

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NELSON CARIÑO,
DOMINGO BANHAON, LUIS CORCOLON, ROGELIO “BOY”
CORCOLON, JOSELITO “LITO” CALONG-CALONG AND “BOY
PANSIT,” ACCUSED,**

G.R. No. 131117. June 15, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is the appeal of the Decision[1] of the Regional Trial Court of Pasig City, Branch 160, in Criminal Case No. 107788-H, finding the appellants guilty beyond reasonable doubt of murder, qualified by treachery, sentencing all of them to suffer the penalty of reclusion perpetua and ordering them to indemnify, jointly and severally, the heirs of the deceased Ruben A. Velecina in the amount of P50,000; and to pay the said heirs P20,000 as moral damages; and, P10,000 as exemplary damages.

On March 3, 1994, accused Nelson Cariño, “Boy Pansit,” appellants Domingo Banhaon, Luis Corcolon, Rogelio “Boy” Corcolon and Lito Calong-Calong were charged with murder in the Regional Trial Court of Calamba, Laguna, originally docketed as Criminal Case No. 3953-94-C. On March 2, 1998, the Court resolved to transfer the case to the Regional Trial Court of Pasig City. The case was re-docketed and raffled to Branch 160 thereof. The accusatory portion of the information reads as follows:

That on or about July 30, 1989 at Barangay Bayog, Los Baños, Laguna and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping each other and with treachery, abuse of superior strength and with the aid of armed men, did then and there wilfully, unlawfully and feloniously with intent to kill, attack, assault and employ violence upon the person of Ruben Velecina by then and there shooting him with powerful firearms thereby inflicting upon him serious and mortal injuries in the different parts of his body which directly caused his death to the damage and prejudice of his surviving heirs.[2]

Except for Nelson Cariño and “Boy Pansit” who remained at large, the rest of the accused were arrested. When arraigned, the accused, assisted by counsel, entered their respective plea of not guilty.

The Case for the Prosecution

Leopoldo Cariño and his brother, Nelson Cariño, Luis Corcolon, Rogelio (Boy) Corcolon, Lito Calong-Calong, Domingo Banhaon, “Boy Pansit” and Norberto Ongjuatco were bodyguards of Mayor Antonio Sanchez of Calauan, Laguna. Leopoldo was gunned down by an unknown assailant, and Mayor Sanchez suspected that the following persons were involved in the killing: Ruben Velecina; his mother, Atanacia Velecina; his brother who was a tricycle driver, Valentin Velecina; Bernardo Velecina; and Recto Aniceto, all residents of Los Baños, Laguna.

Nelson Cariño was reported to have killed Bernardo Velecina, while Recto Aniceto was reportedly shot by the group of Lito Calong-Calong. Norberto Ongjuatco, one of the bodyguards of Mayor Sanchez, secretly warned

Valentin to be careful. When apprised of the impending peril to their lives, Valentin, Ruben and their mother, Atanacia, were afraid that they would be killed next on orders of Mayor Sanchez.

Isidro Velecina and Dory Perez were to be wed on July 30, 1989. A pre-nuptial party was set in the evening of July 29, 1989, to be held in the yard of the Perez residence at Barangay Bayog, Los Baños, Laguna. Roger Perez, Dory's father, invited his friends, and among them was Edwin Botero, a former soldier in the Philippine Army and a security guard employed at the Philippine Long Distance Company. Ruben Velecina, Isidro's father, also invited guests of his own. Ruben's brother, Valentin, arrived at the house with his family at about 7:00p.m. His wife, Ofelia, his mother, Atanacia, and his son Rowel were with him. Valentin, Edwin and other guests had a drinking spree in front of the house where the other guests were dancing and singing. The house was made of bamboo and wood.

Between 12:30 and 1:00 a.m., July 30, 1989, Edwin noticed a white Ford Fiera with plate number 777 stop in front of the alley leading to Roger's house, about twenty (20) meters from where he and his friends were drinking Tanduay. The Fiera was followed by a tricycle and a galvanized owner-type jeep driven by "Boy Pansit." Edwin saw that Mayor Sanchez was inside the Fiera, along with two others who were seated at the backseat; beside "Boy Pansit" was Lito Corcolon. The latter alighted from the jeepney, approached Edwin and asked him if Ruben and Roger, the fathers of the persons to be wed, were inside the house. Edwin replied in the affirmative.[3] Thereafter, Lito Corcolon returned to the Ford Fiera and whispered something to Mayor Sanchez.[4] The Ford Fiera then drove away.

Lito Corcolon, Rogelio Corcolon, Nelson Cariño, "Boy Pansit," Lito Calong-Calong and Domingo Banhaon then alighted from the jeepney and entered the alley leading to the Perez residence. They posted themselves near the kitchen. When Valentin Velecina saw Mayor Sanchez' men arrive, he posted himself in a dark place near the chicken coop, about seven (7) meters from the western side of the house. Valentin could see the kitchen from where he was. He could also see the bodyguards of Mayor Sanchez, all of whom were armed with short handguns.

Momentarily, Carlos Medel, Valentin's cousin arrived near the chicken coop to urinate. When he saw Carlos, Valentin pulled his leg and told him to go to the kitchen to tell his brother, Ruben, and his mother, Atanacia, that the bodyguards of Mayor Sanchez were in the vicinity. Carlos obliged and left. Meanwhile, Ruben went to the comfort room which was near the kitchen sink and was covered by bamboo slits. As he emerged from the comfort room, Nelson Cariño, Lito Calong-Calong, Rogelio and Lito Corcolon aimed their guns at the kitchen and fired successively. "Boy Pansit" and Domingo Banhaon pulled out their guns and acted as lookouts.

People hurriedly scampered away when they heard the gunfire. There were shouts of: "May patay, may patay!" Momentarily, Nelson Cariño told his companions: "Tayo na, yari na iyan." The six bodyguards of Mayor Sanchez then left the scene and boarded the jeepney. Edwin and Valentin heard two more gunshots coming from the direction of the jeep, after which the vehicle sped away.

Meanwhile, Valentin remained behind the chicken coop until he felt that it was safe for him to come out. Momentarily, he heard his brother, Ruben, cry out, "Ate Uping, may tama ako." [5] Valentin rushed to the kitchen and saw Ruben lying on the floor, mortally wounded.

Isidro Velecina and Roger Perez reported the incident to the police. Policemen, including Wilfredo Palacpac and Oscar Ampao, rushed to the scene,[6] and saw the cadaver of Ruben lying on the ground, face down. The policemen recovered five empty shells fired from a .45 caliber gun, as well as slugs which were embedded on the cement walls of the house. In the course of the policemen's on-the-spot investigation, no one ventured to identify the perpetrators. The shooting incident was recorded in the police blotter.

Dr. Ruben B. Escueta, the Rural Health Physician of Calauan, Laguna, conducted an autopsy on the cadaver of Ruben Velecina and submitted a report of his findings, viz:

NECROPSY FINDING

General Survey

Well develop (sic), well nourish (sic), male, white complexion measuring 165 cms. and weighing about 130 lbs. Wearing checkered and white and black brief and bearing gun shot (sic) wounds on different parts of the body.

REGIONAL EXAMINATION

Head – No Injury

Face – No Injury

Neck and Nape – No Injury

Chest

1). Through and through gun shot (sic) wound on the left lateral side of the chest to the right lateral side. The point of entrance is located between the 5th and 6th ribs. Its entrance measure 1 cm. in length and 1 cm. in width. The point of exit is located between the 9th and 10th rib on the right lateral side of the chest, measuring 2 cms. in length and 1.5 cms. in width.

Back

2) Through and through gun shot (sic) wound on the right side of the back. Through the left side. The point of entrance located between 4th and 5th ribs medial portion measuring 1 cm. in width. The point of exit is located at the lateral side of the chest between the 9th and 10th ribs measuring 2 cms. in length and 1.5 cms. in width.

3) Through and through gun shot (sic) wound on the right flank wound between the 2nd and 3rd lumbar vertebrae through posterior portion of the chest between the 9th and 10th ribs left side of the chest. The point of entrance is located between the 2nd and 3rd lumbar vertebrae measuring 1 cm. in length and 1 cm. in width. The point of exit is located between the 9th and 10th ribs, lateral side of the chest. Measuring 2.5 cms. in length and 1.5 cms. in width.

4) Through and through gun shot (sic) wound on the left lumbar area. Located at the level of 6th vertebrae, through left waist line (sic). The point of entrance is located at the level of 6th lumbar vertebrae. Measuring 1 cm. in length and 1 cm. in width. The point of exit is located at the left waistline. Measuring 2.5 cms. in length and 1.5 cms. in width.

EXTREMITIES

Upper extremities

Right –

5) Through and through gun shot (sic) wound on the right shoulder through the left lateral side of the chest. The point of entrance is located on the tip of the right shoulder measuring 1 cm. in length and 1 cm. in width. The point of exit is located on the left lateral side of the chest between the 5th and 6th ribs.

6) Left upper extremity –

Gun shot (sic) wound on the medial portion of the left forearm. The point of entrance is located on the lateral medial portion of left forearm measuring 1 cm. in length and 1 cm. in width. The bullet lodge (sic) on the medial portion of the humerus (sic).

Lower Extremity

Right Lower Extremity – No Injury

Left Lower extremity

Through and through gun shot (sic) wound on the medial portion of left thigh. The point of entrance is lateral medial portion of left thigh measuring 1 cm. in length and 1 cm. in width. The point of exit is located on the

inner medial portion of the left thigh. Measuring 2.5 cms. in length and 1.5 cms. in width.

AUTOPSY FINDING

Head

Cranial vault – No injury

Brain tissue – pale in appearance with collapsed blood vessel

Chest

Bonythorax –

Fracture on the medial portion of 10th rib left side of the chest.

-through and through gun shot (sic) on the left upper lobe of the lungs

Right lungs – congested

Heart – laceration of the paracardiac soc (sic).

laceration of the posterior portion of the ventricle.

laceration of the coronary blood vessel.

Abdominal Cavity – laceration of peretonal (sic) covering of the abdomen.

laceration of anterior lobe of the liver.

Laceration of the rectus muscle on the muscle on the right side of the abdomen

Extremities – upper right extremity

laceration of the deltoid muscle blood vessel on the right shoulder

REMARKS:

About 2 liters of blood were obtain (sic) from the thoracic cavity.

CAUSE OF DEATH:

Massive Intra Thoracic Hemorrhage due to Gun Shot (sic) Wounds.[7]

In the meantime, Atanacia advised her son Valentin to hide, as he might be killed next. Valentin heeded his mother's advice and hid in San Pablo City. He sought the help of the Ombudsman and the Criminal Investigation Service (CIS) of the Philippine National Police, but was told to seek the help of the New People's Army in Quezon. He reported the shooting to NBI Director Antonio Carpio, who referred him to the police authorities in Batangas. When he went to the police authorities in Batangas and revealed the identity of his brother's assassins, he was told: "Bumangga ka pala sa pader, magpahinog ka."

Nonetheless, on March 15, 1991, Valentin sought the help of the President of the Philippines and gave a sworn statement to Norberto Galang at the Kalayaan Hall, Malacañang, Manila.[8] Edwin Botero was, however, afraid to reveal the identities of the culprits to the police authorities and that he witnessed the killing.

On August 13, 1993, Mayor Antonio Sanchez was arrested for rape with homicide. His bodyguards, the Corcolon Brothers Luis and Rogelio, had earlier surrendered to the Criminal Investigation Service for the same crime.[9] Barely three (3) days after Mayor Sanchez' arrest, Edwin Botero gave his sworn statement to the Anti-Organized Crime Division of the NBI.[10] He applied for and was granted protection under the Witness Protection Program of the Department of Justice.

The Case for the Appellants

Appellant Rogelio "Boy" Corcolon denied the charge against him and offered alibi as his defense. While admitting that he knew Mayor Antonio Sanchez,[11] he denied that he had ever been in the latter's employ. He

claimed that he worked as a company guard of San Miguel Corporation.[12] He related that at or about 1:00 a.m. of July 30, 1989, he was in his residence at Barangay Mabacan, Calauan, Laguna, approximately thirty minutes away from Barangay Bayog.[13] He stated that he knew accused Cariño as “Bodoy,” but denied being with the latter on July 30, 1989. He, likewise, disclaimed knowing appellant Calong-Calong and explained that he only met him in the courtroom. He denied knowing Edwin Botero, saying that he met the latter only at the NBI. He also stated that he did not know much about Ruben Velecina and “Boy Pansit.”

For his part, Luis Corcolon claimed that at the time the incident occurred, he was a resident of Barangay Masaya. He denied knowing the victim, Ruben Velecina, but admitted that he used to see Valentin Velecina in the cockpit. He had heard of the name Nelson Cariño, but denied knowing the appellant Domingo Banhaon. He only got to meet “Boy Pansit” and Lito Calong-Calong in court.[14] He, likewise, denied that he was, at any time, in the employ of Mayor Sanchez, and claimed that he knew the latter only because he was the Mayor of Calauan.[15]

Domingo Banhaon, on the other hand, claimed that in the afternoon of July 29, 1989, he was in their residence at Barangay San Isidro, Calauan, Laguna, with the newly-eloped couple Alfredo and Lorenza Alcantara.[16] As a friend and cousin of Alfredo, appellant Banhaon and his wife helped the Alcantara couple in preparing for their marriage. Appellant Banhaon fetched Barangay Captain Alberto Oroga of Barangay Lanot, and the latter accompanied them and the Alcantara couple to Alfredo’s parents, who were residing in Barangay Talang Uno, Lumban, Laguna where Alfredo’s parents resided. They left Calauan at 6:00 p.m. and reached Lumban at 8:00 p.m.[17] The Banhaons helped the Alcantara couple explain their situation to Alfredo’s parents. The talk ended at around 10:00 p.m., prompting the Banhaons to spend the night at the Alcantara residence. They left Lumban for Calauan at 5:00 a.m. of July 30, 1989. Upon reaching their house, Domingo Banhaon learned of Ruben Velecina’s death. He then attended the victim’s wake, as the latter also happened to live in the same barangay.[18] He admitted that he knew the Velecina family, having worked for them as helper.

Appellant Banhaon also claimed that Valentin Velecina, the victim’s brother, knew him to have provided photography services to Mayor Sanchez. Valentin approached him, and asked him to testify and implicate the Mayor in the killing of Ruben. Appellant Banhaon also claimed that Valentin threatened to implicate him in the murder of Ruben if he refused. As he did not know anything about the circumstances of Ruben’s death, appellant Banhaon refused to testify against Mayor Sanchez. Hence, Valentin Velecina implicated him in the killing.

Appellant Banhaon presented Lorenza Alcantara as witness to corroborate his testimony.[19]

Appellant Joselito Calong-Calong, for his part, denied any participation in the killing. He claimed that he was never employed by Mayor Sanchez, but that he worked as a truck helper at the Pepsi Bottling Company from 1976 to 1991, and then transferred to the Cosmos Bottling Company in 1992 until he was arrested. He said that he came to know Rogelio and Luis Corcolon only during the arraignment of the case.[20] He also claimed that on July 29, 1989, he arrived from work at 7:00 p.m. and stayed at home with his wife and children. He went to church the next day. On his way home, as he passed by the house of Dominador Banhaon, he learned of the death of Ruben Velecina, who lived only about “twelve (12) Meralco posts away” from him. He countered that Valentin Velecina approached him to testify in the killing of Ruben. When he refused, Valentin got mad and threatened him, “Para kang hindi kanayon, kapag ako’y nainis sa ‘yo, isasama kita.”[21]

On September 30, 1996, the trial court promulgated its decision finding the appellants guilty beyond reasonable doubt of murder. The dispositive portion of the decision reads:

WHEREFORE, foregoing considered, the Court finds accused LUIS CORCOLON, ROGELIO “BOY” CORCOLON, LITO CALONG-CALONG, and DOMINGO BANHAON, GUILTY, beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, qualified by treachery and there being no

mitigating or aggravating circumstances present in the commission of the crime, hereby sentences, said accused to suffer a penalty of reclusion perpetua, and the accused jointly and severally to indemnify the heirs of the deceased in the amount of P50,000.00, to pay moral damages of P20,000.00, exemplary damages of P10,000.00 and to pay the costs.[22]

The trial court declared that the prosecution was able to prove and establish the crime charged and that the appellants were guilty thereof. It found Edwin Botero and Valentin Velecina's positive identification of the victim's assailants credible and entitled to full probative weight, as against the denial and alibi of the appellants. It held that the initial reluctance of the aforesaid witnesses to testify against the appellants did not militate nor diminish their credibility, especially considering the perilous situation they were in. Further, Valentin Velecina had no reason to implicate his barriomates, appellants Banhaon and Calong-Calong.

The court found that the appellants conspired with one another in killing the victim, and that they committed the crime with treachery and abuse of superior strength.

The Present Appeal

The appellants now come to this Court to appeal the trial court's decision.

The appellant Calong-Calong assails the decision of the trial court contending as follows:

THAT THE HONORABLE COURT A QUO COMMITTED SERIOUS ERRORS IN LAW AND/OR MISAPPREHENSION OF FACTS WHEN IT FOUND THE ACCUSED-APPELLANT JOSELITO CALONG-CALONG GUILTY OF THE CRIME OF MURDER DESPITE THE PRESENCE OF REASONABLE DOUBT AND/OR INSUFFICIENCY OF EVIDENCE AS AGAINST HIM THE ALLEGED PRESENCE OF CONSPIRACY NOT HAVING BEEN DULY PROVEN BY THE PROSECUTION'S EVIDENCE ... [23]

Appellant Calong-Calong asserts that the trial court committed serious errors in law when it found him guilty beyond reasonable doubt of murder, considering that the evidence presented against him was insufficient, especially as witnesses Edwin Botero and Valentin Velecina failed to identify him. He stressed that witness Valentin Velecina was ill-motivated in implicating him in the murder charge. He furthered that only one kind of weapon caused the wounds that led to the death of Ruben Velecina.[24]

The appellants, Corcolon Brothers, for their part, contend that:

THE REGIONAL TRIAL COURT IN PASIG CITY (BRANCH 160) HAS ERRED IN NOT ABSOLVING AND FREEING ACCUSED-APPELLANTS LUIS CORCOLON AND ROGELIO CORCOLON OF THE SERIOUS CRIME OF MURDER DUE TO THE PRESENCE OF REASONABLE DOUBT IN THEIR FAVOR.

They point out that the RTC erred in finding them guilty beyond reasonable doubt of the crime of murder, when the prosecution was not able to prove that they were involved in the aforesaid crime.

The appellant Banhaon, on the other hand, argues that he should be acquitted of the crime charged:

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT DOMINGO BANHAON GUILTY OF MURDER DESPITE THE INSUFFICIENCY OF THE PROSECUTION EVIDENCE THAT WOULD WARRANT A CONVICTION BEYOND REASONABLE DOUBT.[25]

Appellant Banhaon contends that the trial court erred in not considering his defense. He emphasized that his innocence is buttressed by his voluntary surrender and the decision to remain in jail despite an opportunity to escape during a jail break.[26]

On the other hand, the OSG avers that the prosecution established the crime with clear and convincing evidence through the testimony of witnesses Edwin Botero and Valentin Velecina. The OSG contends that, in light of the prosecution witnesses' testimonies, the denial and alibi of the appellants cannot prevail. The prosecution, likewise, proved that the appellants, in conspiring with one another and with the use of treachery and abuse of superior strength, willfully and unlawfully, killed Ruben Velecina.

The Ruling of the Court

The threshold issue is whether or not the trial court erred in giving credence and probative weight to the testimonies of the prosecution witnesses while disbelieving those of the appellants.

Well-settled is the rule that the findings of a trial court on the credibility of witnesses deserve great weight, as the trial judge has a clear advantage over the appellate magistrate in appreciating testimonial evidence. The trial judge is in the best position to assess the credibility of the witness as he had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Absent any showing that the trial court's calibration of credibility was flawed, we are bound by its assessment.[27] Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath – all of which are useful aid for an accurate determination of a witness' honesty and sincerity. The trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case.[28]

We have reviewed the records and we find no justification to deviate from the findings of the trial court. The denial of the appellants of the crime charged cannot prevail over the positive declarations of prosecution witnesses Edwin Botero and Valentin Velecina. The defense of alibi is inherently weak and crumbles in the light of positive declarations of truthful witnesses, who testified on affirmative matters that the appellants were at the scene of the incident and were among the victim's assailants.[29] Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law.[30]

In this case, Valentin Velecina testified that at a distance of seven (7) meters or so, and while he was hiding in a nearby chicken coop, he saw the accused Nelson Cariño, appellants Luis Corcolon, Rogelio Corcolon and Lito Calong-Calong fire their guns towards the kitchen sink, as Ruben Velecina emerged from the comfort room, while Domingo Banhaon and "Boy Pansit" acted as lookouts. When Luis Corcolon and his cohorts stopped firing, he heard his brother say, "Ate Uping, may tama ako." Immediately after the assailants left, he entered the house and saw his brother's body slumped on the ground, soaked in his own blood.[31] The testimony of Velecina is quoted, viz:

Q: While you were at the back of the house of Dory Perez, what transpired next?

A:

At about 10:30 in the evening when I noticed that several persons arrived coming from the back portion of the house and not in front of the house.

Q: You are referring to what date, Mr. Witness?

ATTY. PIO: Already answered your Honor.

COURT: Witness may answer.

A: July 29.

FISCAL:

Q: Now, you said that there were several persons who arrived, who were these persons?

A: The six (6) persons I have mentioned earlier.[32]

...

Q: Upon arrival at the said place, what did they do there?

A: When I saw them at that time they just stood near the house and positioned themselves.

Q:

Mr. Witness, how far were you from these persons when you saw them?

A: More or less as far as that window

....

INTERPRETER: Measuring a distance of eight meters.

FISCAL:

Q: How long did they stay on the said place?

A: More or less as I could estimate about one half hour.

Q: How about you, where were you at that time?

A: I was just standing at that time which was not well lighted.

Q: Why were you so certain that those persons whom you saw were the same persons?

A: Because on the place where they entered there was a fluorescent light lighted.

INTERPRETER: Witness pointing to the long fluorescent tube.

FISCAL:

Q:

By the way Mr. Witness, you have earlier pointed to this Honorable Court the persons of Rogelio Corcolon and Luis Corcolon, how about the other persons you saw at Dory's residence, please look around?

A: They are not around.

Q: After thirty minutes (30) of staying there what happen (sic) next?

A: Before the lapse of thirty minutes somebody approach me.

Q: Who was that person who approached you?

A: Carlos Medel asked permission if he could urinate.

Q: When he approached you, what did he do?

A: I whisper[ed] to him to go inside and tell not to go out for the henchmen of Mayor Sanchez was here.

Q: What was the reaction of Carlos Medel, whom you instructed to go inside?

A: He entered the house and told me that they would inform.

Q: So, you were left outside?

A: Yes, Sir.

Q: What did you do when you were left behind?

A: I cover[ed] myself by trying to get near them so that I could identify them.

Q: What did you do next to these fellows whom you earlier named?

A:

After a while I saw them pulling out short firearms and I saw them aiming their guns on the persons on the side and then bursts of gunshots near a wall, it was just a wall with bamboo on top of it.

Q: Would you kindly specify those persons whom you said were carrying firearms?

A: The six of them but only four aimed their firearms.

Q: Do you know the caliber of firearms they were carrying at that time?

A: I could not remember if 45 or 38.

Q: You earlier stated "PUMUTOK" towards what direction were the firings directed?

A: Inside.

Q: Inside what?

A: Inside the house.

Q: What happened after that?

A: When they were firing their guns, the people scampered away.

Q: How about you, where were you at that time?

A: I stayed in my place and watch.

Q: How long did the firing last?

A: I could not remember for how long but only for a short while.

Q: After that firing, what transpired next?

A: I heard my brother Ruben shouting "ATE UPING MAY TAMA AKO."

Q: Upon hearing this remark of your brother, what did you do?

A: I still stay there and I did not get away till those persons left.

Q: Towards what direction were those people who shoot your brother proceeded?

A: Towards the place where they entered.[33]

...

FISCAL:

Q:

Mr. Witness, when the person whom you earlier named aimed or fired their firearms towards the direction of Dory's residence, where were you at that time?

A: I was at a dark place near the chicken coop.

Q: When did you come out of the place where you were hiding?

A: After the gunshot and Nelson Cariño uttered "TAYO NA YARI NA YAN."

...

Q: After the group left the place, what followed next?

A:

After they have left in a few seconds, I heard two gunshots, they fired twice when they were at the road when I heard before the time they sped away, that is the time I entered inside.

Q: When you entered your brother?

A:

Yes, Sir.

Q: Do you recall if your brother was armed at that time?

A: None, Sir.

Q:

You earlier stated Mr. Witness that there were four among those persons whom you earlier named who fired their guns?

A: Yes, Sir.

Q: Who are they?

A:

Nelson Cariño, Luis Corcolon, Lito Calong-Calong, Rogelio Corcolon and the other two have guns but they seem to be look out.

Q: Who were those two that you are referring to Mr. Witness?

A: Domingo Banhaon and Boy Pansit.

Q:

Mr. Witness, will you kindly tell again the Honorable Court those persons, the six persons whom you earlier mentioned were here?

A: Only three.

Q: Who?

A: Luis Corcolon the one with fan.

INTERPRETER: Witness pointed to Luis Corcolon.

A: Rogelio Corcolon.

INTEPRETER: Witness pointed to Rogelio Corcolon, one of the accused in this case.[34]

Edwin Botero corroborated the testimony of Valentin Velecina. He testified that he saw Luis Corcolon, Rogelio Corcolon, “Boy Pansit” and two others go inside the alley leading to the back of the Perez residence. After thirty minutes, he heard shots coming from the direction of the said house. As people scampered in panic, he saw the appellants Luis Corcolon, Rogelio Corcolon and Boy Pansit come out of the alley with handguns on display. They fired shots in the air and then sped away in the jeep.

FISCAL:

Q:

When this owner-type jeep passed by your place where you were drinking, what did Luis Corcolon do if any, if you remember?

A:

When the jeep pass by, Luis Corcolon alighted from the jeep and he asked something from us. He asked us why we are drinking in that place and I told him I was invited by Mang Roger.

Q:

Are you referring to Mang Roger?

A: Roger Perez.

Q: Aside from asking you why you were drinking in that place, what did he asked you if any?

A: He asked me that question, he asked me if the father of the person to be wed was there.

Q: What was your answer?

A: I told him he was inside.

Q: Do you remember if he mention any name?

A: None Sir, he just asked me if the father of the person to be wed is there.

Q: What was your actual answer to the question?

A: I told him Roger Perez and Ruben Velecina were there.

Q: Let’s go back to the Ford Fiera, you said it pass by you, where does it go if any?

A:

When the Ford Fiera pass by our place it stop in a distance and the owner-type jeep proceeded and Luis Corcolon just walk by.

Q: What about the tricycle with the three persons riding on its where did they go?

A: It parked near the Ford Fiera.

Q: Now far more or less from you from the place where you were drinking did the Ford Fiera parked?

A: About fifty (50) meters.

INTERPRETER: Witness pointing a distance up to the tree outside in the other side of the road.

FISCAL: Twenty meters?

ATTY. PIO: Thirty five meters.

...

FISCAL:

Q: Now, let's go back to Corcolon, would you remember what was he wearing at that time?

...

FISCAL: Luis Corcolon.

A: Black jacket.

Q: What about the other persons the passenger of the jeep or the Ford Fiera?

A: No, Sir. I could not remember.

Q:

You said that Luis Corcolon just walk to the place where the Ford Fiera was parked what happened after that?

A:

The Ford Fiera moves forward and stop at the rear of the tricycle, he turned around and whisper something to Mayor Sanchez.

Q:

Now, you had been mentioning the accused Luis Corcolon and Rogelio Corcolon, could you tell us why you know them personally?

A:

I was formerly a soldier and we trained CAFGU and the other CAFGU has been taken by Mayor Sanchez as body guard and I was assigned at Dayap in Calauan, Laguna.

Q: When was this tour of duty of yours in Calauan, Laguna?

A: 1990.

COURT: Were you one of the body guards of Mayor Sanchez which was assigned to him?

A: No, Your Honor.

FISCAL:

Q:

Now, the question that was paused to you, why you personally know Luis Corcolon and Rogelio Corcolon, now your answer was that you were assigned at Dayap and that Mayor Sanchez got one half of the CAFGU, how did you come to meet them?

A: I have been going to the house of Mayor Sanchez I saw them there as trainees of CAFGU.

Q: What about the two accused Luis and Rogelio Corcolon, were they also trainee?

A: No, Sir.

Q: Would you know a person by the name of Lito Calong-Calong?

A: No, Sir.

Q:

Let's go back to that point when you saw Luis Corcolon whispering to Mayor Sanchez what happen after that?

A: After that, that they have whispered to each other the Ford Fiera left and they entered the alley.

Q: You said "PUMASOK SILA" who was this?

A:

All of them, Luis Corcolon, Boy Corcolon and Boy Pansit, I do not know the others.

Q: Now, more or less, how many persons entered that alley together with Boy Pansit and the two Corcolon?

A: There were six (6) of them.

Q: That alley was leading to what direction?

A: At the back of Mang Roger.

Q: After you saw them entered the alley, what did you and your group do if any?

A: We continue drinking.

Q: After a while, what happened if any?

A: More or less 30 minutes I heard gunshots.

Q: After you heard gunshots, what else happen if any?

A: During the gunshot people panic, we were separated, the people were going out.

Q:

Now, you said you heard gunshots, during your lifetime with the Armed Forces, do you have training of firing guns?

A: Yes, Sir.

Q:

So, when you heard gunshots that evening, where do you think, from what direction were those gunshots came from?

A: It came from the back of the house of Roger Perez where they entered through.

Q:

Now, you said that you heard the shooting there were people scampering, what else did you see aside from those people coming out, who else did you see if any?

A: I heard from the people running "MAY PATAY, MAY PATAY."

Q:

What about Luis Corcolon, Rogelio Corcolon and Boy Pansit and the other group, did you see them again after the series of gunshots?

A: They all came out and boarded the Ford Fiera and owner-type jeep and the tricycle.

Q:

You said that the group of Boy Pansit, Rogelio Corcolon went back to the tricycle and the owner-type jeep, what were they carrying at that time?

ATTY. PIO:

Objection, Your Honor.

COURT:

Objection sustained.

FISCAL:

Q: What did you observe when they went back to the owner-type jeep and the tricycle?

A: After they boarded and they fired shots upward.

Q: How many gunshots while in the jeep?

A: Two shots while in the jeep.

Q: Would you know what kind of firearm was fired while they were in the jeep?

A: I do not know, it was just a short gun that I saw.

COURT:

Q: When you said you saw a short gun, where did you see this handgun and at what time?

A: More or less 1:00 o'clock.

Q: Where were they when you see them with the handgun?

A: At the place of the incident at Mang Roger's place.

Q: After you heard two gunshots while this group of Boy Corcolon, what else happened?

A:

They left afterwards and later a tricycle come and I went home.[35]

The failure of Edwin Botero and Valentin Velecina to report the crime immediately after the commission thereof did not diminish their credibility. It should be remembered that different people react differently to an unusual event.[36] There is no standard behavior when confronted with a strange, startling or frightful occurrence. Fear has been known to render people immobile and helpless particularly in life and death situations. Any person faced with such an overwhelming situation would sufficiently be cowed by fear or at least compelled to act in a manner aimed at self-preservation.[37] Witnesses may keep silent for a time rather than risk their lives. As we ruled in *People v. Rimorin*:[38]

That Osoteo's fear of Rillon constrained him for ten years from revealing the crime and identifying the perpetrators to the authorities is understandable. The delay should not in any way taint his credibility. It should in fact foster credence in his revelation, considering that after ten years he did not have to come out to testify if there was no grain of truth in it.

The initial reluctance of witnesses Edwin Botero and Valentin Velecina to testify against the accused and the appellants had been satisfactorily explained. Valentin Velecina testified that he was not able to report the incident

for fear that he would be the next target of the assailants who were bodyguards of Mayor Antonio Sanchez of Calauan, Laguna, especially considering that two of his relatives had been killed and that he had received death threats.

Q:

Mr. Witness, prior to the death of your brother Ruben Velecina, your nephew by the name Bernardo Velecina was killed, and after that your cousin by the name of Recto Aniceta was also killed and you suspected a certain Ruben Cariño as the one who killed these two persons, is that correct?

A: Yes, Sir.

Q:

And you believe the reason why Nelson Cariño killed Ruben Velecina was because of the death of Leopoldo Cariño, is that correct?

A: Yes, Sir.

Q: And your family was suspected behind the killing of Leopoldo Cariño?

A: Yes, Sir.

Q:

And this is the reason why up to now you are still in hiding for you believe that Nelson Cariño would like to kill you?

A: Yes, Sir.[39]

Edwin Botero testified that it was only on August 16, 1993 that he came out because he was afraid that he would be killed by the accused and the appellants if he testified. Upon seeing his kababayan, Atty. Sacaguig of the NBI, on television regarding the Aileen Sarmenta case, he decided to testify on the victim's behalf.

FISCAL:

Q:

Now, Mr. Witness, it appears in your statement that the date when you executed this is August 16, 1993 before the Office of Head Sergeant Artemio Sacaguig, please explain to this Court why you only executed this affidavit on August 16, 1993 when the incident happened on July 30, 1989?

A: The reason why I did not come out because I am afraid I could not present myself as witness.

Q:

What could be the reason why you eventually change (sic) your mind and executed this affidavit?

A:

I saw Atty. Sacaguig in the (sic) T.V. and my townmate with the NBI. I voluntarily went to him to give justice to the Velecina case.

Q: What was the topic of the TV program that inspired you to come out?

A:

About Mayor Sanchez and Kit Alquesa was inflicted (sic) with the Aileen Sarmenta case.[40]

By then, Mayor Sanchez and his bodyguards, the appellants Luis Corcolon and Rogelio Corcolon had been placed in the custody of police authorities. Edwin Botero was so afraid for his life that he applied for and was granted protection under the Witness Protection Program of the Department of Justice.

Neither did Valentin Velecina's relationship with Ruben Velecina render his testimony biased. Relationship, by itself, does not give rise to any presumption of bias or ulterior motive, nor does it impair the credibility of witnesses or tarnish their testimonies. The relationship of a witness to the victim would even make his testimony more credible, it being unnatural for a relative who is interested in vindicating the crime charged and prosecute another person other than the real culprit.[41] Relatives of victims of crimes have a natural knack for remembering the faces of the assailants more than anybody else, and would be concerned with obtaining justice for the victim by having the felon brought to justice and meted the proper penalty.[42] In the absence of any improper motive on the part of the witness, his relationship to the victim cannot impair the weight of his testimony.[43]

We agree with the ruling of the trial court that the appellants conspired to kill Ruben.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[44] It need not be established by direct evidence. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design.[45] Proof of previous engagement among the malefactors to commit the crime would be unnecessary to establish conspiracy when by their overt acts it would be deduced that they conducted themselves in concert with one another.[46]

As gleaned from the records, the following chain of events show that there was community of design among the appellants: (1) the appellants, although in separate vehicles, arrived at the scene of the crime together at approximately 12:30 a.m. on July 30, 1989; (2) accused Nelson Cariño and appellants Corcolon Brothers and Lito Calong-Calong fired shots on the wall where Ruben Velecina was taking refuge, while appellant Domingo Banhaon and "Boy Pansit" stood guard; (3) the group of Luis Corcolon stopped firing on the wall only when accused Nelson Cariño assured them that the victim was dead, uttering "Tayo na yari na yan;" and, (4) the group left together after shooting the wall.

In *People v. Delim*,[47] we held that lookouts are criminally liable as principal, by direct participation.

The killing was qualified by treachery. There is treachery when the offender commits any of the crimes against persons, employing means or methods in the execution thereof which tend directly and specifically to insure its execution, without risk to the offender, arising from the defense which the offended party might make.[48] The essence of treachery is that the attack is deliberate and without warning, done in swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape.[49] In the case at bar, the victim was inside the Perez residence and was busy preparing for the wedding of his son, Isidro Velecina, to Dory Perez, the daughter of Roger Perez. The victim was unarmed and was deprived of any means to defend himself, or to evade the sudden and unexpected assault.

The autopsy conducted by Dr. Ruben Escueta shows that the victim sustained a total of seven (7) gunshot wounds, with entrances at the back and the other wounds sustained while in a lying position. Per the autopsy report, the cause of the victim's death was massive hemorrhage in the thoracic cavity due to accumulation of two liters of blood arising from lacerations sustained by the right lung, heart, liver and abdominal muscles.

Abuse of superior strength was also attendant. To take advantage of superior strength is to purposely use excessive force, out of proportion to the means of defense available to the person attacked.[50] In the case at bar,

there was clear and gross disparity of strength between the unarmed victim and the six armed assailants - four of whom used four short firearms in shooting the wall where the victim was taking refuge, while two others stood guard, also armed with short firearms. The victim, who was inside the house preparing for his son's wedding, gave no provocation when he was attacked. However, the aggravating circumstance of superior strength cannot be separately appreciated because it is absorbed by treachery.[51]

It was further alleged that the offense was committed with the aid of armed men. The requisites of this aggravating circumstance are: (1) that armed men or persons took part in the commission of the crime, directly or indirectly, and (2) that the accused availed himself of their aid or relied upon them when the crime was committed.[52] In this case, while the appellants were all armed, all of them acted in conspiracy with one another. All of the appellants acted in concert to ensure the commission of the crime. Hence, the aggravating circumstance cannot be appreciated. Even if it were so, the same could not be appreciated separately as it is deemed to have been absorbed by treachery.[53]

Appellant Domingo Banhaon insists that his voluntary surrender and his refusal to escape during the jail break gives proof to his innocence. In order for voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority or the latter's agent; and, (3) the surrender was voluntary. Further, the surrender must be spontaneous in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledged his guilt or because he wishes to save them the trouble and expenses necessarily incurred in search and capture.[54]

In the case at bar, appellant Banhaon remained at large even after Judge Francisco Ma. Guerrero issued the warrant for his arrest on March 17, 1994.[55] Appellant Banhaon surrendered only on June 27, 1995, after an alias warrant of arrest had already been issued against him, and approximately six years after the commission of the crime. Clearly, voluntary surrender cannot be appreciated in his favor as a mitigating circumstance. Neither can it be used to show his innocence. Appellant Banhaon's failure to escape is not indicative of his innocence.

The records reveal that the crime was committed during nighttime. This circumstance is considered aggravating only when it facilitated the commission of the crime, or was especially sought or taken advantage of by the accused for the purpose of impunity. The essence of this aggravating circumstance is the obscuridad afforded by, and not merely the chronological onset of, nighttime. Although the offense was committed at night, nocturnity does not become a modifying factor when the place is adequately lighted and, thus, could no longer insure the offender's immunity from identification or capture.[56] In the case at bar, it was not shown that nighttime was especially sought for or used to insure the offender's immunity from identification or capture.

We note that the Information alleges that the appellants used firearms to kill the victim. Under Republic Act No. 8294, the use of unlicensed firearm is an aggravating circumstance if such firearm is used to commit homicide or murder. However, such circumstance cannot be appreciated against the appellants because of the following: (a) the law took effect after the commission of the crime and a retroactive application thereof would be unfavorable to the appellants; and, (b) there is no allegation in the Information, nor was it proved by the prosecution that the appellants had no license or permit to possess the firearms. The lack of license or permit of the appellants to possess the firearms is a negative averment which is an essential element of the aggravating circumstance and must be alleged in the Information.

Under Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, murder is punishable by reclusion perpetua to death. However, when the crime was committed in 1989, murder was punishable by reclusion temporal maximum to death. Where no mitigating or aggravating circumstance attended the commission

of the crime, the medium period of the imposable penalty, which is reclusion perpetua, should be imposed by the trial court. In this case, no mitigating nor aggravating circumstance attended the commission of the crime. Hence, the trial court correctly imposed the penalty of reclusion perpetua on the appellants.

Conformably with recent jurisprudence, we sustain the amount of P50,000 for civil indemnity to the heirs of the deceased without need of any further proof.[57] Exemplary damages of P25,000[58] must, likewise, be awarded, in accordance with Article 2230 of the Civil Code because of the attendance of the qualifying circumstance of treachery.[59] However, the award of moral damages should be deleted in the absence of any sufficient evidence to support the same.[60] The heirs of the victim are, however, entitled to temperate damages.[61]

WHEREFORE, the appealed decision of the Regional Trial Court of Pasig City, Branch 160, finding the appellants Luis Corcolon, Rogelio “Boy” Corcolon, Lito Calong-Calong and Domingo Banhaon guilty beyond reasonable doubt of murder is hereby **AFFIRMED** with **MODIFICATIONS**. Said appellants are **ORDERED** to pay, jointly and severally, the heirs of the victim, Ruben Velecina, Fifty Thousand Pesos (P50,000) as civil indemnity; Twenty-Five Thousand Pesos (P25,000) as exemplary damages; and Twenty-Five Thousand Pesos (P25,000) as temperate damages. The award of moral damages is deleted.

SO ORDERED.

Puno, Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Mariano M. Umali (now retired Associate Justice of the Court of Appeals).

[2] Records, p. 2.

[3] TSN, 26 April 1995, pp. 12-13.

[4] Id. at 10.

[5] TSN, 16 June 1995, pp. 15-16.

[6] TSN, 29 September 1995, pp. 40-43.

[7] Records, pp. 140-141.

[8] Exhibit “B,” Records, p. 136.

[9] *People v. Sanchez*, 302 SCRA 21 (1999).

[10] Exhibit “A,” Records, p. 132.

[11] TSN, 18 August 1995, p. 8.

[12] Id. at 16.

[13] Id. at 14-15.

[14] Id. at 22-23.

[15] Id. at 26.

[16] TSN, 18 October 1995, pp. 30-31.

[17] Id. at 39.

- [18] Id. at 50.
- [19] TSN, 11 October 1995.
- [20] TSN, 27 October 1995, p. 21.
- [21] Id. at 14.
- [22] Rollo, p. 41.
- [23] Id. at 66.
- [24] Id. at 63-71.
- [25] Id. at 216.
- [26] Id. at 216-235.
- [27] *People of the Philippines v. Alfonso Rivera @ “Ponso” and Teddy Rivera (At Large)*, G.R. No. 139185, September 29, 2003.
- [28] *People of the Philippines v. Errol Rollon*, G.R. No. 131915, September 3, 2003.
- [29] Ibid.
- [30] *People of the Philippines v. Errol Rollon*, supra.
- [31] TSN, 31 August 1995, p. 17.
- [32] Nelson Cariño, Domingo Banhaon, “Boy Pansit,” Luis Corcolon, Joselito “Lito” Calong-Calong and Rogelio alias “Boy” Corcolon. (TSN, 16 June 1995, p. 13).
- [33] TSN, 16 June 1995, pp. 11-18.
- [34] Id. at 24-28.
- [35] TSN, 26 April 1995, pp. 12-19.
- [36] *People v. Morial*, 363 SCRA 96 (2001).
- [37] *People of the Philippines v. Errol Rollon*, supra.
- [38] 332 SCRA 178 (2000).**
- [39] TSN, 16 June 1995, pp. 45-46.
- [40] TSN, 26 April 1995, pp. 21-22.
- [41] *People of the Philippines v. Bernabe Montemayor*, G.R. No. 125305, June 18, 2003.
- [42] *People v. Listerio*, 335 SCRA 40 (2000).
- [43] *People of the Philippines v. Errol Rollon*, supra.
- [44] *People of the Philippines v. Felipe Natividad, et al.*, G.R. No. 151072, September 23, 2003.
- [45] *People of the Philippines v. Ruben Cañete, et al.*, G.R. No. 138366, September 11, 2003.
- [46] *People of the Philippines v. Nestor Carriaga, et al.*, G.R. No. 135029, September 12, 2003.

[47] 396 SCRA 386 (2003).

- [48] People of the Philippines v. Ruben Cañete, et. al., supra.
- [49] People of the Philippines v. Eusebio Duban, G.R. No. 141217, September 26, 2003.
- [50] People of the Philippines v. Errol Rollon, supra.
- [51] People v. Diaz, 320 SCRA 168 (1999).
- [52] People v. Amion, 353 SCRA 410 (2001).
- [53] People v. Manes, 303 SCRA 231 (1999).
- [54] People v. Raul Oco @ Boy Usher, G.R. No. 137370-71, September 29, 2003.
- [55] Records, p. 31.
- [56] People of the Philippines v. Raul Oco @ Boy Usher, supra.
- [57] People of the Philippines v. Errol Rollon, supra.
- [58] People v. Nicolas, 400 SCRA 217 (2003).
- [59] People of the Philippines v. Eusebio Duban, supra.
- [60] People v. Caballero, 400 SCRA 424 (2003).
- [61] People of the Philippines v. Danny delos Santos, G.R. No. 135919, May 9, 2003.

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