

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ULДАРICO PANADO, RONIE PANADO, RONEL PANADO, JESSIE OQUENDO (AT LARGE), JOHN PAUL ELESERIO (AT LARGE), AND JOHN DOE (AT LARGE)...

G.R. No. 133439. December 26, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

FOUND GUILTY by the trial court for the killing of Danilo del Rosario and sentenced each to reclusion perpetua and to pay the heirs of their victim P50,000.00 for actual and compensatory damages plus the costs, ULDERICO, RONIE and RONEL, all surnamed PANADO, now come to us on appeal. Placido Panado, a co-accused, was earlier acquitted by the court a quo.

The Information alleges that in the afternoon of 28 June 1997 the above named accused in conspiracy with JESSIE OQUENDO, JOHN PAUL ELESERIO and JOHN DOE armed with assorted weapons, treacherously and with abuse of superior strength, attacked and killed Danilo del Rosario.

On 20 October 1997, after conducting a preliminary investigation, Assistant Provincial Prosecutor Freddie A. Ofialda dismissed the case for insufficiency of evidence against Lorenzo de Pedro, who was initially included in the charge sheet, but found probable cause to hold for trial accused Uldarico Panado and his three (3) sons Ronie, Ronel and Placido, together with Jessie Oquendo, John Paul Eleserio and one John Doe. The trial court however did not acquire jurisdiction over the last three (3) named accused - Jessie Oquendo, John Paul Eleserio and John Doe - as their whereabouts remained unknown even as Uldarico and his three (3) sons were arraigned.

Hilda del Rosario, a witness for the prosecution, testified that at around 4:30 in the afternoon of 28 June 1997 she was in her house in Sitio Batuan, Mandong, Batan, Aklan, together with her husband Danilo del Rosario, who was drinking liquor in their kitchen with his friend Elmer Sison. Her 10-year old son Louie Gee was outside playing in the yard. While going about her household chores four (4) armed persons arrived and forthwith surrounded their house. The intruders were Uldarico Panado, Placido Panado, Jessie Oquendo and Lorenzo de Pedro, although on cross-examination Hilda mentioned only the names of Uldarico, Placido and Jessie as she failed to recognize the fourth.[1] With a bolo in hand, Uldarico walked towards the front door while Ronie Panado challenged her husband Danilo saying, "Danny go out, we will fight." [2]

Meanwhile, Uldarico approached Danny in a threatening manner. Instinctively, Danny stood up from his perch and stepped back towards a coconut plantation outside his house. But as he stepped out of his house he was encircled by Ronie, Ronel and John Paul Eleserio. According to Hilda, she heard Uldarico prodding his companions to kill Danny who continued to step backwards blindly until he tripped over a barbed wire that sent him stumbling to the ground. Uldarico then attacked his fallen quarry with a bolo while Ronel stabbed him with a knife. Ronie joined the fray by smashing Danilo's left ear with a stone and Placido and Jessie made sure that their victim could not escape. Hilda cried helplessly.[3] When asked if she knew of any reason for the killing of her

husband, she surmised that it could be a long-standing grudge between Danilo and the Panados which started when the latter accused her husband of conspiring with a certain Atty. Hernando Cortes to assassinate them.

Dr. Cornelio Cuachon testified that the post-mortem examination conducted on the cadaver of Danilo del Rosario yielded the following results: (a) a stab wound located at the right side of the chest and another stab wound at the left chest just below the nipple both of which could have been caused by a knife or a bolo; (b) a lacerated wound which was probably caused by a blunt object; (c) an avulsion which could have been caused by either a piece of wood, an iron bar, a fist blow, or even by a stone; and, (d) the cause of death was severe hemorrhage secondary to stab wound.[4]

Elmer Sison testified that on the day of the incident while he and Danilo were drinking liquor at the kitchen (described by the witness as open and not enclosed by a wall) of the latter's house, he saw Ronie, John Paul, Jessie alias "Toti" and Placido arrive. The four (4) immediately surrounded Danilo's house. Sensing that trouble was brewing, Elmer warned his drinking buddy not to go out and then hastily left towards the river nearby.[5]

Louie Gee, the 10-year old son of Danilo, identified the accused Uldarico, Ronel, Placido, Jessie, John Paul and Ronie as the persons who surrounded and killed his father. He particularly pointed to Ronel as the one who stabbed his father, and Ronie who smashed his father's face with a stone. He could still recall how he ran in terror towards his grandfather's house when he saw the accused taking turns in hitting his father.[6]

Nathaniel Montaña, testifying for the defense, said that at around 4:00 in the afternoon of the day of the killing he saw Danilo poking a gun at Lorenzo de Pedro who was already on his knees. Danilo fired his gun twice at Lorenzo but missed. He further testified that Ulderico, Placido, Ronie, and Ronel were then at the Poblacion after having been hired to do some carpentry work.[7]

Nathaniel Montaña's testimony was corroborated by Juanito Panado, the alleged employer, who testified that on the fateful day of 28 June 1997 Uldarico, Ronie and Ronel were at his house doing some repairs. They reported for work at 6:45 in the morning of that day, which he remembered to be a Saturday since there were no classes. The three (3) workers left at 5:45 in the afternoon after receiving their week's wages. He also noted two (2) other workers, Jessie Oquendo and John Paul Eleserio, who left earlier in the afternoon.[8]

Montaña's testimony was further substantiated by Teresita Francisco, a neighbor of Juanito Panado, who confirmed the presence of Uldarico, Ronie and Ronel in Juanito's house on 28 June 1997. Teresita was certain that the three (3) accused left after 5:00 in the afternoon of that day. As to Jessie and John Paul, she did not see them in Juanito's house on the day of the incident.[9]

In his defense, Placido Panado swore that on 28 June 1997 he was fetched by his Lola Francisca (Francisca Cortez) at 9:00 o'clock in the morning to repair the roof of her kitchen. He started working at 2:00 o'clock in the afternoon and finished at 6:00 o'clock in the evening of the same day. When he got home he saw his father Uldarico and his brothers Ronel and Ronie who had just arrived from a construction project. Placido's testimony was corroborated by his Lola Francisca who confirmed his presence at her house to repair her roof and that he stayed until 7:00 o'clock in the evening after taking his supper.[10]

Taking the witness stand, Uldarico testified that at around 7:00 o'clock in the morning of the day of the killing, he, together with his sons Ronie and Ronel, was at the residence of Juanito Panado renovating the latter's house. He recalled that on that day they worked from 7:00 o'clock in the morning to 5:00 o'clock in the afternoon. Although they finished their work at 5:00 o'clock, they stayed a bit longer because it was payday and they still had to discuss with Juanito certain matters concerning their next work schedule. On their way home, Ronel rode his own bicycle while he (Uldarico) rode on another bicycle with Ronie as his backrider. Upon reaching their house in

Barangay Mandong, Batan, he was accosted by SPO1 Teresito Chagas who asked him about a supposed fighting incident in the vicinity. He denied any knowledge of the same. When asked whether he had anything to do with the death of Danilo del Rosario, he disclaimed any involvement in the killing. On 29 June 1997 he and his sons were invited to the police precinct where their fingerprints were taken without any investigation. He testified further that he knew John Paul, Jessie and even Lorenzo because they would come to visit their barangay every now and then.

Lorenzo de Pedro also took the witness stand to rebut the testimony of Nathaniel Montañó that he (Lorenzo) was shot twice by Danilo del Rosario. According to Lorenzo, the truth was that on 28 June 1997 at around 4:00 o'clock in the afternoon he was inside his grandmother's house when he heard shouts. When he went outside he saw Uldarico, Ronel, Ronie and Placido chasing and later slaying Danilo del Rosario. On cross-examination, while admitting having heard shouts he nevertheless denied having heard gunshots on the day of the killing.

As sur-rebuttal witnesses, the defense presented Vito Baldonado and Thelma Panado. Vito Baldonado narrated that on 28 June 1997, while on his way to a certain agrarian employee, he saw Danilo del Rosario poking a gun at Lorenzo de Pedro who was kneeling beside the road.[11] This testimony was echoed by Thelma Panado who disclosed that she also saw the deceased poking a gun at Lorenzo.[12]

On 26 January 1998 the trial court rendered the assailed Decision finding Uldarico, Ronie and Ronel guilty of murder and sentencing each to reclusion perpetua. Placido Panado however was acquitted for lack of sufficient evidence while the case against accused Jessie Oquendo, John Paul Eleserio and John Doe was archived for failure of the court to acquire jurisdiction over their persons.[13]

Explaining its Decision the lower court opined that prosecution witnesses Hilda del Rosario, her 10-year old son Louie Gee, and Elmer Sison clearly and positively showed the circumstances regarding the death of Danilo del Rosario and the persons who inflicted the injuries that caused his death. The alibi of the accused was rejected in view of the positive identification of the accused. With respect to the attendant circumstances, the lower court said

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The information alleged that the accused conspired, confederated with and helped one another, in killing Danny del Rosario with treachery and abuse of superior strength to qualify the crime to murder x x x x Treachery is present when two conditions concur: a) the employment of means, methods or manner of execution which would ensure the offender's safety from any offensive or retaliatory act on the part of the offended party which means that no opportunity was given to the latter to do so; and b) that such means, method or manner of execution was deliberately or consciously chosen x x x x Prosecution's evidence showed that the accused Uldarico Panado, Ronie Panado, Ronel Panado and their other companions were armed, hence, there was clearly an inequality of forces between their group and Danny del Rosario who was unarmed and left alone by his drinking companion, Elmer Sison. Decidedly, the accused assumed a situation of superiority of strength which they took advantage of in the commission of the crime.

As to the allegation of conspiracy, the lower court said -

x x x the prosecution was able to prove that the accused Uldarico Panado, Ronel Panado, and Ronie Panado, were of one mind in attacking Danny del Rosario. As seen in the chain of circumstances in the commission of the crime, from the time they surrounded the house of Danny del Rosario, all armed, with Ronie Panado shouting "Danny, come and we will fight" to their surrounding Danny when he ran to the coconut plantation, then Uldarico's shout to kill Danny when they surrounded him and ultimately stabbing him when he stepped on the barbed wire and fell helpless on the ground, then Ronel stabbing him with a knife and Ronie striking him with a stone on his right ear with such force as to cause a portion of that ear to be detached, there was a clear unity of criminal purpose and intention to kill Danny del Rosario x x x x.[14]

Accused-appellants now interpose this appeal on these grounds -

First. The lower court committed grave error in disbelieving the allegation that a shooting incident involving Danilo del Rosario and Lorenzo de Pedro had preceded the killing. By foisting this allegation, accused-appellants insinuate that Lorenzo not only had the motive but was in a better position than accused-appellants to commit the crime imputed to them.

We are not persuaded by the defense. Lorenzo de Pedro himself categorically denied on rebuttal the claim that the victim had poked a gun at him and even corroborated the testimonies of the prosecution witnesses on the identity of the killers. Besides, he was exonerated by the prosecution witnesses themselves who, if indeed they had witnessed the actual killing, would not have hesitated to point to Lorenzo instead of passing on the blame to accused-appellants.[15]

Second. The lower court committed reversible error in finding that the victim's widow had no improper motive to testify against accused-appellants. They argue that Hilda herself revealed that her family had ill motives against them when she categorically admitted in her testimony that there was animosity between them and the deceased after the latter was accused of conniving with Atty. Cortes to kill them.

The contention is devoid of merit. The general rule is that proof of motive is unnecessary to impute a crime on the accused if the evidence of identification is convincing; a converso, where the proof concerning the identification of the accused is unclear, then proof of motive is of paramount necessity.[16] Accused-appellants were not only positively identified by one (1) but four (4) prosecution witnesses, namely, Hilda del Rosario, her son Louie Gee, their family friend Elmer Sison and Lorenzo de Pedro. Granting that Hilda was not in good terms with accused-appellants, how can we now account for the other witnesses, particularly the last two (2) witnesses, whose motives were never put in issue? In pinpointing accused-appellants as the killers of her husband, the victim's widow was impelled by no other reason than to bring the culprits to justice. Having witnessed the violent death of her husband, it would be insensitive and callous on her part not to charge properly her husband killers knowing fully well who they were, and to fabricate instead charges against innocent persons.

Third. Accused-appellants would make much of the alleged inconsistent and contradictory statements of the prosecution witnesses with respect to the exact number of the assailants as well as their identities. According to them, Hilda allegedly identified seven (7) of the attackers while her son Louie Gee, although substantially corroborating his mother's testimony, identified only six (6) of them, and even asserted, contrary to his mother's claim, that Lorenzo de Pedro was not at the scene of the crime. To underscore these alleged contradictions, they point out that Elmer Sison mentioned only four (4) of the malefactors.

Again, we do not agree. A meticulous reading of the testimonies of the prosecution witnesses will reveal no conflicting, contradictory or impossible statements which could erode their credibility. The three (3) prosecution witnesses saw the killing from different angles or vantage points and in various stages. Hilda was inside the house with her husband Danilo when she saw the assailants from the time they arrived and surrounded their house until they ganged up on her husband and killed him. Louie Gee on the other hand was playing in the yard when the incident commenced but hid himself and ran to his grandfather's house as the crime unfolded. Elmer Sison for his part witnessed only the initial stages of the crime but did not see the actual killing as he ran out of the house when he sensed the impending trouble. Contrary to accused-appellants' belief, it would elicit a suspicion of a rehearsed testimony if the declarations of all the prosecution witnesses jibed in every detail despite the differences in their locations when the terrifying spectacle happened.

With respect to Lorenzo de Pedro, it was established at the preliminary investigation that he was at the scene of the crime not as participant but as a mere passive onlooker. The records do not disclose that he actively

participated in the killing. He narrated that when he noticed the commotion outside his grandmother's house, he immediately went down and proceeded towards Danilo's house where he saw the accused chasing the victim. Thereafter, he returned to his house for fear that he might get involved. This explains why he was initially seen by Hilda with the attackers but was never seen by Louie Gee in the company of his father's killers.

Finally, Accused-appellants assail the lower court's ruling giving no credence to their defense of alibi. According to them, the defense witnesses testified in a positive, straightforward and consistent manner even during cross-examination. They insist that while such defense can easily be fabricated, it is not always false and without merit, especially when juxtaposed with the improbabilities and uncertainties of the prosecution's evidence. Accused-appellants further clarified that although non-flight by itself is not conclusive proof of innocence, "the concatenation of the circumstances in this case conduces to the inevitably logical and favorable consideration pointing to their innocence." A pathetic excuse, to say the least.

The rule is, positive identification which if categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[17] For alibi to prosper, it is not enough to prove that accused-appellants were somewhere else when the crime was committed but it must likewise be demonstrated that they were so far away that they could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[18] The evidence for the defense showed that the house of Juanito Panado, where accused-appellants were alleged to have been during the day, was only half a kilometer or at most a kilometer away according to Uldarico Panado from their house which was near the house of the deceased, and with a bicycle it would only take them about ten (10) minutes to negotiate.

All told, accused-appellants were not only positively identified in broad daylight as the perpetrators of the crime, but they also miserably failed to prove the physical impossibility of their presence at the time of its commission.

As regards damages, there is need to modify the award by the trial court. In fixing the amount of P50,000.00 for actual or compensatory damages, it appears to have been based on the claim of the widow that the heirs incurred burial and funeral expenses. But Art. 2199 of the Civil Code explicitly requires that, except as provided by law or by stipulation, one is entitled only to such pecuniary loss as he has duly proved. In the instant case, aside from the assertion of the widow that he spent P9,000.00 for the coffin of the deceased, no documentary evidence was presented to prove that burial or funeral expenses were actually incurred. However, from her own testimony she claimed that the receipt for the purchase of the coffin was delivered to the Social Security System (SSS) to support her claim for reimbursement. In fact, according to her, she was expecting to be reimbursed P12,000.00 for her funeral expenses. The amount should more than make up for the P9,000.00 she allegedly spent for the coffin of her husband. With regard to her other funeral expenses, the widow failed to prove them with competent evidence.

Nonetheless, the heirs are entitled to damages for the loss of earning capacity of the deceased Danilo del Rosario. The absence of documentary evidence to support such claim does not preclude its recovery. The testimony of the victim's wife, Hilda del Rosario, as to the earning capacity of her husband during his lifetime sufficiently cures this deficiency.[19] Danilo del Rosario was thirty-seven (37) years old at the time of his death. His average income as fishpond caretaker was P3,000.00 a month. Hence, in accordance with the American Expectancy Table, the loss of earning capacity must be computed as follows: $\frac{2}{3}$ multiplied by (80 minus age of the deceased).[20] Since Danilo was 37 years of age at the time of his death, then his life expectancy was 28.66 years. Thus -

Net Earning = Life x Gross - Reasonable &

Capacity (x) Expectancy Annual Necessary

Income Living Expenses

$$(x) = 2(80-37) \times (P36,000 - P18,000)$$

3

$$(x) = 28.66 \times P18,000$$

$$(x) = P 514,800.00[21]$$

On the award of moral damages, this Court is convinced that the prosecution has amply demonstrated that the heirs suffered mental anguish to justify this award. Current jurisprudence has set moral damages at P50,000.00. Nonetheless, we deem it proper to rethink our policy on moral damages.

Unlike in the crime of rape, we grant moral damages in murder or homicide only when the heirs of the victim have alleged and proved mental suffering. However, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages must be awarded even in the absence of any allegation and proof of the heirs' emotional suffering. Verily, Hilda and her son Louie Gee would forever carry the emotional wounds of the vicious killing of a husband and a father. With or without proof, this fact can never be denied; since it is undisputed, it must be considered proved.

WHEREFORE, the Decision of the court a quo finding accused-appellants ULDARICO PANADO, RONIE PANADO AND RONEL PANADO guilty of Murder and sentencing each of them to suffer the penalty of reclusion perpetua is AFFIRMED, with the MODIFICATION that they are likewise ordered jointly and severally to indemnify the heirs of the deceased Danilo del Rosario P50,000.00 as civil indemnity, P50,000.00 as moral damages and P514,800.00 for the loss of his earning capacity. Costs against accused-appellants.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1]TSN, 25 November 1997, p. 38.

[2]Id., p. 24.

[3]Id., pp. 23-26.

[4]TSN, 26 November 1997, pp. 7-9.

[5]Id., pp. 19-22.

[6]TSN, 2 December 1997, pp. 2-6.

[7]TSN, 9 December 1997, pp. 4-6.

- [8]Id., pp. 11-19.
- [9]Id., pp. 20-26.
- [10]Id., pp. 26-27.
- [11]TSN, 13 January 1998, pp. 15-17.
- [12]TSN, 20 January 1998, pp. 3-4.
- [13]Decision penned by Judge Sheila-Martelino-Cortes, RTC-Br. 3, Kalibo, Aklan.
- [14]Rollo, pp. 26-29.
- [15]Id., p. 31.
- [16]People v. Agustin, G.R. No. 114681,246 SCRA 673, 18 July 1995.
- [17]People v. Amania, G.R. No. 108598, 248 SCRA 486, 21 September 1995.
- [18]People v. Lazaro, G.R. No. 99263, 249 SCRA 234, 12 October 1995.
- [19]People v. Verde, G.R. No. 119077, 302 SCRA 690, 10 February 1999.
- [20]People v. Estepano, G.R. No. 126283, 28 May 1999.
- [21]Ibid.

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