

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FEDERICO BALTAZAR Y PIMENTEL ALIAS "TODONG";
ACCUSED-APPELLANT.**

G.R. No. 129933. February 26, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Accused-appellant Federico Baltazar y Pimentel alias "Todong" interposes the present appeal, seeking the reversal of the June 28, 1997 Decision[1] of the Regional Trial Court of Roxas City, Branch 16,[2] in Criminal Case No. C-4658, which found him guilty beyond reasonable doubt of the crime of murder.

The Information against him alleges as follows:

"That on or about November 16, 1994 at around 10:00 o'clock in the evening in sitio Hanalon, Brgy. Malagab-i, Cuartero, Capiz, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm of unknown caliber, with intent to kill and means of treachery, the accused having employed means, methods and form in the execution of the felony which insures its commission without risk to himself arising from any defense which the offended party might take did then and there willfully, unlawfully and feloniously attack, assault and shoot one REYNALDO GARDOSE hitting the latter on the head causing death thereafter." [3]

On March 22, 1995, appellant assisted by counsel de parte was duly arraigned and, after his plea of not guilty to the charge of murder, the court a quo proceeded to trial.

The facts as narrated by the witnesses of the prosecution[4] are concisely summarized in the Brief for the Appellee, submitted by the Office of the Solicitor General, to wit:

"At around 9:30 o'clock in the evening of November 16, 1994, witness Rodney Hallegado and the deceased Reynaldo Gardose went to the ricefield of Lilia Hallegado in Brgy. Malagab-i, Cuartero, Capiz to bring rice seedlings. On their way home, the two agreed to have a drink at Rodney's house. Reynaldo told Rodney that he would first drop by his house to ask for his wife's permission. Rodney then agreed to wait for him at the day care center some twenty (20) meters away from Reynaldo's house (pp. 3-7, TSN, July 13, 1995).

While Reynaldo was talking with his wife, Perla Gardose, and asking for the latter's permission, somebody from outside their house called him. Perla got a lamp and opened the door to see who was calling her husband. She saw two persons outside. She easily identified one of them as appellant Federico Baltazar, a resident of the same barangay and whom she knew since childhood. She, however, failed to recognize the other person who was standing in the dark. She asked appellant what his purpose was, and the latter told her that he and Reynaldo had some important matters to talk about. Reynaldo then went down the house and walked with the two other men through the feeder road. Perla watched them walk away until she heard their baby cry. She went inside the house and breast-fed the baby until she almost fell asleep. A few minutes later, she heard a gunshot. She got so afraid, so she just laid down back with her baby. That evening, her husband did not return home (pp. 4-10, TSN, October 16, 1995).

Meanwhile, Rodney, who was waiting inside the day care center, saw appellant, accompanied by another man, arrived at Reynaldo's house and called Reynaldo. He later saw Reynaldo come out of the house and walk with appellant through the feeder road. Reynaldo was ahead of appellant. Suddenly, he saw appellant drew a firearm from his waist and shot Reynaldo when the latter was about to turn to his right. The latter fell down. Fearing that appellant might see him, Rodney hid at the back of the day care center and went home through the forested area (pp. 7-11, TSN, July 13, 1995).

The following morning, Perla woke up feeling that something wrong had happened. She went to the feeder road and, there, saw her husband lying face down already lifeless. She hurriedly went home, told her children that their father was already dead. On that same morning, she, accompanied by Rodney Hallegado, went to the poblacion and reported the incident to the police (pp. 11-13, TSN, October 16, 1995).

Reynaldo Gardose sustained gunshot wounds and died of massive hemorrhage (p. 39, TSN, July 15, 1995)."[5]

On the other hand, accused-appellant interposed denial and alibi as his defense. According to him and his wife, Luzviminda Baltazar, they were together in the ricefield in the afternoon of November 16, 1994. From the ricefield they went home and had supper at 6:00 o'clock in the evening. Accused-appellant stayed in the house until the following morning when at around 8:00 o'clock, a policeman and a CAFGU member arrived at their house and invited him to the poblacion for questioning. The third witness for the defense, Captain Angela Baldevieso, a forensic chemist of the PNP Crime Laboratory Services, testified that she received a request on November 21, 1994 from the officer-in-charge of the Cuartero Police Station to determine the presence of gunpowder nitrates on the cast taken from the hands of the accused-appellant. She explained that the hands of the accused-appellant were applied with melted paraffin wax which when dry, is used to determine the presence or absence of gunpowder nitrates. The test she conducted on November 21, 1994 yielded a negative result on the presence of gunpowder nitrates on the paraffin cast taken from the hands of accused-appellant.

On January 28, 1997, the trial court rendered its decision, the decretal portion of which reads:

"WHEREFORE, This Court finds the accused, FEDERICO BALTAZAR Y PIMENTEL, a.k.a. `TODONG', GUILTY BEYOND REASONABLE DOUBT OF Murder for shooting to death with treachery, Reynaldo Gardose, on the night of November 16, 1994, defined and penalized under Article 248 paragraph (i) of the Revised Penal Code, without mitigating nor other aggravating circumstances, and sentences him to suffer imprisonment of Twenty Five (25) Years of reclusion perpetua.

He is ordered to pay the heirs of Reynaldo Gardose civil damages in the sums of P540,000.00 unrealized earnings, P15,000.00 funeral expenses, as actual or compensatory damages, P50,000.00 as moral damages, P50,000.00 as death indemnity and costs of the suit."[6]

Expectedly, appellant filed a notice of appeal with the court a quo, which then forwarded the records of the case to us. In his appeal brief, appellant makes the following assignment of errors:

- THE HONORABLE TRIAL COURT COMMITTED A SERIOUS, SUBSTANTIAL AND REVERSIBLE ERROR IN THE APPREHENSION OF FACTS IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE ALLEGED EYEWITNESS. THE HONORABLE TRIAL COURT DENIED THE EXISTENCE OF IMPROPER MOTIVE ON THE PART OF SAID WITNESS.
- THE HONORABLE TRIAL COURT COMMITTED A SERIOUS, SUBSTANTIAL AND REVERSIBLE ERROR IN HOLDING THAT THE TESTIMONY OF THE ALLEGED EYEWITNESS WAS AMPLY CORROBORATED BY THE TESTIMONY OF THE WIFE OF THE VICTIM WHEN THERE ARE MATERIAL DISCREPANCIES IN THE SUBSTANCE OF THEIR TESTIMONIES.
- THE HONORABLE TRIAL COURT ERRED IN HOLDING THAT THE RESULTS OF THE PARAFFIN TEST ARE NOT CONCLUSIVE OWING TO THE FACTORS ATTESTING ITS ACCURACY ALBEIT

THE NON-EXISTENCE OF THESE FACTORS IN THE CASE AT BENCH (sic). THE NEGATIVE RESULTS OF THE PARAFFIN TEST SHOULD HAVE BEEN APPRECIATED AS AN AID TO SHOW THE INNOCENCE OF THE ACCUSED.[7]

Basically, accused-appellant's first and second assigned errors refer to the trial judge's assessment of the prosecution's witnesses, particularly that of eyewitness Rodney Hallegado. According to accused-appellant, the actuations of Rodney Hallegado during and after the shooting were contrary to human experience; that he was impelled by improper motive to testify falsely against accused-appellant; and that the trial court failed to note the material discrepancies between the testimonies of Rodney and that of the wife of the victim, Perla Gardose, which totally destroyed their credibility as witnesses.

The trial court gave full faith and credence to the testimony of eyewitness Rodney Hallegado, observing in detail his demeanor, conduct and attitude on the witness stand, as follows:

"This Court observed his demeanor at the stand, the spontaneity of his answers, and his candor, and finds no reason to doubt the truth of his eyewitness account of the crime. There is nothing conflicting about his testimony that may affect his credibility. In fact his testimony was corroborated by Perla Gardose, the victim's wife, particularly that portion when the accused fetched his victim with an unidentified person that night of November 16, 1994, a few minutes before he shot him. He relived before the Court the horror of seeing his co-worker and relative shot to death by the accused, as well as his helplessness to prevent the crime. The Court finds in him the quality of an unbiased witness who came forward to simply tell what he actually saw that fateful night of November 16, 1994.

This Court believes that he was in a position and had the opportunity to identify the accused as the assailant. There are circumstances and compelling reasons to support this stand. He was just five (5) meters away from where the crime was committed. The accused and this witness are both residents of Barangay Malagab-i and have known each other for a long time. Not only that, they are related to each other. They had no grudge against each other for this witness to impute so grave a crime against the accused." [8]

As often stressed by this Court on the point of credibility of witnesses, 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.[9] Having heard the witnesses and observed their deportment on the stand, the trial judge is in a better position to resolve such question.[10] We have examined the records and find no reason to depart from this well-settled rule.

Accused-appellant's argument that eyewitness Rodney Hallegado's actuations during and after the shooting were contrary to human experience on account of, among others, "his indifference and helplessness to prevent the crime to be committed on his co-worker despite a showing that he saw the victim ahead of the alleged assailant," and that, "he did not even bother to find out whether his companion and friend was still alive and could still be given medical attendance but instead allowed the whole night to pass without informing the victim's wife or the authorities" fails to persuade. It is well-settled that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response where one is confronted with a strange or startling or frightful experience.[11] Witnessing a crime is an unusual experience which elicits different reactions from the witnesses and for which no clear-cut standard form of behavior can be drawn.[12] On the witness stand, Rodney Hallegado explained that the attack was so sudden that he did not get the chance to warn Gardose before the accused drew and fired his firearm.[13] He also testified that when he heard the shot he hid because of fear that accused-appellant might see him and shoot him also.[14] He added further that from the scene of the crime he went home passing through the forested area to avoid detection.[15] He then narrated to this uncle what he saw but the latter advised him to wait until morning to report the incident.[16] Verily, Rodney adequately explained

his conduct during and after the shooting as one borne out of fear for his own life. It is not incredible, contrary to human experience and unrealistic for an eyewitness to a crime, especially if he is alone and unarmed, to hide and not come out in the open to either prevent the crime or assist the victim when to do so would put his own life in peril.

Next, accused-appellant's argument that "there is reason to suspect that the witness wanted the accused ousted from the land the latter tilled because the former also appear (sic) interested in working the land himself"[17] must be rejected since the alleged ill-motive on the part of eyewitness Rodney Hallegado to falsely testify against accused-appellant is based merely on suspicion and speculation. Accused-appellant surmises that a brewing agrarian dispute involving the accused-appellant and one Lilia Hallegado prompted Rodney to testify falsely against the former and to impute so grave a crime as murder. It must be emphasized that the Court adheres to the established rule that in the absence of any evidence to show that the witness was actuated by any improper motive, his identification of the accused as the assailant should be given full faith and credit.[18] The presence of personal motives on the part of a witness to testify in favor of the victim and against the accused should be supported by satisfactory proof in order that his testimony may be considered biased.[19] The records are barren of any satisfactory proof to show such bias on the part of Rodney. This Court cannot reverse a judgment of conviction based on accused-appellant's suspicion that Rodney was interested in working the land himself to the exclusion of accused-appellant.

Third, the inconsistencies referred to by accused-appellant in the testimonies of Rodney and Perla refer to minor and insignificant details which do not destroy their credibility. Accused-appellant points to the conflicting versions in the testimonies of Rodney and Perla as to the incidents which transpired the morning after the killing. He points out that Rodney testified that early in the morning after the tragic incident, Rodney called for the victim's wife before they went together to the spot where the victim lay lifeless. The wife, however, said that she discovered the death of her husband all by herself when she focused her sight on the feeder road where she saw her husband. These inconsistencies refer to minor details and collateral matters which do not affect the substance, veracity or weight of their declaration as to what happened on the night of the killing. As the trial court aptly pointed out, Rodney's testimony was corroborated by Perla Gardose, "particularly that portion when the accused fetched his victim with an unidentified person that night of November 16, 1994, a few minutes before he shot him." If at all, the discrepancies pointed out by accused-appellant serve to add credence and veracity to the candid and spontaneous testimonies of Rodney Hallegado and Perla Gardose.

As regards the third assigned error, accused-appellant contends that the trial court erred in failing to appreciate in accused-appellant's favor the negative result of the paraffin test which bolsters his defense of denial and alibi. Again, we are not persuaded. While accused-appellant tested negative for gunpowder nitrates, forensic chemist Angela Baldevieso testified that a paraffin test is not conclusive owing to several factors including wind direction, using a glove, firing at a hard object, using a long barrel gun or a low caliber gun and profuse perspiration.[20] Indeed, the Court has held that, "the negative findings of the paraffin test do not conclusively show that a person did not discharge a firearm at the time the crime was committed for the absence of nitrates is possible if a person discharged a firearm with gloves on, or if he thoroughly washed his hands thereafter.[21] We agree with the trial court that with the inconclusive result of paraffin tests, that is, that an accused may or may not have fired a gun, the positive identification of an eyewitness that accused-appellant shot the victim prevails and cannot be overcome by the negative result of a paraffin test.

In fine, accused-appellant's alibi cannot stand in view of the positive identification made by eyewitness Rodney Hallegado. Settled is the rule that alibi cannot prevail over the positive identification of the assailant by an eyewitness.[22] For alibi to prevail, it must be established by positive, clear and satisfactory proof that it was

physically impossible for the accused to have been at the scene of the crime at the time of the commission, and not merely that he was somewhere else.[23] In this case, there was no physical impossibility because accused-appellant's house was only about one (1) kilometer away from the scene of the crime.

The Court is convinced that accused-appellant was correctly convicted of the crime of murder. We agree with the trial court in appreciating treachery as a circumstance qualifying the killing. There is treachery "when the offender commits any of the crimes against the person 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." [24] The essence of treachery is that the attack comes without warning and in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[25] Here, the victim was called late at night by the accused-appellant and his companion to come out of his house. The victim walked outside with the two, unaware, unarmed and in no position to defend himself when the accused-appellant shot him. Clearly, treachery qualified the killing to murder.

Pursuant to Article 248 of the Revised Penal Code, as amended,[26] the penalty for the crime of murder is reclusion perpetua to death. There being no mitigating nor aggravating circumstance,[27] the imposable penalty is reclusion perpetua. However, the trial court incorrectly fixed the duration of said penalty at twenty-five (25) years. We have held that, notwithstanding the provision of Republic Act No. 7659 specifying the duration of reclusion perpetua from 20 years and 1 day to 40 years, reclusion perpetua remains as an indivisible penalty without minimum, medium and maximum periods even after the operation of the law on December 31, 1997.[28] Republic Act No. 7659 simply restated existing jurisprudence when it fixed the duration of reclusion perpetua at twenty years and one day to forty years but it did not intend, through such statement of its duration, to alter its original nature and classification as an indivisible penalty.[29] Hence, accused-appellant should serve the indivisible penalty of reclusion perpetua.

As to the civil liability imposed by the trial court, some modifications are in order. The award for actual damages in the amount of P15,000.00 should be deleted in the absence of competent proof and the best evidence obtainable on the actual amount of loss suffered.[30] Only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victim should be allowed for actual damages.[31]

Similarly erroneous is the award for loss of earning capacity in the amount of P540,000.00. Loss of earning capacity should be computed as follows:

" $\frac{2}{3} \times [80 - \text{age of victim at the time of death}] \times [\text{reasonable portion of the annual net income which would have been received as support by heirs}]$ "[32]

As testified to by the widow, Perla Gardose, the victim had been 36 years old at the time of his death and earning an average of P100 daily or P3,000 monthly.[33] From this monthly income must be deducted the reasonable amount of P1,000 representing the living and other necessary expenses of the deceased.[34] Hence, the lost earnings of the deceased should be computed as follows:

$$\begin{aligned} &= \frac{2}{3} \times [80 - 36] \times [P24,000] \\ &= \frac{2}{3} \times [44] \times [P24,000] \\ &= 2 [P1,056,000] \\ &3 \\ &= P2,112,000 \\ &3 \\ &= P704,000 \end{aligned}$$

Being consistent with current jurisprudence, the award of P50,000.00 as death indemnity is affirmed.[35] Moral

damages in the amount of P50,000.00 is reasonable considering the grief and sorrow^[36] suffered by the widow at the sudden loss of her husband. Moral damages, which include mental anguish, serious anxiety and wounded feelings, may be recovered in criminal offenses resulting in the victim's death.^[37]

WHEREFORE, the judgment of the lower court convicting accused-appellant Francisco Baltazar y Pimentel of the crime of murder is hereby **AFFIRMED** with the following **MODIFICATIONS**: (1) accused-appellant shall serve the indivisible penalty of reclusion perpetua, or imprisonment from twenty years and one day to forty years, in accordance with the provisions of Article 27 of The Revised Penal Code; (2) the award of P15,000.00 as actual damages is **DELETED**; (3) the award of loss of earning capacity is increased to P704,000.00.

SO ORDERED.

Melo, J., (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 21-36.

[2] Presided by Judge Delano F. Villarruz.

[3] Original Records, pp. 39-40.

[4] They are Rodney Hallegado, Dr. Ricardo Betita, Jr. and Perla Gardose.

[5] Rollo, pp. 110-112.

[6] Rollo, pp. 35-36.

[7] Rollo, p. 69.

[8] Rollo, pp. 31-32.

[9] *People vs. Manegdeg*, 316 SCRA 689 (1999).

[10] *People vs. Quitlong*, 292 SCRA 360 (1998).

[11] *People vs. Sta. Ana*, 291 SCRA 188 (1998).

[12] *People vs. Laceste*, 293 SCRA 397 (1998).

[13] TSN dated July 15, 1995, pp. 25-26.

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*, p. 29.

[17] Rollo, p. 79.

[18] *People vs. Reyes*, 292 SCRA 663 (1998).

[19] *Ibid.*

[20] TSN dated August 28, 1996, pp. 2-20.

[21] *People vs. Oliano*, 287 SCRA 158 (1998).

[22] *People vs. Grefaldia*, 273 SCRA 591 (1997).

- [23] People vs. De Guia, 280 SCRA 141 (1997).
- [24] Revised Penal Code, Art. 14, par. 16.
- [25] People vs. Grefaldia, 298 SCRA 337 (1998).
- [26] The crime was committed on November 16, 1994, after RA No. 7659 took effect on December 31, 1993.
- [27] People vs. Gonzales, 311 SCRA 547 (1999).
- [28] People vs. Fuertes, 296 SCRA 602 (1998).
- [29] Ibid.
- [30] People vs. Oliano, 287 SCRA 158 (1998).
- [31] David vs. Court of Appeals, 290 SCRA 727 (1998).
- [32] People vs. Cawaling, 293 SCRA 267 (1998).
- [33] TSN dated October 16, 1995, pp. 16-17.
- [34] Cawaling, *supra*.
- [35] People vs. Sol, G.R. No. 118504, May 7, 1997; People vs. Cayabyab, G.R. No. 123073, June 19, 1997.
- [36] TSN dated October 16, 1995, p. 18.
- [37] Gonzales, *supra*.

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