

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO SALVADOR AND JOHN DOE, ACCUSED, ROBERTO SALVADOR, ACCUSED-APPELLANT.

G.R. No. 132481. August 14, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 33, Guimba, Nueva Ecija, finding Roberto Salvador guilty of murder and sentencing him to death and to pay the amount of P50,000.00 as indemnity for the killing of Florencio Valeroso in Quezon, Nueva Ecija on June 5, 1996.

The information alleged:

That on or about the 5th day of June 1996, in the Municipality of Quezon, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and being armed with a short firearm and with treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Florencio Valeroso with the said firearm which caused his instantaneous death to the damage and prejudice of his heirs.

CONTRARY TO LAW.[2]

Upon being arraigned on May 19, 1997, accused-appellant Roberto Salvador, assisted by counsel, entered a plea of not guilty. Trial on the merits then commenced. The identity of the other accused is not yet known up to this date.

The prosecution presented four witnesses: Eva Valeroso, the wife of the victim; Maria Theresa Valeroso, the daughter of the victim; Margarito Cielo, a representative of the Records Officer of the City Health Office; and Dr. Jun Concepcion, Medico-Legal Officer of the Department of Health.

Eva Valeroso, the widow of the victim, testified that on June 5, 1996, between 6 o'clock and 7 o'clock in the evening, she and the victim Florencio Valeroso and their child Maria Theresa were walking home from the rice mill where Florencio had worked when they met two persons, both of whom were wearing baseball caps and "Good morning" towelettes over their heads. Eva greeted the men, remarking that there was no electricity in the area, to which one of them answered "Yes." When they were already about two arm's length away, one of the men came back and greeted them from behind, saying "Magandang gabi" ("Good evening"). As they turned around to see who it was, the man shot Florencio. Florencio fell to the ground, but the man kept firing at him.[3] Eva held the hand of the man and pleaded with him to stop shooting her husband. As the man tried to free himself, his hat fell off, enabling Eva and Maria Theresa to identify him as accused-appellant Roberto Salvador. Roberto was angered, and he struck Eva on the head with his gun. Then, Roberto and his companion ran away. As Eva cried for help, several people came and rushed her husband to the hospital, where he was declared dead on arrival. [4]

Eva likewise testified that, at the time of his death, Florencio was 34 years old and was working as a “makinista” in a rice mill in Barangay San Miguel. He was earning from P1,000.00 to P2,000.00 a week. She testified that they incurred burial expenses amounting to P30,000.00 and presented several receipts to support her claim.[5]

Dr. Jun Concepcion, Medico-Legal Officer of the Department of Health, conducted the autopsy on the victim. According to his autopsy report,[6] Florencio Valeroso died as a result of multiple gunshot wounds penetrating the heart and body.

For its part, the defense presented five witnesses: SPO4 Abraham Fronda, a member of the PNP, Quezon City, Nueva Ecija; Barangay Captain Francisco Sagurit of San Miguel, Quezon, Nueva Ecija; Rufino Duque, Acting Clerk of Court of the Municipal Trial Court of Sto. Domingo, Nueva Ecija; Police Inspector Fernando Galang, Chief of Police of Aliaga, Nueva Ecija; and accused-appellant Roberto Salvador. Their version of the incident is as follows:

On June 5, 1996, at around 5 o'clock in the afternoon, SPO4 Abraham Fronda, together with three (3) Bantay Bayan members identified as Jaime Simplina, Rey Abalos and accused-appellant Roberto Salvador, went to Barangay San Manuel, Quezon, Nueva Ecija, about five kilometers away from Barangay San Miguel. They were to attend a visor trial meeting in the house of Kagawad Tinio.[7]

Several persons were present at the meeting, including some members of the Bantay Bayan, family members, and several friends of Kagawad Tinio, since the latter was also celebrating his birthday then. The meeting lasted for more than an hour, ending at around 6:30 o'clock in the evening. After the meeting, SPO4 Fronda and the three (3) members of Bantay Bayan who were with him were asked to stay for dinner. They therefore stayed in the house until 7 o'clock in the evening when they decided to go back to Barangay San Miguel on board a jeep.[8]

When they were about 200 meters away from the station, they were met by Pedro Ignacio, an investigator, who informed them of a shooting incident. Ignacio boarded the jeep and went with them to the place of the shooting incident. However, none of them saw the victim as the latter had already been rushed to the hospital. He was informed that the victim was a certain Tomas Valeroso.[9]

On June 6, 1996, SPO4 Fronda executed a sworn statement,[10] while Ricardo Abalos, Jaime Simplina and accused-appellant Roberto Salvador executed a joint one.[11] They explained that these statements were made in support of the investigation report.[12]

Accused-appellant Salvador testified that after the shooting on June 5, 1996, Eva Valeroso arrived at the COPS Kababayan Center at around 10 o'clock in the evening. She was angry at him and his colleagues because they failed to come to her husband's rescue. The following morning, Amang Razon, the brother of Eva, went to the station to apologize to them for his sister's behavior.[13]

Further, accused-appellant claimed that he went to the wake for the victim twice, first, when the remains were brought back to San Miguel at around 3 o'clock in the morning of June 6, 1996, and second, on the night of June 8, 1996, when they held a “Mañanita” with the other Cursillo members.[14]

On June 5, 1996, the trial court rendered its decision finding accused-appellant Roberto Salvador guilty as charged. Hence this appeal, accused-appellant contending that $\frac{3}{4}$

I THE COURT BELOW GRAVELY ERRED IN FINDING A JUDGMENT OF CONVICTION AGAINST THE ACCUSED BASED SOLELY ON THE SELF-SERVING [TESTIMONIES] OF THE PROSECUTION WITNESSES VIS-À-VIS THE IDENTITY OF THE ASSAILANT AND/OR ACCUSED.

II THE COURT BELOW LIKewise ERRED IN FINDING THAT THE EVIDENCE PRESENTED IS

SUFFICIENT ENOUGH TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.[15]

Accused-appellant's contentions are without merit.

First. Accused-appellant questions the credibility of Maria Theresa as a witness. He points out Maria Theresa's failure to answer simple questions, such as the name of her school or that of her teacher, and claims that this renders questionable her ability to testify on important matters, such as the identity of her father's assailant. Maria Theresa was seven years old at the time of the killing and eight years old at the time of her testimony. A child of her age, according to the defense, could not have understood the nature of an oath. Moreover, accused-appellant argues, a seven-year old child cannot possibly identify the assailant with moral certainty since there was insufficient light at the place of the incident at the time of its occurrence.

We disagree. At age seven, a normal child can fully comprehend a shocking experience like the killing of a person. We have held that a child, regardless of age, can be a competent witness if he can perceive, and perceiving, can make known his perception to others, and if he is capable of relating truthfully facts upon which he is examined.[16] The determination of the competence and credibility of a child to testify rests primarily with the trial judge who has the opportunity to observe the degree of a child's intelligence and her manner of testifying, as well as her understanding of the obligation of an oath.[17]

Maria Theresa's knowledge about the circumstances surrounding the shooting of her father is clear and precise. She could recall how her father was shot several times and how her mother, in trying to stop the assailant, was hit on the head with a gun. She remembered being brought to the place of her "Sansing" Nena by her brother soon after the incident. When asked to approximate the distance between her father and the assailant as well as her own distance from accused-appellant, she gave a correct estimate without hesitation. [18] While the child may not care so much for the name of her school or that of her teacher, it is a different thing with respect to the details of her father's killing. The experience was traumatic. It left an indelible mark on her mind. The incident she witnessed was no trivial matter. Maria Theresa was certain about the identity of her father's assailant as she identified accused-appellant in court to be the person responsible for the death of her father. She testified that she was able to recognize accused-appellant because it was still sufficiently bright when the shooting took place. Upon being cross-examined, she testified:[19]

ATTY. BUMANLAG:

Q: When you said that there was no electric current running at that time, would I be correct if I say that it was [pitch] dark?

A: It is still lighted, sir.

FISCAL FLORENDO:

Your honor, may I request for a re-interpretation. The answer of the witness is "maliwanag."

COURT:

Place it on record that the answer of the witness is "maliwanag", bright.

A: "Maliwanag po."

ATTY. BUMANLAG:

Q: Will you be in a position to tell the Court why as you said it was bright although there was no electric current running at that time?

A: It was still early, sir.

Q: At 7:00 o' clock in the evening on June 5, 1996?

A: Yes, sir.

Q: The area was not yet totally dark at 7:00 o'clock in the evening?

A: Not yet, sir.

Indeed, days are longer during the summer months in this country, and it is possible that there was still some natural light at around 7 o'clock in the evening, sufficient for one to see the things occurring around him.

Accused-appellant also points to the failure of both Eva and Maria Theresa to disclose the identity of Florencio's assailant when the investigation was being conducted. He alleges that Eva's passive reaction during the investigation was contrary to human experience because the normal reaction of one who is aggrieved is to denounce immediately the perpetrator of the crime.[20]

The contention has no merit. Eva gave a satisfactory explanation why she informed the authorities about the identity of her husband's assailant only on July 24, 1996, when she executed her sworn affidavit. Eva said:[21]

ATTY. BUMANLAG:

Q: How many policemen came to your house on that date of June 6, 1996?

A: I do not remember, sir, but what I remember, it was only the Chief of Police who talked to me.

Q: The first question I think being asked to you was "do you know who killed your husband"?

A: Yes, sir.

Q: You were asked that question by the Chief of Police of Quezon?

A: Yes, sir.

Q: And did you immediately tell the Chief of Police who asked you that it was Roberto Salvador who killed your husband when they came to your place early in the morning of June 6, 1996?

A: I told them that I will go to them as long as everything is already arranged, sir.

Q: In other words, you did not tell yet the policemen who actually shot your husband when they came to your house?

A: Yes, sir.

Q: My question now is, "why"?

A: I was afraid then because I always see that Roberto Salvador is being accompanied by policemen, sir.

Q: What if Roberto Salvador was with the company of the policemen?

A: I was just afraid, sir, every time I saw Roberto Salvador in the company of policemen and having a gun.

Even after she was able to gather enough courage to report the matter to the authorities, she was told by the police that she needed a witness, aside from her daughter and herself, to corroborate her claims. This, even as she explained that only she and her daughter Maria Theresa had witnessed the incident.[22]

It is then understandable why Eva showed initial reluctance in filing a complaint against accused-appellant, who was Chief of the Bantay Bayan of San Miguel. It could reasonably be assumed that he would be influential with the police.[23] For an ordinary person like Eva, this would be sufficient reason to be afraid for herself and her children's safety. We hold that Eva's failure to disclose the identity of assailant at once does not detract from her later identification of accused-appellant as the person who had shot her husband.

Second. Accused-appellant's defense is alibi. He claimed he was in a meeting in another barangay at the time of the incident. To buttress his claim, several witnesses were presented by the defense, all of whom are the

accused-appellant's comrades. It is well settled, however, that alibi cannot prevail over positive identification by credible witnesses of accused-appellant as the perpetrator of the crime.[24] As already stated, accused-appellant was positively identified by Eva and Maria Theresa as the assailant.

Accused-appellant claimed that he had no misunderstanding with the victim and his family. In fact, they belonged to the Cursillo movement. He said:[25]

FISCAL FLORENDO:

Q: Mr. Salvador, how long have you known Tomas or Florencio Valeroso?

A: It's been a long time, sir.

Q: You are both natives of Barangay San Miguel, Quezon, Nueva Ecija?

A: Yes, sir.

Q: Did you have any misunderstanding or quarrel with him prior to June 5, 1996?

A: None, sir.

Q: You do not remember any incident wherein there was any altercation with him?

A: None, sir.

Q: How close were you with this Florencio or Tomas Valeroso?

A: We only see each other in Barangay San Miguel, sir?

Q: In other words, you were not close to him?

A: We were close, sir.

Q: What do you mean [by] "close"?

A: Because Tomas Valeroso is my brother in Cursillo, sir.

Q: How about the family of the deceased Tomas or Florencio Valeroso, did you have any misunderstanding with any one of them?

A: None, sir, because the brothers of Tomas Valeroso are also my brothers in Cursillo.

Q: And also the family of Eva Razon-Valeroso, you do not have any quarrel with them prior to June 5, 1996?

A: We did not have, sir.

Q: And you now claimed that for no apparent reason at all, you are accused of the serious crime of murder?

A: That's why I do not know why they filed a charge against me, sir.

Q: But prior to the incident you were in good terms with the family of Tomas Valeroso and to the family of Eva Valeroso?

A: Yes, sir.

His claim was belied by Eva, however, who testified on cross-examination that accused-appellant and the victim did have an altercation just before the incident:[26]

ATTY. BUMANLAG:

Q: In Exhibit I which you have previously identified you were asked this question and you made the following answer:

T- May alam ka bang dahilan kung bakit binaril ni Roberto Salvador itong asawa mo?

S- Opo. Nagkaruon po sya ng hinampo sa aking asawa nuong sila ay nagkainuman sa dahilan sa mga pagpuna ng aking asawa sa kanyang mga kagamitan sa bahay.

Do you remember having [been] asked that question and you made that statement in your affidavit found in Exhibit I?

A: Yes, sir.

Q: Were you present at that particular time?

A: I was not there, sir.

Q: And that matter was told to you?

A: My husband told ... me before he died, sir.

Q: And you believe that that was the reason why your husband was shot by Roberto Salvador?

A: Yes, sir. Even during that time when they had that altercation, Roberto Salvador was already about to [shoot] my husband, sir.

While the victim and his family might bear no grudge against accused-appellant, it is apparent that the victim had offended accused-appellant.

As earlier noted, accused-appellant Roberto Salvador, Ricardo Abalos, and Jaime Simplina gave sworn statements (“Pinagsama-samang Salaysay”), concerning their whereabouts at the time of the incident. The purpose was to show that they were not at the scene of the killing when it occurred. This was executed on June 6, 1996, however, just a day after the incident. Why this was done when no case had even been filed against them has not been explained. Accused-appellant testified:[27]

FISCAL FLORENDO:

Q: Mr. Witness, it is indicated in this joint statement that the same was executed on June 6, 1996. I am asking you about the time when you executed the same?

A: About 6:00 o'clock, sir.

Q: 6:00 o'clock in the morning?

A: Yes, sir.

Q: And where did you give your statement?

A: At the COPS Kababayan Center, at San Miguel, Quezon, Nueva Ecija, sir.

Q: And who asked you to give that statement?

A: Investigator SPO2 Maximo Sta. Maria, sir.

Q: Did you ask him why your statement was being taken?

A: Yes, sir.

Q: What did Police Officer Sta. Maria tell you?

A: Chief Galang asked me to give a statement, sir.

Q: And in that statement, your purpose was to prove that you were not in the place of the incident when it happened?

A: Yes, sir.

....

Q: SPO4 Abraham Fronda testified here that you were with him when you arrived at the place of the incident, is that true?

A: Yes, sir.

Q: Up to what time [were] you and SPO4 Fronda together?

A: From June 5, 1996 up to June 6 in the morning, sir.

Q: That was the time when Chief Galang told you to execute an affidavit?

A: Yes, sir, in that morning.

Q: During the time when you and SPO4 Fronda were together, that SPO4 Fronda does not have any suspect yet as to who killed Tomas Valeroso?

A: None yet, sir.

COURT:

Why did you execute the sworn statement when your name was not even mentioned as a suspect?

COURT:

The witness failed to answer the question of the Court.

A: There is no reason why I should not file my affidavit, sir.

COURT:

Place that into the records.

It would appear that the group, particularly accused-appellant, was afraid of being implicated in the shooting of Florencio Valeroso because accused-appellant knew that Eva and Maria Theresa had recognized him when his hat fell off as he was shooting the victim.

Accused-appellant said he was in Barangay San Manuel, also in the municipality of Quezon, where the killing took place, at the time of the shooting incident. However, for alibi to prosper, it must be shown that it was impossible for the accused to have been at the scene of the crime at the time of its commission.[28] In this case, it was not impossible for accused-appellant to be at the scene of the crime even if he came from a meeting in a neighboring barangay. Barangay San Manuel, where the supposed visitorial meeting took place, is only five to six kilometers from Barangay San Miguel, where the incident happened. It takes only from 15 to 25 minutes to negotiate the distance at a moderate speed.[29] According to the prosecution witnesses, the incident occurred at around 7 o'clock in the evening, whereas accused-appellant claimed he and his companions left San Manuel aboard an owner-type jeep at around 7 o'clock in the evening. It was not then impossible for him to have been in Barangay San Miguel within minutes after leaving Barangay San Manuel.

Now, the killing was attended by treachery. Accused-appellant employed means, methods, or forms which tended directly and specially to ensure his commission of the crime, without risk to himself arising from the defense which the offended party might have offered. Accused-appellant attacked his victim with such suddenness that the latter had no chance to defend himself.[30] Accused-appellant was thus correctly charged with murder.

Under Art. 248 of the Revised Penal Code, as amended by R.A. No. 7659, the penalty for murder is reclusion perpetua to death. The aggravating circumstance of disguise was proven in court, but it was not alleged in the complaint. For this reason, it cannot, as the Solicitor General pointed out, be appreciated in view of Rule 110, §8 of the Revised Rules of Court, which requires that qualifying and aggravating circumstances be alleged in the information. Although this rule took effect on December 1, 2000, after the commission of the offense in this case, nonetheless we have given it retroactive effect in several of our cases considering that the same is favorable to the accused.[31] Hence, in accordance with Art. 63, second paragraph, subparagraph (2) of the Revised Penal Code, the lesser penalty of reclusion perpetua should be imposed on accused-appellant.

Eva Valeroso testified that she incurred expenses in the amount of P30,000.00 for the burial expenses for her

husband. Her testimony was supported by documentary evidence and not rebutted by the defense. Such amount should therefore be awarded to the victim's heirs. In addition, moral damages in the amount of P50,000.00 should be awarded to them in accordance with our case law. Such an award needs no further proof other than the victim's death.

WHEREFORE, the decision of the Regional Trial Court, Branch 33, Guimba, Nueva Ecija is hereby AFFIRMED insofar as it finds accused-appellant Roberto Salvador guilty of murder, with the MODIFICATION that the penalty imposed by the trial court is reduced to reclusion perpetua. In addition to the amount of P50,000.00 awarded by the trial court as civil indemnity for the death of Florencio Valeroso, accused-appellant is ORDERED to pay the heirs of the victim the amounts of P50,000.00 for moral damages and P30,000.00 for actual damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez and Corona, JJ., concur.

Sandoval-Gutierrez, J., on leave.

[1] Per Judge Rogelio P. de Guzman.

[2] Rollo, p. 10.

[3] TSN (Eva Valeroso), pp. 4-5, Aug. 5, 1997.

[4] Id., pp. 5-8.

[5] Id., pp. 10-11.

[6] Exh. A; Records, p. 15.

[7] TSN (SPO4 Abraham Fronda), p. 4, Sept. 29, 1997.

[8] Id., pp. 4-5.

[9] TSN (Roberto Salvador), p. 5, Dec. 2, 1997.

[10] Records, p. 7.

[11] Exh. I; Records, p. 8.

[12] TSN (SPO4 Abraham Fronda), pp. 13-14, Sept. 29, 1997.

[13] TSN (Roberto Salvador), p. 2, Dec. 8, 1997.

[14] Id., p. 3.

[15] Brief for the Accused-Appellant, p. 2; Rollo, p. 84.

[16] *People v. Dichoso*, 336 SCRA 491 (2000).

[17] *People v. Pajo*, 348 SCRA 492 (2000).

[18] TSN (Maria Theresa Valeroso), pp. 3-4, 6, June 9, 1997.

[19] TSN (Maria Theresa Valeroso), pp. 2-3, July 1, 1997.

[20] Brief for the Accused-Appellant, pp. 10-11; Rollo, pp. 92-93.

[21] TSN (Eva Valeroso), p. 8, Sept. 8, 1997 (emphasis added).

[22] TSN (Eva Valeroso), pp. 3, 10, Sept. 16, 1997.

[23] TSN (Roberto Salvador), p. 3, Dec. 2, 1997.

[24] *People v. Mirador*, G.R. No. 135936, Sept. 19, 2001.

[25] TSN (Roberto Salvador), p. 8, Dec. 8, 1997 (emphasis added).

[26] TSN (Eva Valeroso), p. 6, Sept. 16, 1997 (emphasis added).

[27] TSN (Roberto Salvador), pp. 10-11, Dec. 8, 1997 (emphasis added).

[28] *People v. Gonzales*, G.R. Nos. 139445-46, June 20, 2001. See also *People v. Baers*, G.R. No. 128617, June 20, 2001; *People v. Tumayao*, G.R. No. 137045, Apr. 16, 2001; *People v. Galvez*, G.R. No. 136790, Mar. 26,

2001.

[29] TSN (Brgy. Capt. Francisco Sagurit), p. 6, Oct. 14, 1997; TSN (SPO4 Abraham Fronda), p. 8, Sept. 29, 1997.

[30] See *People v. Reyes*, G.R. Nos. 137494-95, Oct. 25, 2001; *People v. Clariño*, G.R. No. 134634, July 31, 2001; *People v. Tumayao*, G.R. No. 137045, Apr. 16, 2001; *People v. Arrojado*, G.R. No. 130492, Jan. 31, 2001.

[31] E.g., *People v. Arrojado*, G.R. No. 130492, Jan. 31, 2001; *People v. Baroy*, G.R. Nos. 137520-22, May 9, 2002; *People v. Manlansing*, G.R. Nos. 131736-37, Mar. 11, 2002; *People v. Moreno*, G.R. No. 140033, Jan. 25, 2002; *People v. Vicente*, G.R. No. 142447, Dec. 21, 2001; *People v. Arandain*, G.R. Nos. 131864-65, Sept. 27, 2001; *People v. Ramirez*, G.R. No. 136094, April 20, 2001; *People v. Gano*, G.R. No. 134373, Feb. 28, 2001.

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