

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ILDEFONSO VIRTUCIO JR. ALIAS "GAGA"; ACCUSED-APPELLANT.

G.R. No. 130667. February 22, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

An Information was filed on 8 April 1996 charging Ildefonso Virtucio, Jr. with murder for the death of Alejandro Briones. To this day however the accused professes innocence.

The conviction of the accused was based on the following evidence of the prosecution: At around ten o'clock in the evening of 31 March 1996 Alejandro Briones was standing outside his store in Mambaling, Cebu City. He was watching his neighbors play "chikicha," a card game. Suddenly appearing from nowhere accused Ildefonso Virtucio Jr. approached the store muttering, "Ako nasay andar karon kay duna koy tawo nga nalagutan nga nagpa-raid nako sa shabu." [1] The accused then took out his gun and fired downwards. Then without any provocation the accused aimed his gun at the head of Alejandro Briones; the gun did not fire. Alejandro stood up and parried off the firearm. He asked Virtucio, "Unsa man, Ga?" In answer, Virtucio fired his gun and this time Alejandro was hit on his stomach. Virtucio fired another shot hitting Alejandro on his right forearm. Wounded and bleeding from his wounds, Alejandro tried to run but Virtucio finished him off with a fatal shot on the head which sent the victim falling to the ground.

Betty Briones, wife of Alejandro, was in their store. She was just one and a half (1 1/2) meters away from her husband when shot. She saw the startling occurrence as did their 12-year old son "Aly Boy" who was playing outside the store.

With the help of their neighbors Alejandro was taken to the Cebu City Medical Center where he died two (2) days later. Proximate cause of his death, according to his examining physician, was "cardiopulmonary arrest secondary to pulmonary embolism with possible myocardial infraction and fulminating sepsis secondary to multiple gunshot wounds." [2] For his hospitalization and medical attendance, the Brioneses incurred expenses in the amount of P57,000.00.

Accused Virtucio interposed alibi for his defense. He alleged that as early as eleven o'clock in the morning of 31 March 1996 he was already on his way to Tabuelan, Cebu, together with his business partner, Pablo Cuer, to await the arrival of seashells from Escalante, Negros Occidental. They arrived in Tabuelan at around four-thirty in the afternoon. He stayed in the house of Cuer until 2 April 1996 since the seashells did not arrive on the expected date. During his stay in Tabuelan he shared the same room with Cuer leaving the latter's wife to sleep in another room.

On 2 April 1996 police authorities from the Tabuelan Police Station went to the Cuer residence and invited the accused to their headquarters where he was subsequently detained. He came to know that he was implicated in the killing of Alejandro Briones only on 3 April 1996. He could not think of any reason why Betty and "Aly Boy" Briones would implicate him in the crime. In fact, the Brioneses were his neighbors for three (3) years and they

had maintained good relationship throughout those years. He admitted though that one (1) month before the killing, the house of his common-law wife's parents was raided for shabu; however, he never blamed anyone for the incident.

Pablo Cuer corroborated the testimony of Virtucio. He said that once in Tabuelan, Cebu, the accused never left their house as they even shared the same room, while his wife slept in another room. On 1 April 1996 they woke up at four-thirty in the morning and proceeded to the wharf to wait for the seashells from Escalante, Negros Occidental. Since the seashells failed to arrive as scheduled Virtucio had to stay with the Cuers for another night. In the afternoon of the following day, 2 April 1996, Policeman Alfredo Arellano invited Virtucio to the police station where he was subsequently detained. According to Cuer, he did not bother to give Virtucio some food while detained because he (Cuer) returned to the wharf to get the seashells.

Fe Tesoro, mother of the common-law wife of the accused, testified that she asked the accused to go in her stead to Tabuelan in the company of Pablo on 31 March 1996. So, Virtucio and Cuer left Cebu City at about ten o'clock in the morning. The Tesoros likewise went to Tabuelan that same evening using their old Tamaraw vehicle. They arrived at the house of the Cuers at around eleven o'clock in the evening. Fe Tesoro allegedly told the accused to go home as soon as the seashells were available, afterwhich the Tesoros returned to Cebu City arriving there at midnight. Fe denied knowing that her neighbor Alejandro Briones was shot at the time she left for Tabuelan, Cebu. She insisted that she only knew about the shooting of Alejandro the following day. As to the fact that Virtucio was a suspect, she testified that she learned about it only on 2 April 1996 when the police authorities fetched him from Tabuelan, Cebu.

On 21 October 1996 the Regional Trial Court of Cebu City found Virtucio guilty of murder and sentenced him to suffer the penalty of reclusion perpetua and to indemnify the heirs of Alejandro Briones the amount of P50,000.00. The court a quo disregarded the alibi of the accused in view of his positive identification by the prosecution witnesses as the author of the crime. Besides, he miserably failed to prove that it was physically impossible for him to have been at the crime scene at the time it was committed.

The trial court found that evident premeditation and treachery qualified the killing to murder. The court below ratiocinated that evident premeditation was present considering that the accused had harbored a grudge against the victim, the latter being suspected of instigating the raid in the house of his common-law wife's mother. The court a quo concluded, in addition, that the killing was treacherous as it was done in a sudden and unexpected manner, leaving the victim in no position to effectively defend himself.

Accused-appellant is now before us impugning the testimonies of the victim's widow and son for allegedly being "biased and polluted." He suggests that their testimonies be considered fabricated as they were too harmonious with nary a hint of inconsistency in their narration of facts.

In resolving the issue of credibility of witnesses, we must yield to the oft-repeated rule that the trial court's evaluation of the testimony of a witness is accorded the highest respect because of its direct opportunity to observe the witnesses on the stand and to determine if they are telling the truth or not.[3] Lacking any ground in questioning the discretion of the trial court, we consider its ruling on the credibility of the witnesses as settled.

The witnesses' relationship to the victim does not automatically affect the veracity of their testimonies. No legal provision disqualifies relatives of the victim of a crime from testifying if they are competent. That the prosecution's eyewitnesses were the widow and son of the deceased, without more, is not reason enough to disregard and label their testimonies as biased and unworthy of credence. Plainly, relationship did not affect their credibility.[4] This Court is well aware that not too infrequently crimes are committed with just the relatives of the victim as witnesses.[5]

On the same note, the testimony of "Aly Boy" should not be discarded simply because he was a mere child when he testified. A child is only disqualified if it can be shown that his mental maturity renders him incapable of perceiving the facts respecting which he is being examined and of relating them truthfully.[6] Once it is established that he understands or discerns the nature and character of an oath, full faith and credit should be given to his testimony. The narration of "Aly Boy" was vivid and full of details, stemming only from a recollection of what actually took place and not from a concocted story impressed upon him by his mother, as insinuated by accused-appellant.

The prosecution witnesses positively identified accused-appellant as the author of the crime. Faced with this positive identification, he could only offer the defense of denial and alibi. Denials, as negative and self-serving evidence, do not deserve as much weight in law as a positive and affirmative testimony.[7] Alibi as a defense has an inverse relation to positive identification. It is regarded as the weakest and most unreliable of all defenses especially in the light of clear and positive identification of the accused by the prosecution witnesses against whom no motive to falsely testify against the accused can be imputed. Alibi can only prosper by indubitably proving that the accused was somewhere else when the crime was committed, and that he could not have been physically present at the locus criminis or its immediate vicinity at the time of its commission; physical impossibility, in other words, of being in two (2) places at the same time.[8]

Accused-appellant's defense that he was in Tabuelan, Cebu, when Briones was killed does not persuade. The sequence of events is much too doubtful to be believed. His nonchalance upon being invited by the police strikes us as unusual. His subsequent detention minus any vehement objection also baffles this Court. Paradoxically, he claims innocence yet he has shown no signs of it. His contention that his business partner Pablo Cuer fetched him contradicted Cuer's and Tesoro's testimony that he was asked to accompany Cuer. Plainly, his alibi is riddled with inconsistencies.

The trial court, however, erred in appreciating the qualifying circumstance of evident premeditation. The court below concluded that accused-appellant must have planned the killing considering that he harbored a grudge against the deceased for quite some time. This basis falls short of the requirement that the element of evident premeditation must, like the crime itself, be proved beyond reasonable doubt. There is evident premeditation when the following are satisfactorily proved: (a) the time when the appellant decided to commit the crime; (b) an overt act showing that the appellant clung to his determination to commit the crime; and, (c) the lapse of sufficient period of time between the decision and the execution of the crime, to allow the appellant to reflect upon the consequences of the act.[9] Other than the fact that accused-appellant had the motive to kill the victim, the prosecution in the instant case miserably failed to establish that he plotted the killing of Briones and that he had sufficient time to ponder over his plan. Notably, the proof of motive is no longer necessary in view of the positive identification of accused-appellant as the assailant.

On the other hand, the court a quo properly appreciated the qualifying circumstance of treachery. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked. There is treachery when the attack on the victim was made without giving the latter warning of any kind and thus rendering him unable to defend himself from an assailant's unexpected attack. While a victim may have been warned of a possible danger to his person, in treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate.[10] In the case before us, the deceased was totally unaware of the impending attack to his person. He was just standing outside their store watching some neighbors play cards. Accused-appellant suddenly sprang from nowhere and without any provocation from the victim, shot him at close range. The deceased was unarmed and defenseless when he was killed in cold blood.

The trial court failed to award actual damages to the heirs of the victim despite the testimony of the widow that

they incurred P57,000.00 for hospital and burial expenses. However, upon examination of the records, we find that only P9,000.00 of the total P57,000.00 was sufficiently and competently proved. Hence, the heirs of the deceased are entitled to an award of P9,000.00 as actual damages. On the other hand, the trial court properly awarded P50,000.00 as civil indemnity without need of further proof other than the death of the victim.

WHEREFORE, the Decision of the Regional Trial Court of Cebu City finding accused-appellant ILDEFONSO VIRTUCIO JR. alias "Gaga" guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of Alejandro Briones the amount of P50,000.00 as civil indemnity is AFFIRMED with the MODIFICATION that accused-appellant is additionally ordered to pay the heirs of the deceased P9,000.00 as actual damages. Costs against accused-appellant.

SO ORDERED.

Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.
Buena, J., on leave.

[1] TSN, 9 July 1996, p. 7.

[2] Records, p. 5.

[3] People v. Pelen, G.R. No. 131827, 3 September 1999, citing People v. Manalili, G.R. No. 121671, 14 August 1998, 294 SCRA 220; People v. Lapay, G.R. No. 123072, 14 October 1998, 298 SCRA 62; People v. Anonuevo, G.R. No. 112989, 18 September 1996, 262 SCRA 22; People v. Alcartado, G.R. No. 119070, 30 August 1996, 261 SCRA 291; People v. Quijada, G.R. Nos. 115008-09, 24 July 1996, 259 SCRA 191; People v. Jose, G.R. No. 107106, November 24, 1995, 250 SCRA 319; People v. Urgel, No. L-34851, 25 February 1985, 134 SCRA 483.

[4] People v. Urgel, G.R. No. L-34851, 25 February 1985, 134 SCRA 483.

[5] People v. Ruben Ronato, G.R. No. 124298, 11 October 1999.

[6] Section 21 (b), Rule 120, Rules of Court.

[7] People v. Dela Cruz, G.R. No. 123397, 13 October 1998, 298 SCRA 36.

[8] People v. Apa-ap, Jr., G.R. No. 110993, 17 August 1994, 235 SCRA 468; People v. Torres, G.R. No. 105389, 28 April 1994, 232 SCRA 32; People v. Albores, G.R. Nos. 101122-23, 9 December 1992, 216 SCRA 302; People v. Alshaika, G.R. No. 113224, 11 September 1996, 261 SCRA 637; People v. Necerio, G.R. No. 98430, 10 July 1992, 211 SCRA 415; People v. Quijada, G.R. Nos. 115008-09, 24 July 1996, 259 SCRA 191; People v. Urgel, No. L-34851, 25 February 1985, 134 SCRA 483; People v. Mesias, G.R. No. 67823, 9 July 1991, 199 SCRA 20.

[9] People v. Armando Sarabia, G.R. No. 106102, 29 October 1999.

[10] See Note 5.

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