

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO LLANDA (AT LARGE), ACCUSED-APPELLANT.

G.R. No. 133386. November 27, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the decision[1] of the Regional Trial Court of Ozamiz City, Branch 15, dated May 27, 1996, in Criminal Case No. 1535, convicting appellant Romeo Llanda of murder and imposing on him the death penalty.

On October 7, 1994, the Office of the Provincial Prosecutor of Misamis Occidental charged appellant with murder in an information, which states:

That on or about the 3[rd] day of September, 1994, at about 6:30 o'clock in the evening, in barangay Casilak-San Agustin, municipality of Tudela, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a caliber .38 pistol, did then and there willfully, unlawfully, feloniously and treacherously, attack, assault and shot CORNELIO E. CORONADO, thereby hitting the victim on his head, which caused his instantaneous death.

CONTRARY TO LAW.[2]

When arraigned, appellant pleaded not guilty to the charge. But before trial could commence, appellant escaped while being escorted to Tudela, Misamis Occidental.[3] Hence, the trial proceeded in absentia.

The prosecution's version, as culled from the records, shows that:

At around 6:30 p.m. of September 3, 1994, the victim Cornelio Coronado was having supper with his son Jessie, his daughter-in-law Juliet, daughter Nena, and his three (3) grandchildren at their house in Kasilak,[4] San Agustin, Tudela, Misamis Occidental,[5] when suddenly a shot rang out. Nena Coronado peeped through the slits between the coco slabs of which their kitchen wall was made of, and she saw appellant in the act of shooting her father.[6] She was familiar with appellant because he had been their neighbor for six (6) years.[7] The bullet from the appellant's gun passed through a slit between the coco slabs and struck the victim at the right side of the head, causing him to fall on the floor.[8] Nena then saw appellant strutting around their house armed with a pistol and a bolo.[9] Appellant was shirtless, sported tattered denims, had black gloves on, and had a towel around his head.

Immediately after the fatal shot, the victim's son, Jessie,[10] rushed downstairs. Through the slits of the bamboo walling of the lower portion of the Coronados' house,[11] he witnessed appellant walking around their house, carrying a handgun and a bolo.[12] Jessie saw that appellant had a towel wrapped around his head, was stripped to the waist, and had gloves on.[13] He hacked the window of the Coronados' house with his bolo before walking away.[14] After he left, Jessie rushed to the Civilian Armed Force Geographical Unit (CAFGU) detachment at Canibungan, Daku,[15] Clarin, Misamis Occidental, to report the incident.[16]

Jessie Coronado testified as to the possible motive behind the killing. He declared that on August 25, 1994,

appellant's father, Santos Llanda, had a quarrel with the victim over a parcel of land owned by a certain Nicanor Caramba.[17] In the evening of that same day, an unidentified person took a potshot at Jessie. Jessie then reported the incident to the Barangay Captain and a certification was issued to him.[18]

Prosecution witness Miguel Cueva, a CAFGU member, was then on duty at the CAFGU detachment in Canibungan. He testified that at sometime past 6:30 o'clock in the evening of September 3, 1994, Jessie Coronado arrived, followed shortly by his wife, Juliet, to report the fatal shooting of their father.[19] The CAFGU members proceeded to question Jessie, after which they proceeded to the Coronados' house. They then brought the victim's corpse to the barangay hall.[20] Cueva then issued Jessie a certification to the effect that he reported the victim's death to them.[21] The CAFGU members, however, did not arrest appellant as they had no warrant of arrest.[22]

Appellant raised the defense of denial and alibi. He claimed that the perpetrator of the crime was the victim's son, Jessie himself.

For the defense, Juan Otom testified that at around 5:00 P.M. of September 3, 1994, the victim requested him to husk his coconut harvest.[23] The two then went to the Coronados' nipa hut to ask permission from Cornelio's son, Jessie, who was the gatherer.[24] There, father and son had a heated argument[25] and in the course thereof, Jessie strangled his father and pressed him to the floor.[26] Otom then departed from the scene but as he left, he heard Nena Coronado shout, "Manoy! Manoy! Don't kill father!".[27] He then heard a shot and on looking back, saw Jessie leaving the scene with a gun.[28] He told no one about the incident except appellant's father.[29]

Defense witness Protacio Prayles[30] was, in turn, presented to prove appellant's alibi.[31] Prayles declared that at around 4:00 P.M. of September 3, 1994, he was at the Canibungan, Daku, Clarin market with appellant and six other persons.[32] They left the market at 6:30 P.M. and arrived at Barangay Kasilak at around 7:00 P.M. He then heard the sound of a woman weeping. The sound seemed to emanate from the Coronados' house.[33] Prayles proceeded there and saw the victim lying lifeless in the arms of Nena Coronado.[34] When he asked Nena who shot her father, she gave no answer.[35] He then proceeded to the barangay captain to report the matter to the authorities.[36]

Victor Tactacon, a barangay kagawad, also took the stand for the defense. Tactacon declared that at around 7:00 P.M. of September 3, 1994, appellant, with three other persons, came to his house to report that there had been a killing at the Coronados' house. Tactacon directed them to the military detachment while he and two others proceeded to the Coronados'.[37] There they saw the victim's corpse. Jessie pointed at appellant as the assailant,[38] so Tactacon barred appellant from entering the Coronados' house. Tactacon stated that appellant cried in protest at being suspected as the assailant.[39] Tactacon then issued a certification to appellant's father that he found no evidence to support the claim of the Coronados that appellant hacked different parts of their house with a bolo.[40]

Finally, the defense presented the testimony of Nereo Betito, a provincial jail guard, who declared that at one of the hearings, Jessie Coronado admitted to him that although he suspected appellant as his father's killer, he did not clearly see the shooting because it happened from a distance.[41]

The trial court found the prosecution's version more worthy of credence and convicted appellant. Its fallo reads:

WHEREFORE, finding the accused Romeo Llanda guilty beyond reasonable doubt of killing the victim Cornelio Coronado, qualified by treachery and aggravated by dwelling, this Court sentences him to death, and to indemnify the heirs P50,000.00. With costs.

SO ORDERED.[42]

Hence, this automatic review.

On November 17, 1998, we ordered the arrest of appellant, who was still at large and directed the Philippine National Police Station Commander in Ozamis City and/or Chief Superintendent Lucas Managuelod, CIDG Director of Camp Crame, Quezon City to serve the said warrant of arrest.[43] On June 29, 2000, the warrant of arrest was returned to this Court unserved,[44] as appellant continues to elude the authorities.

Notwithstanding appellant's fugitive status, we shall proceed to review the case as it involves the imposition of the death penalty. Automatic review by this Court is mandatory, for this constitutionally vested power includes the bounden duty to review all death penalty cases.[45]

Before us, appellant assigns the following errors:

I

THE LOWER COURT ERRED IN APPRECIATING THE CIRCUMSTANCES OF TREACHERY AND DWELLING AGAINST THE ACCUSED WHICH WAS NOT PROVEN BY THE PROSECUTION.

II

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AS DEFINED AND PENALIZED UNDER ART. 248 OF THE REVISED PENAL CODE AS AMENDED BY RA 7659 INSTEAD OF THE CRIME OF HOMICIDE.[46]

The core issues in the instant case concern (1) the sufficiency of the prosecution's evidence to sustain a conviction for murder; and (2) the propriety of the death sentence imposed.

Appellant through counsel argues that the lower court erred in finding him guilty with moral certainty of the crime of murder, aggravated by the circumstances of treachery and dwelling. He theorizes that the trial court had no sufficient reason to discredit his denial and alibi, much less to believe the prosecution witnesses who pointed at him as the perpetrator of the crime.

For the appellee, the Office of the Solicitor General (OSG) contends that the prosecution has established the guilt of appellant beyond reasonable doubt.[47] The OSG stresses that the prosecution's evidence overwhelmingly points to appellant as the malefactor. Even the mere perusal of the testimonies of the prosecution witnesses clearly shows that they dovetail on every material circumstance, says the OSG, particularly with respect to the positive identification of appellant as the person who shot the victim on that fateful night of September 3, 1994.

The assailed decision shows that the trial court anchored its judgment of conviction for murder primarily on the testimonies of the victim's immediate family, namely: Jessie, Nena, and Juliet Coronado. Their testimonies were found by the court below to be credible, and their respective accounts of the event consistent. Before us now, appellant points to no convincing, much less compelling, reason to discredit or discard their testimonies. Nor could he show any motive why the prosecution witnesses should falsely and maliciously impute so serious a crime to him.

The established rule is that where the question is one of credibility of witnesses, reviewing courts generally will not disturb the finding of the trial court, unless it can be shown that the latter overlooked certain facts of substance and value that, if considered, might affect the result of the case.[48] The matter of assigning values to declarations on the witness stand is best done by the trial judge who, unlike appellate magistrates, can weigh first-hand the testimony of a witness in the light of his demeanor, conduct and attitude, and is thereby placed in a more competent position to discriminate between the true and the false.[49] In the present case, we see no error committed by the trial court in giving full faith and credit to the testimonies of the prosecution witnesses, absent

any evidence to indicate that the witnesses against the accused have been actuated by any improper motive, and absent any compelling reason to conclude otherwise.[50]

In contrast, the testimony of the defense witnesses, in our considered view, hardly deserves serious consideration. As found by the trial court, the defense evidence, grounded mainly on the testimony of Juan Otom, appears highly incredible.[51] On this assessment, we see no reason to take exception. Perusal of the records, particularly, of Otom's testimony implicating Jessie Coronado as the assailant, strains one's credulity. For one, he admitted that he and appellant's father were very close friends and neighbors,[52] confirming in effect his bias for the appellant. His actuation after the incident raises doubt and disbelief, considering that he told no one about the alleged shocking incident except appellant's father.[53] The trial court aptly observed that Otom testified "without conviction." [54] And that appears the best that could be politely said of his testimony.

As to the testimonies of other defense witnesses, their attempts to exonerate appellant is far from persuasive. Witnesses Prayles and Tactacon tried to show that appellant could not be the assailant since he was the one who reported the victim's death to the CAFGU detachment. That is, obviously, non sequitur. Moreover, Prayles is also a biased witness; he admitted to be a good friend and neighbor of appellant's father.[55] The lame attempt of Prayles to establish an alibi in appellant's favor pales in contrast to the positive testimonies of the victim's immediate kin which were clear, candid, and straightforward in identifying appellant as the perpetrator of the crime.

The defense of alibi is looked upon by courts with caution, for not only is it inherently unreliable, it is rather easy to fabricate.[56] For alibi to prosper, it is not enough that an accused prove that he was somewhere else when the crime was committed. He must demonstrate that it was physically impossible for him to be at the crime scene when the crime was committed. Appellant's defense failed on this score. He did not show that the distance from Canibungan, Daku, Clarin, Misamis Occidental to Kasilak, San Agustin, Tudela, Misamis Occidental was so great, or that the facility of access so difficult, as to render it physically impossible for appellant to have been at the locus criminis at the time of the incident.

Appellant's flight before his trial is most telling. He escaped just after his arraignment, despite the presence of police escort, on the way back to Tudela. Flight of an accused, when unexplained, is a circumstance from which an inference of guilt might be drawn, for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence of the crime imputed to him.[57]

In brief, we entertain no doubt that, based on the evidence, the appellant shot and killed the victim, Cornelio Coronado. It now behooves us to determine whether attendant circumstances that qualified and aggravated the offense were properly appreciated by the trial court.

Appellant's counsel argues that treachery could not have qualified the killing to murder, in view of the prior altercation that took place between the victim and appellant's father over a parcel of land. Appellant insists that this fact should have forewarned the victim's family to take precautions, as land disputes in the rural areas are a major cause of violence.

To constitute treachery, two conditions must be present, to wit: (1) the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted.[58] Here, the evidence shows that the victim was shot suddenly. He was totally unprepared for the unexpected attack, as he was eating his supper at the time of the incident. Considering the circumstances of the case, we concur with the trial court that appellant purposely adopted the means of attack to insure the execution of the crime without risk to him. We are thus constrained to agree with the trial court's finding that treachery attended the killing. Hence, appellant is guilty of murder, not just homicide.

In imposing the death penalty, however, the trial court ruled that dwelling aggravated the offense. But the information against appellant is mute on this circumstance. Pursuant to Sections 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure,[59] promulgated December 1, 2000, the information should state not only the designation of the offense and the acts and omissions constituting it but shall also specify its qualifying and aggravating circumstances. As the Rules now stand, dwelling cannot be considered as aggravating since it is not alleged in the information.[60] Being favorable to the appellant, Section 8 should be applied retroactively, though the offense was committed way back on September 3, 1994.

Under Article 248[61] of the Revised Penal Code, the penalty for murder is reclusion perpetua to death. There being no aggravating nor mitigating circumstance, the imposable penalty under Art. 63[62] of the Revised Penal Code is reclusion perpetua.

With respect to damages, we find the award of civil indemnity of P50,000 in order. However, pursuant to current jurisprudence, the heirs of the victim are entitled to another P50,000 as moral damages, without need of further proof.[63]

WHEREFORE, the decision of the Regional Trial Court of Ozamiz City, Branch 15, in Criminal Case No. 1535, is **AFFIRMED** with **MODIFICATION**. Appellant **ROMEO LLANDA** is declared guilty of murder, but his sentence is hereby reduced to reclusion perpetua. Appellant is also ordered to pay the heirs of the victim the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages, together with the costs.

Let a warrant issue for the prompt arrest of appellant. Also, let copies of this decision be furnished the Director of the National Bureau of Investigation and the Director-General of the Philippine National Police for their appropriate action.

SO ORDERED.

Bellosillo, (Acting C.J.), Vitug, Mendoza, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Davide, Jr., C.J., and Puno, J., on official leave.

Panganiban, J., reiterates his separate opinion in *People v. Raquino* (315 SCRA 670) that before the Court reviews a death sentence, it must first await the rearrest and custody of an appellant who has absconded.

[1] Rollo, pp. 77-81.

[2] *Id.* at 10.

[3] Records, p. 106.

[4] Sometimes spelled as “Casilak” in the records.

[5] TSN, August 17, 1995, pp. 3, 6-9; TSN, August 30, 1995, pp. 4-5.

[6] TSN, August 17, 1995, pp. 11-12.

[7] *Id.* at 5.

[8] TSN, August 30, 1995, p. 6.

[9] *Supra* note 6.

[10] Sometimes spelled “Jesse” in the records.

- [11] TSN, August 24, 1995, pp. 6-7.
- [12] Id. at 8.
- [13] Id. at 9.
- [14] Id. at 8-9.
- [15] Also spelled “Canibongan, Dako” in the records.
- [16] TSN, August 17, 1995, pp. 12-13.
- [17] Supra note 11 at 11.
- [18] Ibid.
- [19] TSN, August 31, 1995, p. 4.
- [20] Id. at 5-7.
- [21] Id. at 10-11.
- [22] Id. at 12.
- [23] TSN, October 11, 1995, pp. 3-4.
- [24] Id. at 5.
- [25] Id. at 5-6.
- [26] Id. at 6.
- [27] Ibid.
- [28] Id. at 6-7.
- [29] Id. at 17.
- [30] Sometimes spelled as “Prailes”.
- [31] TSN, October 20, 1995, p. 4.
- [32] Id. at 5.
- [33] Id. at 6.
- [34] Ibid.
- [35] Id. at 7.
- [36] Ibid.
- [37] TSN, January 15, 1996, pp. 3-4.
- [38] Id. at 5.
- [39] Id. at 12.
- [40] Id. at 6.
- [41] TSN, February 1, 1996, pp. 2-4.

- [42] Rollo, p. 24.
- [43] Id. at 32.
- [44] Id. at 57.
- [45] People vs. Del Rosario, 348 SCRA 603, 609 (2000).
- [46] Rollo, p. 67.
- [47] Id. at 96.
- [48] People vs. Hubilla, Jr., 252 SCRA 471, 478 (1996).
- [49] People vs. Reynaldo, 291 SCRA 701, 712 (1998).
- [50] People vs. Solis, 291 SCRA 529, 539 (1998).
- [51] Rollo, p. 23.
- [52] TSN, October 11, 1995, p. 10.
- [53] Id. at 17.
- [54] Supra note 51.
- [55] TSN, October 20, 1995, p. 16.
- [56] People vs. Cortes, 226 SCRA 91, 99-100 (1993).
- [57] People vs. Solis, 291 SCRA 529, 540 (1998); People vs. Maderas, 350 SCRA 504, 512 (2001).
- [58] People vs. Mabuhay, 185 SCRA 675, 680 (1990). See L. REYES, I THE REVISED PENAL CODE, 429 (13th ed. 1993).
- [59] SEC. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.
- SEC. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.
- [60] People vs. Perreras, G.R. No. 139622, July 31, 2001, p. 11.
- [61] ART. 248. Murder. - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:
- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

x x x

[62] ART. 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

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[63] People vs. Cabacan, G.R. No. 130965, August 22, 2002, p. 9.

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