

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE HILOT (DECEASED) AND PATROCINIO BIHAG, JR., ACCUSED,

G.R. No. 129532. October 05, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the decision[1] dated March 18, 1997, of the Regional Trial Court of Oroquieta City, Branch 26, in Criminal Case No. 1275, finding appellant Patrocinio Bihag, Jr., guilty of murder, with the aggravating circumstance of dwelling, and sentencing him to death.

In an Information dated June 27, 1996, Vicente Hilot and Patrocinio Bihag, Jr., were charged with murder, allegedly committed as follows:

"That on or about the 14th day of March 1996, at or about 10:45 in the evening, in barangay San Juan, municipality of Panaon, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to kill and armed with bladed weapons, entered the residence of one Gedie Galindo, and once inside, taking advantage of nighttime and with treachery, did then and there attack, assault, stab and wound said Gedie Galindo, thereby inflicting upon him with (sic) fatal wounds on different parts of his body which caused the immediate death of said Gedie Galindo.

CONTRARY TO LAW, with the qualifying circumstance of treachery, and the aggravating circumstances of nighttime and dwelling of the offended party."[2]

Arraigned on August 20, 1996, appellant entered a plea of not guilty to the charge. His co-accused, Hilot, who fled to Mindanao after the incident, died on June 1, 1996 in Pagadian City.[3]

The facts, as established during the trial, are as follows:

On March 14, 1996, at about 6:00 P.M., spouses Gerundino Galindo and Edna Ho Galindo had finished supper. Like most residents of sitio Conalum, barangay San Juan, Panaon, Misamis Occidental, they slept early. They left two kerosene-fueled "vigil" lamps burning in the kitchen and dining area. At around 10:45 P.M. Edna was suddenly awakened by the loud cry for help from their eldest son, Gedie. She woke her husband up. Gerundino rushed to the kitchen. There, Gerundino saw a bloodied Gedie grappling with Vicente Hilot. The latter was holding a bloodstained hunting knife. Gerundino lost no time in rushing to aid his wounded son. He grabbed a fistful of Hilot's hair, disarmed, and pinned him to the floor. Meanwhile, Gedie, who was stabbed in the chest, moved back to lean on the kitchen wall. Suddenly, the kitchen door opened and Gerundino saw appellant Patrocinio Bihag, Jr., enter with a hunting knife. Before Gerundino could react, Bihag stabbed Gedie in the neck. Gerundino let go of Hilot and went to assist his son. The stab wound was fatal. Hilot and Bihag, immediately fled.[4] Edna had followed her husband to the kitchen and there witnessed the stabbing of her son.[5]

Gerundino's sister and neighbor, Saturnina Galindo, also heard Gedie's shout for help. She grabbed a flashlight

and rushed to find out what was happening. She saw Bihag jump out of her brother's house holding a bloody knife followed by Hilot. She rushed to Gerundino's house where she saw Gedie's parents carrying his limp body.

Prosecution witness Dr. Arden C. Mangubat, Municipal Health Officer of Panaon, Misamis Occidental, conducted an autopsy that showed Gedie had sustained two wounds, one in the neck and another in the chest. The wounds were of the same size and possibly caused by the same knife.[6] According to Dr. Mangubat, the neck wound was most likely the fatal one, since it penetrated the trachea, the air passage to the lungs.[7]

During his trial appellant Bihag put up the defense of alibi. He said that on the night of the alleged murder he was at his residence in barangay Talic, Oroquieta City, with his common law wife, Melba.[8] He was receiving - tallying bets in "masiao," a game of chance. The following day, they went to Sinacaban, Misamis Occidental where they operated another gambling game, "hantak." He had been "hantak" operator for the past ten years. On cross-examination appellant said that when he learned he was a suspect in the killing of Gedie, he went to see Mayor Francisco Paylaga of Panaon, Misamis Occidental. The mayor said not to worry about the case.[9] As a result, he did not bother to verify from the police why he was a suspect. He did not secure affidavits from witnesses regarding his whereabouts at that time of the Gedie's death. Appellant insists that the only reason he was charged in this case for murder is his close relationship with co-accused Hilot.

Defense witness Dioscoro Tañedo[10] corroborated appellant's alibi. Tañedo narrated that while appellant's wife was busy attending to bettors and waiting for the tally sheets, he and appellant had a drinking spree, which lasted from 7:00 to 10:30 p.m. He said appellant never left the building where they were staying in separate apartments.[11] Witnesses Josephine Tañedo, Disocoro's wife, corroborated his story concerning appellant's whereabouts.[12] Appellant's spouse, Melba took the stand to confirm Mrs. Tañedo's story.[13]

The prosecution presented Diosdado Luminot as rebuttal witness. He said he was on his way home that fateful evening at approximately midnight when he met appellant and Hilot walking away from the Gerundino house. Both were holding bloody knives. He greeted them but got no response. Upon reaching Gerundino's place, he noticed several persons there. He was told that there was a robbery in Gerundino's house.[14]

The trial court convicted appellant, disposing as follows:

"WHEREFORE, finding him guilty beyond reasonable doubt of the crime of murder committed with one aggravating circumstance present without a mitigating circumstance to offset it, the Court hereby sentences accused Patrocinio Bihag, Jr., to suffer the penalty of death, to indemnify the heirs of the late Gedie Galindo the amount of P50,000.00 as death indemnity, P15,000.00 for burial expenses and compensatory damages, P10,000.00 for attorney's fees and P2,000.00 for litigation expenses and to pay the costs.

The records of the case including the transcript of stenographic notes are hereby ordered forwarded to the Honorable Supreme Court for automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Republic Act No. 7659."

SO ORDERED.[15]

The trial court held that the killing of Gedie Galindo was qualified by treachery, with the aggravating circumstance of nighttime absorbed by treachery. It also found the aggravating circumstance of dwelling present, since the killing took place inside the victim's house.

Now before us, appellant assigns the following errors:

1

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSE

CHARGED.

2

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE PARENTS OF THE DECEASED DID NOT ACTUALLY IDENTIFY THE CULPRITS THAT WOUNDED THEIR SON

3

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE ACCUSED-APPELLANT HAD NOTHING TO DO WITH THE DEATH OF THE DECEASED

4

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE ACCUSED-APPELLANT WAS IN TALIC, OROQUIETA CITY AT THE TIME OF THE INCIDENT.

The appeal boils down to the issue of the identification of the appellant Patrocinio Bihag, Jr., as one of the assailants, which in turn hinges on the credibility of the prosecution witnesses as well as the tenability of appellant's alibi.

In convicting appellant, the trial court relied upon the positive identification of appellant by the victim's parents. Appellant claims that the witnesses were mistaken since the scene of the crime was allegedly unlit at the time of the incident.

For the State, the Office of the Solicitor General, in turn, argues that appellant's claim lacks merit. To assail the positive identification made by the Galindos solely because of poor lighting is unconvincing. That two kerosene lamps lighted the scene of the crime, sufficient for the witnesses to identify the malefactors, was not rebutted successfully by the defense.

Jurisprudence has held that the light cast by a petroleum lamp^[16] is more than sufficient for categorical identification of a felon. Where two kerosene lamps furnished the illumination, as in this case, the positive identification of the culprit becomes even more difficult to impeach^[17] and thus should be accepted.

Appellant, however, lays stress on the fact that when the police initially investigated the killing, Gerundino failed to name the killers of his son. It was only on March 18, 1996 or four days later, that the parents implicated him. He insists that this belated identification is highly suspect.

The Solicitor General argues the Galindos' withholding of perpetrators' names should not detract from their positive identification of appellant. The Galindos initially wanted to avenge their son's death, motivating them to keep to themselves the assailants' identities. That the parents later changed their minds does not detract from their positive identification of appellant as one of the assailants.

Delay of a witness in reporting the crime to police authorities, when adequately explained, does not impair the witness' credibility nor render his testimony biased or destroy its probative value.^[18] Fear of reprisal,^[19] death threats,^[20] the resulting mental shock or disturbance as a result of having experienced or witnessed a violent crime,^[21] and even a natural reluctance not to be involved in a criminal case^[22] have been accepted as adequate explanations for the delay in reporting crimes. Moreover, there is no rule that the suspect in a crime should be hurriedly named by a witness.^[23]

Positive identification of a culprit is of great weight in determining whether an accused is guilty or not.^[24] Our review of the evidence shows that the Galindos did not err in pointing to appellant as one of the perpetrators of the crime. He was well known in their place because he was a "hantak" operator. The defense admitted appellant had

long known Gerundino.[25] There was no bad blood between them,[26] and there was no reason for the Galindos to falsely accuse appellant. Furthermore, two other witnesses - -Luminot and Saturnina - - corroborated the testimony concerning appellant's presence at the locus criminis. Appellant as well as his co-accused held a knife, according to Luminot. No ill motive was attributed to these witnesses that could make them falsely testify against appellant. Thus, we find no cogent reason to overturn the trial court's holding that appellant was positively and unequivocally identified as one of the victim's assailants.

Appellant next insists that the trial court erred in disregarding his alibi, inasmuch as disinterested witnesses corroborated it.

In finding appellant's alibi less than foolproof, the trial court observed:

"It is of judicial knowledge that the asphalted road between Oroquieta City and Panaon, Misamis Occidental, has a distance of about 15 kilometers. One traveling in a motor vehicle at even a regular speed can reach one of these two places from the other in less than 30 minutes. Assuming that the accused was in Talic, Oroquieta City, on March 14, 1996, having allegedly had (sic) a drinking spree with Dioscoro Tañedo between 7:00 o'clock to 10:30, more or less, in the evening as he wants the Court to believe, there was no physical impossibility for him to be at the scene of the crime in San Juan, Panaon, Misamis Occidental, at about 10:45 P.M."[27]

This Court has ruled consistently that alibi is an inherently weak defense[28] and should be rejected when the identity of the accused is sufficiently and positively established by the prosecution.[29] Moreover, for alibi to overcome the prosecution's evidence, the defense must successfully prove the element of physical impossibility of the accused's presence at the crime scene at the time of the perpetration of the offense.[30] Physical impossibility in relation to alibi takes into consideration not only the geographical distance between the scene of the crime and the place where accused maintains he was, but more importantly, the accessibility between these points.[31] In this case, the element of physical impossibility of appellant's presence that fateful night at the crime scene has not been established.

In finding that treachery attended the killing of Gedie, the trial court stated:

"The Court finds and entertains no doubt that accused Patrocinio Bihag, Jr., is criminally liable for the death of Gedie Galindo. The crime of murder was committed with the qualifying circumstance of treachery. At the time Patrocinio Bihag, Jr., suddenly inflicted the fatal wound at the base of the neck of the victim, Gedie Galindo was already wounded by Vicente Hilot on the chest, bleeding, unarmed and defenseless, leaning helpless against the wall near the door of the kitchen."[32]

However, after close scrutiny of the records, we are not fully persuaded that treachery qualified the crime. For treachery to be appreciated, two essential elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the said means of execution was deliberately or consciously adopted. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or retaliate.[33] In this case, there is no clear showing that Gedie could not defend himself when he was attacked. Note that there were two stabbing incidents, the first by Hilot and the second by Bihag. The time elapsed between the first and second incidents, however, was not significant. For Gerundino immediately rushed to the kitchen in response to Gedie's cry for help. Hilot had wounded Gedie in the chest. Nonetheless, Gedie continued his struggle against Hilot. Gedie was aided then by his father who had grabbed, disarmed and pinned Hilot to the floor. Gedie backed up against the kitchen wall. This was when the kitchen door opened and appellant appeared and stabbed Gedie in the neck. Although wounded, it was not established that Gedie was already incapacitated from offering any resistance or defense, particularly with the aid of his father, when the second stabbing occurred. He had, after all, just fought Hilot valiantly. He had to be on guard against the

possibility that the latter might get loose from Gerundino's hold. Nor could he discount the possibility that Hilot had a confederate waiting to join the assault. In short, the victim was aware of further dangers to life and limb. The fact that the attacker used a bladed weapon did not per se make the attack treacherous. Treachery must be proved by clear and convincing evidence or as conclusively as the killing itself.[34] Any doubt as to the existence of treachery must be resolved in favor of the accused.[35] Absent clear and convincing proof of treachery, appellant can only be convicted of homicide.

The trial court found the aggravating circumstance of dwelling to be present "as the killing took place in the house of the deceased." [36] The information alleged that the accused "entered the residence of one Gedie Galindo, and once inside...did then and there assault, stab and wound said Gedie Galindo." The records show that the victim was killed in the kitchen of his parents' house, the kitchen being one of the rooms in said house. Note that what the prosecution's evidence shows is that the house where the killing took place was not owned by the victim, but rather by his parents. However, it is not necessary under the law that the victim owns the place where he lives or dwells. It is settled that for dwelling to be appreciated, the victim need not be the owner of the dwelling.[37] Regardless of whether the victim was a lessee, a boarder, a bedspacer,[38] or even an invited guest,[39] the place is his home, the sanctity of which the law seeks to protect and uphold. In *People v. Sto. Tomas*, 138 SCRA 206 (1985), where the victim was killed in her mother's house where she was temporarily staying, this Court held dwelling to be aggravating. Here, the victim was killed in his parents' house, which for all intents and purposes was his home. We agree with the court a quo that dwelling aggravated the offense. Contrary to appellant's assertions, the prosecution has more than overcome his presumed innocence. Nonetheless, as earlier elucidated, he can only be found guilty of homicide aggravated by the circumstance of dwelling. Homicide is punished by reclusion temporal, which ranges from a minimum of twelve (12) years and one (1) day to a maximum of twenty (20) years. Under Article 64 of the Revised Penal Code, where the penalty prescribed by law contains three periods, and only an aggravating circumstance is present in the commission of the act, the penalty shall be imposed in its maximum period. Further, applying the Indeterminate Sentence Law, the imposable penalty shall be within the range of prision mayor as a minimum to reclusion temporal in its medium period as the maximum.

Concerning damages, the trial court awarded "P50,000.00 as death indemnity, P15,000.00 for burial expenses and compensatory damages, P10,000.00 as attorney fees and P2,000.00 for litigation expenses and to pay the costs." [40] We find, however, that in awarding actual damages, the court a quo relied only on the testimony of Edna Ho Galindo as regarding expenses incurred for the wake and burial of the victim.[41] No receipts were presented to support her claims. But in this regard, courts will recognize only substantiated expenses, which have been genuinely incurred in connection with the death, wake or burial of the victim.[42] Thus, the award of "P15,000.00 for burial expenses and compensatory damages" ought to be deleted, for being unsupported by the sufficient evidence. But the presence of the aggravating circumstance of dwelling warrants the imposition of exemplary damages.[43] Such award is within the Court's discretion, as part of the civil liability that may be imposed upon the appellant.[44]

WHEREFORE, the assailed decision of the Regional Trial Court of Oroquieta City, Branch 26, in Criminal Case No. 1275, is hereby MODIFIED. Appellant Patrocinio Bihag, Jr., is hereby found guilty beyond reasonable doubt of homicide, committed with the generic aggravating circumstance of dwelling and hereby sentenced to suffer a prison term of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, with accessory penalties provided by law. The award of P15,000.00 for burial expenses and compensatory damages is DELETED, but appellant is ordered to pay the heirs of the victim the sum of P25,000.00 as exemplary damages, in addition to the P50,000.00 as death indemnity. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 15-21.

[2] Records, p. 1

[3] Id. at 29; TSN, November 5, 1996, p. 6.

[4] TSN, November 5, 1996, pp. 3-6; TSN, December 12, 1996, pp. 3-6.

[5] TSN, December 12, 1996, pp. 3-6.

[6] Exhibits "A" and "A-2", Records, p. 8.

[7] TSN, November 12, 1996, p. 8.

[8] Also spelled as "Melva" in the records.

[9] TSN, January 10, 1997, pp. 20-21.

[10] Sometimes spelled "Tañego" in the records.

[11] TSN, January 31, 1997, pp. 6-7, 11.

[12] TSN, January 31, 1997, p. 18.

[13] TSN, February 7, 1997, p. 4.

[14] TSN, February 7, 1997, pp. 18-20.

[15] Rollo, p. 21.

[16] *People v. Quinevista, Jr.*, 244 SCRA 586, 593-594 (1995) citing *People v. Ching*, 240 SCRA 267 (1995), *People v. Nopia*, 113 SCRA 599 (1982).

[17] *People v. Gaspasin*, 145 SCRA 178, 191 in relation to 182 (1986).

[18] *People v. Padoa*, 267 SCRA 64, 76 (1997); *People v. Alcantara*, 254 SCRA 384 (1996).

[19] *People v. Castillo*, 261 SCRA 493, 500-501 (1996).

[20] *People v. Leoterio*, 264 SCRA 608, 615 (1996).

[21] *People v. Repollo, et al.*, G.R. No. 134631, May 4, 2000, p. 10.

[22] *People v. Navarro*, 297 SCRA 331, 350 (1998).

[23] *People v. Queliza*, 279 SCRA 145, 157 (1997).

[24] *People v. Monieva*, G.R. No. 123912, June 8, 2000, p. 10.

[25] TSN, January 10, 1997, p. 16.

[26] Id. at 18.

[27] Rollo, p. 18.

- [28] *People v. Milliam, et al.*, G.R. No. 129071, January 31, 2000, p. 12.
- [29] *People v. Dando*, G.R. No. 120646, February 14, 2000, p. 18 citing *People v. Salvador*, 279 SCRA 164 (1997).
- [30] *People v. Suitos*, G.R. No. 125280, March 31, 2000, pp. 8-9, citing *People v. Henson*, 270 SCRA 634 (1997).
- [31] *People v. Gomez*, G.R. No. 132171, May 31, 2000, p. 5.
- [32] *Rollo*, p. 37.
- [33] *People v. Marcelino, et al.*, G.R. No. 126269, October 1, 1999.
- [34] *People v. Orio*, G.R. No. 128821, April 12, 2000.
- [35] *People v. Santos*, G.R. No. 122935, May 31, 2000.
- [36] *Rollo*, p. 37.
- [37] *People v. Badilla*, 185 SCRA 554, 570 (1990).
- [38] *People v. Parazo*, 272 SCRA 512, 524 (1997), citing *People v. Daniel*, 86 SCRA 511 (1978).³⁸
- [39] *People v. Balansi*, 187 SCRA 566, 575 (1990); *People v. Basa*, 83 Phil. 622 (1949).
- [40] *Supra* note 20.
- [41] TSN, December 12, 1996, pp. 7-8.
- [42] *People v. Rios*, G.R. No. 132632, June 19, 2000, p. 15.
- [43] *People v. Rios*, *supra*, at 14, citing *People v. Esguerra*, 326 Phil. 670, 679 (1996).
- [44] Civil Code, Art. 2230.

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