

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERICTO APPEGU Y MATERUM, ANSELMO GAMUEDA Y ALCANTARA, AND ROMEO GAMUEDA Y ALCANTARA, ACCUSED-APPELLANTS.

G.R. No. 130657. April 01, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellants Ericto Appegu y Materum and brothers Anselmo and Romeo Gamueda y Alcantara were charged with murder in an Information which reads:

That on or about October 4, 1993, in the municipality of Abulug, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Ericto Appegu y Materum, Anselmo Gamueda y Alcantara and Romeo Gamueda y Alcantara, armed with pieces of bamboos and bolo, conspiring together and helping one another, with intent to kill, with treachery, with evident premeditation and with abuse of superior strength, did then and there willfully, unlawfully and feloniously assault, attack, club and hack one Rose Binua, inflicting upon her multiple wounds on her body, which caused her death.[1]

On arraignment, accused-appellants pleaded “not guilty”. Trial on the merits then ensued.

At around 5:00 in the early morning of October 4, 1993, the victim Rose Binua left her home at Sitio Bannag, Barangay Sta. Rosa (Gara-Gara), Abulog, Cagayan together with her three children en route to the house of her mother, Hermana Olarosa, thirty-one and a half (31 ½) meters away. She entrusted her children at her mother’s house and proceeded to Ballesteros to pick up the groceries and money in the amount of P450.00 sent by her husband who worked in Manila.

In the afternoon of that same day, Alex Bunnao, a nine-year old Negrito boy and his fifteen-year old companion, Willie Bilas, were walking along the road in a forested portion of Sitio Bannag, Barangay Sta. Rosa, when they chanced upon Rose Binua being attacked by accused-appellants Ericto Appegu and brothers Anselmo and Romeo Gamueda in a place beside a creek and covered by talahib grass, which was two hundred fifty (250) meters away from the victim’s house.

Alex Bunnao and Willie Bilas hid behind talahib grass. They saw Ericto Appegu hack Rose Binua a number of times in the head and neck with a bolo. Romeo Gamueda bludgeoned Rose Binua with a cleaved bamboo club while Anselmo Gamueda held her right hand above the wrist. When Rose Binua fell, accused-appellants covered her body with talahib grass and left.

Willy Bilas was so terrified at what he witnessed that he went into hiding while Alex Bunnao did not immediately report what he witnessed to anyone out of fear.

At 9:00 in the morning of the following day, Hermana Olarosa was informed of the discovery of her daughter’s body. Rose Binua’s body bore hack wounds on her head and neck and one of her hands was completely severed. Nearby, they saw a basket and a carton containing some juice and coffee.

Dr. Litamin Agustin, a Municipal Health Officer, examined Rose Binua's body and found that it bore eleven (11) wounds. She declared that wounds 1 to 7 could have been caused by a sharp instrument while wounds 8 to 11 could have been possibly caused by a wood or bamboo club.

Hermana Olarosa sought to confirm from the Negrito community in Sitio Bannag the rumor that they knew who perpetrated the crime. Alex Bunnao, an acquaintance of the Olarosa family, revealed that Rose Binua's assailants were accused-appellants whom he knew since birth, they being fellow residents at Sitio Bannag.

Accused-appellants denied having anything to do with the crime. They averred that they were at the house of Barangay Captain Wilfredo Cortez of Calog Norte, Abulug, Cagayan since September 10, 1993 to help in the harvesting of palay from the ricefields of Barangay Captain Cortez. On October 4, 1993, they harvested palay only up to lunch time because it started to rain. In the afternoon, they washed their clothes. They claimed they went home to Sitio Bannag only on October 7, 1993 but stayed only for a day to get some vegetables. On October 10, 1993, policemen arrested Ericto Appegu while the Gamueda brothers were arrested the following day.

Barangay Captain Wilfredo Cortez essentially corroborated accused-appellants' testimonies.

The trial court gave credence to the prosecution's evidence and rendered a decision[2] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered sentencing the three accused Ericto Appegu, Romeo Gamueda and Anselmo Gamueda to suffer an imprisonment of Reclusion Perpetua.

The three accused are further ordered to indemnify the heirs of Rose Binua in the amount of P100,000.00 each and to pay the cost.

Aggrieved, accused-appellants alleged that the trial court erred:

- In not finding as incredible the prosecution's lone eyewitness Alex Bunnao as well as that of his testimony;
- In not giving credence to the defense of denial and alibi interposed by the accused in light of corroboration of credible witnesses and under a weak and tenuous prosecution case; and
- In not finding the accused innocent and not guilty beyond reasonable doubt.[3]

Accused-appellants contend that Alex Bunnao is not a credible witness because of inconsistencies in his testimony. Accused-appellants insist that their defense of denial and alibi should have been given more credence by the trial court. In fine, accused-appellants argue that said inconsistencies have been overlooked by the trial court and which, if considered, would have affected the result of the case.

Accused-appellants' contentions are bereft of merit. When the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. The rule admits of certain exceptions, such as: (1) when patent inconsistencies in the statements of witnesses are ignored by the trial court, or (2) when the conclusions arrived at are clearly unsupported by the evidence. The Court is likewise not precluded from making its own assessments of the probative value of the testimony of the witnesses on the basis of the transcript of stenographic notes thereof.

Accused-appellants point out an inconsistency in Alex Bunnao's testimony regarding the reason of their presence at the crime scene, to wit:

Q –

Why did you and Willie Bilas go to Sitio Bannag, Sta. Rosa, Abulug, Cagayan in the afternoon of October 4,

1993?

A –

We went there to buy cigarette, sir.

Q –

You went there to buy cigarette, why, are you smoking?

A –

Yes, sir.

Q –

How about Willie Bilas, does he smoke?

A –

Yes, sir.

Q –

And where in Sitio Bannag did you and Willie Bilas go and buy cigarette?

A –

In the store of Manong Marlo, sir.

Q –

Do you know one Marlo Materum?

A –

Yes, sir.

Q –

Is he the same Marlo to whose store you went to buy cigarette?

A –

Yes, sir.[4] (Emphasis supplied)

However, Alex Bunnao testified during rebuttal, thus:

ATTY. PASCUA:

Q –

How did it happen that you went to the house of the mother of Ericto Appegu?

A –

We saw them when we passed by, sir.

Q –

Where did you come from when you passed by them?

A –

We came from our house.

Q –

Where were you going?

A –

We went to catch birds by sling.

Q –

So you were still on your way going to the place where you went to hunt birds with your sling when you said you saw the accused in the house of the mother of Ericto Appegu?

A –

Yes, sir.

Q –

What about when you were already on your way, have you had any occasion to see the accused again?

A –

When we were already going home.

Q –

Where did you see the 3 accused when you were already going home?

A –

Beside a road.

Q –

What were the 3 accused doing when you saw them?

ATTY. MANGLIGOT:

Objection, the question is leading.

ATTY. PASCUA:

Q –

What happened when you saw them beside a road?

A –

They were hacking Rose Binua, sir.”[5] (Emphasis supplied)

A close scrutiny of Alex Bunnao’s testimony reveals that the inconsistency is more apparent than real. Alex Bunnao was asked why he and Willie Bilas went to Sitio Bannag in the afternoon of October 4, 1993. He answered that they went there to buy cigarettes. On rebuttal, he was asked simply where they were going, and he said they were going to hunt for birds with a slingshot. We fail to see any inconsistency or any contradiction in the answer of the witness. One neither negates nor excludes the possibility of the other.

Accused-appellants likewise assail the apparent inconsistency in Alex Bunnao’s testimony on cross-examination that his view to the crime scene was clear,[6] thereby contradicting his earlier testimony on direct-examination that the crime scene was covered by tall talahib grass.[7]

Again, the inconsistency is more imagined than real. It is possible that the place where the crime was committed was covered with talahib grass. However, it is also possible that from the vantage point of the witness, his view was unimpaired.

In any case, the alleged inconsistencies refer only to minor details or collateral matters. They do not affect the veracity and weight of Alex Bunnao’s testimony. Slight contradictions even serve to strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed nor perjured. What is important is the fact that there is a sustained consistency in relating the principal elements of the crime and the positive and categorical identification of accused-appellants as the perpetrators of the crime.

Neither are such inconsistencies and even improbabilities unusual, for there is no person with perfect faculties or senses. An adroit cross-examiner may trap a witness into making statements contradicting his testimony on direct examination. Intensive cross-examination on points not anticipated by a witness and his lawyer may make a witness blurt out statements which do not dovetail even with his own testimony. Yet, if it appears that the same witness has not willfully perverted the truth, as may be gleaned from the tenor of his testimony and the conclusion of the trial judge regarding his demeanor and behavior on the witness stand, his testimony on material points may be accepted.[8]

The Court has recognized that even the most candid of witnesses commit mistakes and make confused and

inconsistent statements. This is especially true with young witnesses who could be overwhelmed by the atmosphere of the courtroom. Hence, there is more reason to accord them an ample space for inaccuracy.[9] So long as the witnesses' testimonies agree on substantial matters, the inconsequential inconsistencies and contradictions dilute neither the witnesses' credibility nor the verity of their testimonies. When the inconsistency is not an essential element of the crime, such inconsistency is insignificant and can not have any bearing on the essential fact testified to, that is, the killing of the victim.[10]

Accused-appellants next ascribe bias and improper motive on Alex Bunnao allegedly because he stayed with Hermana Olarosa for the duration of the trial. They imply that Alex Bunnao was made to testify favorably in exchange for the "fair and favored treatment from the victim's relatives." [11]

In this regard, we agree with the Solicitor General when he observed in the Appellee's Brief, thus:

Though prosecution eyewitness Alex Bunnao lived with the victim's mother (Hermana Olarosa) during the trial of this case below; this circumstance does not automatically make him a biased or influenced witness. The victim Rose Binua was an acquaintance of Alex Bunnao. He used to call the victim "Auntie Rose" (TSN, May 24, 1994, pp. 18 and 21). Alex Bunnao refers to Hermana Olarosa as "Lola Semang". (Id., pp. 23-24.) Alex Bunnao is clearly a family friend of the victim. The testimony of a family friend is not, for that reason alone, necessarily flawed or to be denied any weight. (Citation omitted) To warrant rejection of his testimony, it must be clearly shown that independently of such association, Alex Bunnao's testimony was inherently improbable or defective, or that improper or evil motives had moved the witness to falsely incriminate the appellants. (Citation omitted) Appellants have not done so.[12]

Accused-appellants maintain that Alex Bunnao's testimony was incredible as could be gleaned from the following:

ATTY. LIZARDO:

Q –

You said you have known Ericto Appegu, Romeo Gamueda and Anselmo Gamueda for a long time, is that correct?

A –

Yes, sir.

Q –

That long time for having known them, can it be 11 and 12 years or more?

A –

For a long time, sir.

Q –

No, I am referring that for a long time, can it be 11 years or more?

ATTY. PASCUA:

Misleading, the witness is only 10 years old.

COURT:

Witness may answer.

A –

More than, sir.[13]

It is obvious from the quoted testimony that defense counsel tried to mislead Alex Bunnao when he asked the latter how long he had known accused-appellants. Aware that Alex Bunnao was only ten (10) years old, he still followed through by asking whether knowing accused-appellants for a long time meant knowing them for eleven (11) or twelve (12) years.

Alex Bunnao, in the above testimony, answered truthfully when he said that he had known accused-appellants “for a long time.”[14] As the Solicitor General aptly observed:

Alex Bunnao never completed grade one (1) and testified in the Ilocano dialect during his examination as a prosecution eyewitness. (Citation omitted) When an unlettered person, and a minor at that, testifies, inconsistencies in his testimony, of the same nature as above indicated, can be disregarded without impairing his credibility.[15] (Citation omitted)

Lastly, accused-appellants imply that Alex Bunnao’s testimony as to the number of wounds suffered by the victim was unbelievable. Alex Bunnao’s testimony that he saw Ericto Appegu hack the victim twice (2) and Romeo Gamueda club the victim three (3) times is belied by the testimony of Dr. Litaman Gonzales that there were eleven (11) wounds, seven (7) of which were hack wounds and four (4) of which were hematomas.

A scrutiny of Alex Bunnau’s testimony that he and Willie Bilas saw accused-appellants “hacking and mauling”[16] Rose Binua renders accused-appellants’ submission groundless. It appears from Alex Bunnau’s testimony that when they arrived at the scene of the crime, they saw accused-appellants already hacking and mauling the victim. It can be reasonably inferred that they did not witness the commencement of the attack on the victim since he testified that he saw accused-appellants “hack and club”[17] the victim twice and thrice, respectively. The attack may have been executed so fast. Besides, it would be too much to expect from a child-witness to keep count of the number of wounds inflicted upon the victim.

Accused-appellants bewail the trial court’s disregard of their defense of denial and alibi despite Alex Bunnao’s alleged lack of credibility brought about by inconsistencies and discrepancies in his testimony. Accused-appellants aver that on October 4, 1993 at 3:00 in the afternoon, they were at Calog Norte, Abulug, Cagayan in the house of Barangay Captain Wilfredo Cortez. Barangay Calog Norte and Sitio Bannag are allegedly separated by eight (8) barangays and one has to cross the Abulug river which is 250 meters wide. It

would take approximately two (2) hours by foot or one (1) hour by motorized transport to reach Sitio Bannag from Barangay Calog Norte.

Calog Norte is only five (5) kilometers away from Sitio Bannag. We have ruled in a catena of cases that where the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers, three (3) kilometers, or even five (5) kilometers, that distance is not considered too far as to preclude the possibility of the presence of the accused at the locus criminis, even if the sole means of traveling between the two places at that time was only by walking.[18]

For the defense of alibi to prosper, 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 its commission, and not merely that the accused was somewhere else. Physical impossibility refers to the distance between the place where the accused was when the crime happened and the place where it was committed, as well as the facility of the access between the two places.[19] In the case at bar, accused-appellants failed to prove the element of physical impossibility.

It appears that the information alleged that accused-appellants killed the victim with treachery, evident premeditation and abuse of superior strength. The trial court did not discuss which of these circumstances qualified the killing to murder. However, we find that abuse of superior strength attended the commission of the crime. In several cases, we have held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.[20]

In the case at bar, the victim was not only defenseless but was attacked by three (3) men, two of whom were armed with a deadly weapon. As testified to by Alex Bunnao, Ericto Appegu and Romeo Gamueda hacked and clubbed Rose Binua, respectively while Anselmo Gamueda held one of her arms clearly proving conspiracy.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It comes to life at the very instant the plotters agree, expressly or implied, to commit the felony and forthwith, to actually pursue it. Conspiracy need not be proved by direct evidence. It may be inferred from the concerted acts of the accused, indubitably revealing their unity of purpose, intent and sentiment in committing the crime. Thus, it is not required that there was an agreement for an appreciable period prior to the occurrence, it is sufficient that the accused acted in concert at the time of the commission of the offense and that they had the same purpose or common design, and that they were united in its execution.[21]

Conspiracy having attended the commission of the crime, the act of one of the accused-appellants is the act of all. Each is equally guilty with the others.

The trial court's award of damages has to be modified. In line with prevailing jurisprudence, accused-appellants are solidarily liable to pay the heirs of the victim P50,000.00 as civil indemnity and the amount of P50,000.00 as moral damages.

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Sanchez Mira, Cagayan, Branch 12, finding accused-appellants Ericto Appegu, Anselmo Gamueda, and Romeo Gamueda guilty beyond reasonable doubt of Murder and sentencing each of them to suffer the penalty of reclusion perpetua, is **AFFIRMED** with the **MODIFICATION** that they are also ordered to solidarily pay the heirs of Rose Binua the sums of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J., (Chairman) and Kapunan, JJ., concur.
Puno, J., on official leave.

- [1] Rollo, p. 8.
- [2] Penned by Judge Adrian N. Pagalilauan, Branch 12 of the Regional Trial Court of Sanchez Mira, Cagayan; Rollo, pp. 20-28.
- [3] Rollo, p. 75.
- [4] TSN, May 24, 1994, p. 5.
- [5] TSN, October 3, 1996, pp. 5-6.
- [6] TSN, May 24, 1994, p. 22.
- [7] Ibid.
- [8] *People v. Mercado*, 346 SCRA 256 [2000].
- [9] *People v. Amazan*, G.R. Nos. 136251, 138606 & 138607, January 16, 2001.
- [10] *People v. Parba*, G.R. No. 133886, September 5, 2001.
- [11] Appellant's Brief, Rollo, p. 89.
- [12] Appellee's Brief, Rollo, pp. 130-131.
- [13] TSN, May 24, 1994, p. 19.
- [14] Ibid.
- [15] Appellant's Brief, Rollo, p. 134.
- [16] Decision, Records, p. 226.
- [17] TSN, May 24, 1994, p. 11.
- [18] *People v. Crisanto*, G.R. No. 120701, June 19, 2001.
- [19] *People v. Manzano*, G.R. No. 138303, November 26, 2001.
- [20] *People v. Espina*, 326 SCRA 753 [2000].
- [21] *People v. Sinda*, 346 SCRA 600 [2000].

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