested on September 4, 1992.[8]

On the other hand, both accused denied having anything to do with the killing of the victim. Romeo Orio testified that he was at home watching a television program at the time of the incident.[9] While he was thus preoccupied, he heard a commotion outside.[10] He then peeped out of the window but saw no one.[11] Instead, he heard a woman's[12] voice shouting "Tulungan ninyo siya, may nag-aaway, awatin ninyo" (Help him, there is a fight going on, stop it).[13] He then went out through the back door and saw two (2) persons, one of them lay dying on the ground while the other whom he could not identify[14] was about to leave.[15] As he was frightened at what he saw,[16] it being his first time to witness such an incident,[17] he did not do anything[18] nor did he report what happened to the police or the barangay authorities.[19]

He recognized the dying man to be Domingo Francisco, his neighbor.[20] He did not approach the victim but milled instead with the crowd of onlookers who had already converged on the scene of the incident when he stepped out of his house.[21] At this juncture, someone yelled that the police had arrived causing everybody, including him, to scamper away.[22] In the ensuing confusion and stampede caused by the arrival of the police, he entered a neighbor's house instead of his.[23] He also testified that he did not see his brother and co-accused at the place of the incident at the time of its occurrence.[24]

For his part, Rodolfo Orio testified that he was resting with his wife at the house of his brother-in-law in Taging Ilog, Marilao, Bulacan at the time of the incident.[25] He was arrested by the local police authorities while he was on vacation in Samar. He was thereafter brought to the Bulacan Provincial Jail.[26]

The crucial issue raised by accused-appellants pertains solely to the credibility of the prosecution witnesses, particularly the positive identification of appellants as the malefactors who perpetrated the gruesome crime as against their defenses of denial and alibi.

In sum, accused-appellants assail the credibility of the prosecution witnesses faulting the court a quo for giving credence particularly to the testimony of eyewitness Amancia Marcial which, according to them, "at times were incongruous and devious". They claim that the testimony of Amancia Marcial is doubtful, unreliable and not sufficient to sustain conviction because the "[U]biquitous attempts of the witness to lie before the court or mislead the latter are clearly shown through out (sic) her testimony. The scintilla of inconsistencies are sufficient enough

to consider as paltry the testimony of the witness. To be credible, the testimony must be untrammelled by inconsistencies or vestiges of lie." [27]

We disagree. As has been ruled all too often and recently restated in *People v. Quinciano Rendoque, Sr. y Amores, et al.* [28] –

In a long line of cases, the Court has consistently held that the determination of credibility of a witness is properly within the domain of the trial court as it is in the best position to observe his demeanor and bodily movements. [29] Findings of the trial court with respect to the credibility of witnesses and their testimonies are entitled to great respect, and even finality, [30] unless said findings are arbitrary, or facts and circumstances of weight and influence have been overlooked, misunderstood, or misapplied by the trial judge which, if considered, would have affected the case. [31]

Even more recently, in *People v. Jovito Barona, et al.*, [32] we emphatically said "[t]hat the findings of facts of the court a quo and its assessment of the credibility of the witnesses is best left to the trial court judge because of his unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying which opportunity is denied to the appellate tribunals." [33]

A thorough review of the records in this appeal gives us no cogent reason to justify a departure from the aforecited rule. Accused-appellants' attempt to make capital of inconsistencies in the testimony of the prosecution witnesses particularly Amancia Marcial hardly persuades. Assuming that Amancia did not accurately portray the manner in which the accused-appellants attacked the victim, there is no doubt at all in her statements before the court that she saw the accused-appellants stabbing and hacking the victim even when he was already sprawled on the ground. Errorless testimonies cannot be expected especially when a witness is recounting details of a harrowing experience and as long as the mass of testimony jibes on material points, the slight clashing of statements dilutes neither the witness' credibility or the veracity of the testimony. [34]

This Court has said time and again that any minor lapses in the testimony of a witness tend to buttress, rather than weaken, his or her credibility, since they show that he or she was neither coached nor were his or her answers contrived. Witnesses are not expected to remember every single detail of an incident with perfect or total recall. [35] Furthermore, even assuming *ex gratia argumenti* that Amancia Marcial may have falsified some material particulars in her testimonial declarations, this *per se* provides no reason to disregard her testimony altogether. "*Falsus in uno, falsus in omnibus*" is not a strict legal maxim in our jurisprudence. It is neither a test of credibility nor a positive rule of universal application. Therefore, it should not be applied to portions of the testimony corroborated by other pieces of evidence." [36]

Lastly, it must be noted that accused-appellants fled to their home province in Palapag, Samar after the incident where they were arrested on September 4, 1992. [37] Suffice it to state in this regard that flight strongly indicates a guilty mind and betrays the existence of a guilty conscience. [38] Stated differently, the flight of accused-appellants is indicative of their guilt. [39] Apropos herein is that old biblical adage which says that "[t]he wicked fleeth even when no man pursueth, whereas the righteous are as brave as a lion." [40]

In stark contrast, all that accused-appellants could muster in their defense are denials. In *People v. Edgar Lopez y Emoylan*, [41] this Court pointedly declared that "[A]ppellant's proffer of denial and uncorroborated alibi, which are inherently weak defenses [42] cannot therefore be given credence. Appellant's denial, unsubstantiated by clear and convincing evidence, is self-serving and deserves no weight in law and cannot be given greater evidentiary value over the testimony of witnesses who testified on positive points." [43]

All told, an overall scrutiny of the records of this case leads us to no other conclusion but to the correctness of the trial court's findings that accused-appellants committed the acts imputed to them. To restate what had been said

earlier, "[I]n the absence of any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misconstrued as to impeach the findings of the trial court the appellate courts will not interfere with the trial court's findings on the credibility of witnesses or set aside its judgment considering that it is in a better position to decide the question having heard the witnesses themselves during trial." [44] What remains to be determined is whether the elements of the crime charged justify their conviction for the felony.

The Information indicting accused-appellants for Murder alleged that treachery, evident premeditation and abuse of superior strength attended the killing of the victim.

There is treachery when the offenders commit any of the crimes against persons 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. [45] In order that *alevosia* may be appreciated as a qualifying circumstance, it must be shown that : a.] the malefactor employed means, method or manner of execution affording the person attacked no opportunity to defend himself or to retaliate; and b.] the means, method or manner of execution was deliberately or consciously adopted by the offender. [46]

The aforesaid elements are unavailing in this case. The records disclose that prosecution eyewitness Amancia Marcial did not know how the incident started. What in fact appears on record is that when she heard someone shout, "Pare, hindi ako kalaban!", she peeped out of the window and saw accused-appellant Rodolfo Orio brandishing a bolo menacingly approaching the unarmed victim. She likewise saw accused-appellant Romeo Orio who was armed with a balisong rushed out of his house, pounce on the victim, pinning the latter against the wall and stabbed him in the chest after which he was joined by Rodolfo who repeatedly hacked the victim until the latter was already sprawled on the ground. [47] However, the fact that both accused-appellants were armed with bladed weapons while their victim was unarmed and defenseless does not make the attack treacherous. Treachery must be proved by clear and convincing evidence or as conclusively as the killing itself. [48] Indeed –

...Deeply ingrained in our jurisprudence is the rule that where no particulars are known as to the manner in which the aggression commenced and how the act which resulted in the death of the victim unfolded, we cannot surmise from the circumstances that the accused perpetrated the killing with treachery. [49] Treachery cannot be presumed, it must be proved as clearly and as convincingly as the killing itself. [50] Any doubt as to the existence of treachery must be resolved in favor of the accused. [51]

In the absence of any convincing proof that accused-appellants consciously and deliberately adopted the means by which they committed the crime in order to ensure its execution, the Court must resolve the doubt in favor of the accused-appellants. [52]

Evident premeditation can not likewise be appreciated as a qualifying circumstance in this case. Like *alevosia* evident premeditation must be established with equal certainty and clearness as the criminal act itself. It must be based on external acts which are evident, not merely suspected, and which indicate deliberate planning. [53] It cannot be presumed from mere lapse of time. [54] Mere presumptions and inferences, no matter how logical and probable they might be would not suffice to establish evident premeditation. [55]

In the case at bar, there was no evidence of the planning and preparation to kill the victim. In fact, no attempt was ever made to establish the requisites of evident premeditation, viz : a.] the time when the accused determined to commit the crime, b.] an act manifestly indicating that the accused has clung to his determination, and c.] sufficient lapse of time between such determination and execution to allow them to reflect upon the consequences of their act. [56] In the absence of any evidence of the planning to kill or when the plan was conceived, there is no basis for appreciating evident premeditation. [57]

Abuse of superior strength, however, attended the killing of Domingo Francisco. Abuse of superior strength

requires, at base, a deliberate intent on the part of the malefactor to take advantage thereof. Besides the inequality of comparative force between the victim and the aggressor, there must be a situation of strength notoriously selected and made use of by the offender in the commission of the crime.[58] In this case, the two accused-appellants were armed with a bolo and a fan knife known as balisong 29 when they attacked and ganged up on the unarmed victim. It need not be overemphasized vis-à-vis such circumstances that there was a blatant inequality of strength between the victim and the accused-appellants.[59]

At the time of the commission of the crime on June 28, 1992, the penalty for Murder under Article 248 of the Revised Penal Code was then reclusion temporal in its maximum period to death. Under Article 64 of the Revised Penal Code when there is neither aggravating nor mitigating circumstances, the penalty shall be imposed in its medium period which is reclusion perpetua.[60] The penalty was, thus, correctly imposed upon accused-appellants by the trial court.

Actual damages were correctly awarded to the victim's heirs considering that they spent for the funeral and burial expenses. Consistent with controlling jurisprudence,[61] we sustain the award of P50,000.00 as indemnity ex delicto.

WHEREFORE, the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 19 in Criminal Case No. 1613-M-92 finding accused-appellants Rodolfo Orio and Romeo Orio guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code is hereby AFFIRMED in all respects.

SO ORDERED.

Davide, Jr. C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Record p. 2; Rollo, p. 2.

[2] Record, p. 18.

[3] Record, pp. 124-127; Rollo, pp. 18-21.

[4] Record, p. 127; Rollo, p. 21.

[5] TSN, 24 March 1993, pp. 6-7.

[6] TSN, 8 June 1993, pp. 5-9.

[7] Exhibits B and C.

[8] TSN, 13 December 1994, p. 2; 18 April 1995, pp. 3-4.

[9] TSN, 5 August 1994, p. 3.

[10] Ibid., pp. 3-4.

[11] Id., p. 4.

[12] Id., p. 6.

[13] Id., p. 4..

[14] TSN, 9 November 1994, p. 3.

[15] TSN, 5 August 1994, pp. 4-6.

[16] Ibid., p. 5.

[17] Id., p. 6.

[18] Id., p. 5.

[19] Id., pp. 5, 8.

[20] Id.

[21] Id., pp. 6-7.

- [22] TSN, 9 November 1994, pp. 5-6; 5 August 1994, p. 7.
- [23] TSN, 5 August 1994, p. 8.
- [24] TSN, 9 November 1994, pp. 4-5; 5 August 1994, p. 5.
- [25] TSN, 18 April 1995, pp. 3-4.
- [26] *Id.*, p. 5.
- [27] Appellant's Brief, p. 5.
- [28] G.R. No. 106282, 20 January 2000, p. 9.
- [29] *People v. Ferrer*, 295 SCRA 190, 200 (1998)
- [30] *People v. Lapay*, 298 SCRA 62, 73 (1998); *People v. Manuel*, 298 SCRA 184, 194 (1998)
- [31] *People v. Villones*, 298 SCRA 566, 580-581 (1998)
- [32] G.R. No. 119595, 25 January 2000, p. 4.
- [33] *People v. Silvano*, G.R. No. 127356, 29 June 1999; *People v. Tan, Jr.*, 264 SCRA 425 (1996)
- [34] *Antonio v. CA, et al.*, 273 SCRA 328 (1997)
- [35] *People v. Antonio Sanchez, et al.*, G.R.No. 131116, 27 August 1999, p. 13, citing *People v. Henry Benito*, G.R. No. 128072, 19 February 1999.
- [36] *People v. Eleuterio Costelo, et al.*, G.R. 134311, 13 October 1999, p. 25, citing *People v. Bibat*, 290 SCRA 27 (1998)
- [37] TSN, 13 December 1994, p. 2; 18 April 1995, pp. 3-4.
- [38] *People v. Rodrigo Mangahas*, G.R. No. 118777, 28 July 1999, p. 18, citing *People v. Gregorio*, 255 SCRA 380 (1996); *People v. Lopez*, 245 SCRA 95 (1995); *People v. Anciro*, 228 SCRA 629 (1993); *People v. Martinado*, 214 SCRA 712 (1992); *People v. Garcia*, 209 SCRA 164 (1992)
- [39] *People v. Benjamin Andales*, G.R. No. 125994, 18 January 2000, p. 13, citing *People v. Reunir*, 157 SCRA 686 (1988)
- [40] *People v. Aguiluz*, 207 SCRA 187 (1992)
- [41] G.R. No. 131151, 25 August 1999, p. 10.
- [42] *People v. Andal*, 344 Phil. 889 (1997); *People v. Garcia*, 281 SCRA 463 (1997); *People v. Abellanosa*, 264 SCRA 722 (1996); See also *People v. Alcantara*, 240 SCRA 122 (1995)
- [43] *People v. Godoy*, 250 SCRA 676 (1995); *People v. Tabiliran, Jr.*, 249 SCRA 447 (1995)
- [44] *People v. Augusto Tazon y Delos Reyes*, G.R. No. 129793, 15 December 1999, p. 7, citing *People v. Guiamil*, 277 SCRA 658 (1997)
- [45] Article 14, Revised Penal Code; *People v. Ybeas*, 213 SCRA 793 (1993); *People v. Compendido, Jr.*, 258 SCRA 254 (1996); *People v. Tabag*, 268 SCRA 115 (1997)
- [46] *People v. Hector Domingo, et al.*, G.R. No. 104955, 17 August 1999, p. 12; *People v. Hipolito Bermudez y Villacorta*, G.R. No. 129033, 25 June 1999, p. 11, citing *People v. Hubilla, Jr.*, 252 SCRA 471 (1996); *People v. Landicho*, 258 SCRA 1 (1996); *People v. Cabodoc*, 283 SCRA 183 (1997)
- [47] TSN, 24 March 1993, pp. 6-9.
- [48] *People v. Felix*, 297 SCRA 12 (1998)
- [49] *People v. Sumaoy*, 263 SCRA 460 (1996); *People v. Obzunar*, 265 SCRA 547 (1996); *People v. Asis*, 286 SCRA 64 (1998)
- [50] *People v. Albao*, 287 SCRA 129 (1998); *People v. Demonteverde*, 290 SCRA 175 (1998)
- [51] *People v. Julio Ocumen y Saldares*, G.R. Nos. 12049394/117692, 2 December 1999, p. 22, citing *People v. Antonio Eribal*, G.R. No. 127662, 25 March 1999, p. 10, citing *People v. Ballare*, 264 SCRA 350 (1996)
- [52] *People v. Cresenciano Maramara, @ Cresing*, G.R. No. 110994, 22 October 1999, p.8, citing *People v. Aguilar*, 292 SCRA 349 (1998)
- [53] *People v. Pena*, 291 SCRA 606 (1998); *People v. Acao*, 60 SCRA 89 (1974), citing *U.S. v. Banagale*, 24

Phil. 69 1912; *People v. Mendoza*, 100 Phil. 811 (1957)

[54] *People v. Renante Sison @ Dante*, G.R. No. 119307, 20 August 1999, p. 10, citing *People v. Derilo*, 271 SCRA 633 (1997)

[55] *People v. Andres Penaflorida*, G.R. No. 130550, 2 September 1999, p. 8, citing *People v. Villanueva*, 265 SCRA 216 (1996)

[56] *People v. Elino "Bobong" Naguita*, G.R. No. 130091, 30 August 1999, p. 15, citing *People v. Narit* 197 SCRA 334 (1991); *People v. Barba*, 203 SCRA 436 (1991); *People v. Cordova*, 224 SCRA 320 (1993)

[57] *People v. Edwin Naag y Roque, et al.*, G.R. No. 123860, 20 January 2000, p. 25, citing *People v. Patawaran*, 274 SCRA 130 (1997)

[58] *People v. PO3 Ernesto D. Langres*, G.R. No. 128754, 13 October 1999, p. 17, citing *People v. Solis*, 291 SCRA 529 (1998), citing *People v. Escoto*, 244 SCRA 87 (1995)

[59] *People v. Ralph Velez Diaz @ Jimboy*, G.R. No. 130210, 8 December 1999, p. 7, citing *People v. Gatcho*, 103 SCRA 207 (1981)

[60] *People v. Cesario Sanchez @ Satur, et al.*, G.R. No. 118423, 16 June 1999, p. 23; *People v. Juan Panaga, et al.*, G.R. Nos. 125967-70, 5 May 1999, p. 16.

[61] *People v. Edilberto Durado, Sr., et al.*, G.R. No. 121669, 23 December 1999, p. 21, citing *People v. Suplito*, G.R. No. 104944, 16 September 1999. *People v. Eleuterio Costelo, et al.*, *supra*, citing *People v. Quitlong*, 292 SCRA 360 (1998); *People v. Lagarteja*, 291 SCRA 142 (1998); *People v. Marollano*, 276 SCRA 84 (1997); and *People v. Caballes*, 274 SCRA 83 (1997); *People v. Elizalde Culala y Bognot*, G.R. No. 83466, 13 October, 1999, citing *People v. Denilo, et al.*, 271 SCRA 633 (1997); *People v. Recones*, G.R. No. 129535, 20 July 1999, and *People v. Patalin*, G.R. No. 125539, 27 July 1999; *People v. Roberto Gonzales y Mendoza @ Bobbit*, G.R. No. 130507, 28 July 1999, p. 17, citing *People v. Robles*, G.R. No. 124300, 25 March 1999; *People v. Piamonte*, G.R. No. 91999, 25 February 1999 and *Pepito v. CA*, G.R. No. 119942, 8 July 1999; *People v. Glenn Lotoc, et al.*, G.R. No. 132166, 19 May 1999, p. 16.

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