

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NECESARIO HIJAPON @ “TETENG” AND JOSE
MACALLA, JR., ACCUSED,**

G.R. No. 133928. July 10, 2001

Ponente: PUNO, J.

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PUNO, J.:

This case is on automatic review of the decision of the Regional Trial Court, Caloocan City, Branch 126 in Criminal Case No. C-48458 finding accused-appellant Necesario Hijapon @ Teteng guilty of murder and sentencing him to the penalty of death.

In an Information dated February 6, 1995, accused-appellant Necesario Hijapon @ Teteng and Jose Macalla, Jr. were charged with the crime of murder committed as follows:

"That at about 7:30 o'clock in the evening of 25 July 1994 at Julian Felipe Street, TOPDA Village, Kalookan City and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, qualified by treachery, taking advantage of superior strength, with the aid of armed men or by employing means to weaken the defense or by means or persons to insure or afford impunity, conspiring, confederating and mutually helping one another, did then and there, shot [sic] Dionisio Ilustrisimo several times, hitting him at the different parts of his body, resulting to his instantaneous death.

CONTRARY TO LAW."[1]

Both accused pleaded not guilty on arraignment.

At the trial, the prosecution presented five (5) witnesses: the victim's two (2) children, namely, Sharon Ilustrisimo and Jomer Ilustrisimo; the victim's wife, Mercedes Ilustrisimo; the NBI Chief of the Medico-Legal Division, Dr. Alberto Reyes; and accused-appellant's friend, Fernando Marinas. By their testimonies, the prosecution established the following facts:

On July 25, 1994 at 7:30 in the evening, Sharon Ilustrisimo, then eleven (11) years of age, was tending their store in front of their house at No. 160 Julian Felipe St., Topda Village, Kalookan City. Sharon was selling water. Her father, Dionisio, was inside their house fixing the electric light while her mother, Mercedes, was upstairs attending to Sharon's younger sister. Three (3) men came to the store. Sharon recognized one of them as appellant Necesario Hijapon whom she calls "Teteng." Appellant approached Sharon as his two (2) companions went up the house. Sharon asked appellant what he wanted. Suddenly, Teteng poked a gun at her and ordered her to leave. Sharon, sensing that the men were after her father, shouted to her father that a man with a gun was looking for him. Dionisio asked "Nasaan?" and went to the door. Right then and there, Teteng shot Dionisio, hitting the latter's leg. Scared, Sharon ran to the back of the store. She heard several gunshots. She shouted for help but no one came. Her brother, Jomer, who was outside the store heard the shots. So he ran towards the store, but a man blocked his path and poked a gun at him. Sharon ran inside the house and saw her mother crying. Her mother instructed her to call Mang Kabesa for assistance. When Mang Kabesa arrived, Sharon's father was brought to the

hospital where he was pronounced dead.

The postmortem findings revealed that Dionisio died of "gunshot wounds." He sustained four (4) gunshot wounds on the chest and abdomen, hitting his internal organs. Three of the wounds were fatal and caused his death.[2]

Earlier, in the morning of that same day, Fernando Marinas, a friend of appellant and accused Macalla, Freddie Finez and the leader of their gang, Rafael Alfero, were holed up in a safehouse somewhere in Barangay Nangka, Marikina. They had just staged a hold-up. Appellant and Macalla were drinking while Marinas, who was suffering from stomach pain, was resting some four (4) meters away. The two were talking loudly. Marinas heard appellant ask Macalla to accompany him to the house of Dionisio Ilustrisimo in Letre, Caloocan City to kill Dionisio. The following morning, Marinas read in the papers that the person who appellant and Macalla planned to kill was indeed murdered. Marinas asked appellant if Dionisio actually died, appellant answered yes and that he shot Dionisio because he was "very talkative." [3]

On July 29, 1994, appellant and his gangmates, who were about to stage another hold-up, were arrested by agents of the Presidential Anti-Crime Commission (PACC) Task Force Habagat. They were detained at Camp Crame. Mercedes Ilustrisimo, the victim's wife, and her children, Sharon and Jomer, who read in the papers that the killers of Dionisio were apprehended, proceeded to Camp Crame. In a police line-up, Sharon recognized and pointed out appellant as the one who shot her father. Jomer likewise identified Jose Macalla as the person who blocked his path and poked a gun at him.[4] Sharon and Mercedes Ilustrisimo were familiar with appellant because he used to visit their place and have drinking sprees with Dionisio and their neighbors.[5] A week before he died, Dionisio revealed to Mercedes that appellant and his companions had a grudge against him. They feared Dionisio would report to the police what he knew about appellant and his group's participation in the death of a Caloocan City policeman.[6]

Both accused denied the charges against them. Appellant Hijapon also denied knowing accused Macalla and testified that he met Dionisio, the victim, only once when the latter went to Cebu in June 1993; in May 1994 appellant and his family relocated to Manila where he found a living selling "scramble," an iced confection. On July 25, 1994, at 7:30 P.M. he was at his house in Marikina putting his child to sleep; his wife and their two other children later joined him and they all went to sleep together. On July 29, 1994, he and Fernando Marinas were picked up by PACC agents who were looking for two of his friends. Appellant and Marinas were brought to Camp Crame where they were beaten up and charged with illegal possession of firearm. On August 4, 1994, Mercedes Ilustrisimo appeared at Camp Crame and identified him as the person who killed her husband.[7]

Accused Macalla likewise denied knowing co-accused Hijapon and the victim. He claimed that he was in his sister's house in Pasig that fateful night; that he was visiting a friend in Marikina when he was picked up by PACC agents; he was made to stand at a police line-up where he was identified as one of the suspects in the slaying of Dionisio Ilustrisimo.[8]

In a decision dated April 6, 1998, the trial court found appellant guilty of murder qualified by treachery and sentenced him to death. The court, however, acquitted Jose Macalla for the prosecution's failure to prove his guilt beyond reasonable doubt. Thus:

"WHEREFORE, above premises considered, accused NECESARIO HIJAPON @ TETENG is hereby found GUILTY for the murder of Dionisio Ilustrisimo and is hereby sentenced to suffer the penalty of death. Likewise, he is ordered to indemnify the heirs of the victim the amount of P50,000.00 plus P20,000 as actual expenses, without subsidiary imprisonment in case of insolvency.

Upon the other hand, accused JOSE MACALLA, JR. is hereby ACQUITTED of the offense charged in view of the prosecution's failure to overcome the said accused's constitutional presumption of innocence.

Considering that said accused is presently detained, the City Warden of Caloocan City Jail is hereby ordered to release immediately from detention the person of Jose Macalla, Jr. unless there are other cause or causes warranting his continuous detention.

Let the entire record of this case be forwarded to the Supreme Court for automatic review, as provided under the Rules.

SO ORDERED."[9]

In this appeal, appellant claims that:

"I THE COURT A QUO ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES SHARON ILUSTRISIMO AND FERNANDO MARINAS.

II THE COURT A QUO ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANT NECESARIO HIJAPON GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DEFINED AND PENALIZED UNDER ARTICLE 249 OF THE REVISED PENAL CODE."[10]

Appellant primarily questions the veracity of Sharon Ilustrisimo's testimony. He claims that Sharon did not have personal knowledge of how her father died because she admitted that it was their neighbors who told her that appellant killed her father.[11]

Sharon's testimony on direct examination is as follows:

"Fiscal Turalba:

Q:

Now, you said a while ago that on that particular date at about 7:30 in the evening you were vending water. While you were vending water in that particular place, do you remember if there was an unusual incident that happened?

Witness:

A:

Yes, sir.

Q:

What was the unusual incident that happened?

A:

My father was killed.

Q:

How was your father killed?

A:

He was shot, sir.

Q:

Who killed or shot your father?

A:

It was Teteng, sir.

Q:

Do you know the full name of this Teteng?

A:

Necesario Hijapon, sir.

Q:

Aside from this Teteng, do you know if there were other persons involved in the killing of your father?

A:

Yes, sir.

Q:

Do you know the names of these persons?

A:

No, sir. I do not know their names.

Q:

Until now, you still do not know the names of the other persons who killed your father?

A:

I came to know the name of the other person in the name of Jose Macalla, Jr. who my brother pinpointed at Camp Crame.

Q:

You mentioned this Teteng who you declared known also as Necesario Hijapon. Could you still identify him if you could see him again?

A:

Yes, sir.

Q:

If he is inside the court room, will you be able to point at him?

A:

Yes, sir.

Q:

Will you stand up and look around the court room and please point at him?

A:

Yes, sir. (Witness pointed to a person who when asked answered by the name of Necesario Hijapon).

Q:

You also mentioned the name of Jose Macalla, Jr. as the person who was with this person Necesario Hijapon on that fateful night when your father was killed. Now, do you still remember the face of this Jose Macalla, Jr.?

A:

Yes, sir.

Q:

If he is inside the court room, will you be able to point at him?

A:

Yes, sir.

Q:

Will you stand up and point at him?

A:

Yes, sir. (Witness pointing to a person who when asked answered by the name of Jose Macalla, Jr.).

x x x x x x x x

Q:

Now, you said that during that night of July 25, 1994 while you were vending water your father was killed. Now, will you describe to this honorable court how your father was killed?

A:

While I was standing outside our store, Teteng passed by and went to the door of our store and I approached him and asked him what he wanted.

Q:

When this Teteng passed beside you and went to the door of your store, was he alone?

A:

There were three of them, sir.

Q:

You said that when you approached this person who stood at your door, you asked them what they wanted. What happened next after you asked them?

A:

I was suddenly poked with a gun, sir.

Q:

Who poked a gun at you?

A:

It was Teteng, sir.

Q:

And what happened after he poked a gun at you?

A:

He told me to go away otherwise he will shoot me.

Q:

After that what happened next?

A:

Well, I shouted to my father that there was a person carrying a gun.

Q:

And what did your father do, if any?

A:

And then my father asked "Nasaan?" And as he turned at the door, he was shot at the leg.

Q:

After that what happened?

A:

I ran towards the back of our store to ask for assistance.

Q:

What happened next?

A:

After I ran towards the back of our store I heard several gunfire.

Q:

Could you still remember how many shots you heard when you went to the back of your store?

A:

I cannot remember [how] many shots, sir."

Q:

Were you able to ask for help when you went to the back of your store?

A:

Yes, sir.

Q:

Who responded when you asked for help?

A:

Mang Kabesa, sir.

Q:

Who is this Mang Kabesa?

A:

Mang Kabesa who was [sic] giving orders to the barangay.

Q:

When this Mang Kabesa responded, what happened next?

A:

Well, when Mang Kabesa arrived, my father was no longer there and he was brought to the hospital.

Q:

Regarding this incident, were you investigated by the police authorities?

A:

Yes, sir.

Q:

Where were you investigated?

A:

At our house, sir.

Q:

How many times were you investigated by the police?

A:

I was investigated in our house and later on I was again investigated at Camp Crame.

x x x x x x x x

Q:

Now, how did you come to know that you were supposed to be investigated at Camp Crame on August 4, 1995?

A:

We were able to read in the newspaper that the killers of my father is at Camp Crame and our neighbors told us that they are the persons who were responsible for the killing of my father and I was able to identify them.

x x x x x x x x."[12]

On cross-examination, Sharon further testified:

"Atty. De Leon:

Q:

And you said this Teteng remained in the ground floor of your house where your father was fixing your light while these two male persons were instructed to go upstairs where your mother, sister and brother were about to sleep, is it correct?

A:

Yes, ma'am.

Q:

And you said that while you were outside the store vending water this Teteng suddenly pointed the gun at you and threatened you to go away otherwise you will be shot, is it correct?

A:

Yes, ma'am.

Q:

And this poking of the gun at you happened while these two (2) male persons were upstairs, is it correct?

A:

Yes, ma'am.

Q:

And of course, when you were threatened by Teteng by pointing a gun at you, you were scared because you might be killed by that gun?

A:

Yes, ma'am.

Q:

Because you got scared by pointing this gun at you, you immediately ran away?

A:

At that instance I have [sic] not ran away but shouted to my father that there were persons carrying gun.

Q:

When you shouted to your father that there were persons with a gun, after shouting you ran away?

A:

My father was first shot at the leg before I ran away.

Q:

When your father was shot at the leg, you ran away and went to the back of your store shouting for help, is it correct?

A:

Yes, ma'am.

x x x x x x x x

Q:

Am I correct to say that the only part of your story in which you were an eyewitness is the fact that you saw this Teteng shooting your father at the leg and no other event that you witnessed aside from that?

A:

Yes, ma'am. What I saw is that my father was shot at the right leg.

Q:

That was the only thing that you saw?

A:

Yes, ma'am.

Q:

And of course, as you testified awhile ago, you ran towards the back of your store and as you ran away, you heard gunshots which you cannot remember how many times but only heard it?

A:

Only second [sic] after I ran away I heard several gunshots.

x x x x x x x x."[13]

Clearly, Sharon Ilustrisimo personally witnessed that her father, Dionisio Ilustrisimo, was killed by accused-appellant. She positively identified appellant as one of the three (3) men who went to their store. She saw appellant hold a gun which he threateningly poked at her to scare her away. When Sharon warned her father of the men and the gun, Dionisio appeared at the doorway and she saw appellant, who was only one (1) meter away from her, shoot Dionisio, hitting him on the leg.[14] As Sharon fled, she heard successive gunshots. Later, Dionisio was found to have sustained four (4) gunshot wounds all similar in size.[15]

Appellant points out that Dionisio Ilustrisimo sustained gunshot wounds only in the chest and abdomen area, not on his leg as Sharon testified. The fact that no gunshot wound was found on the victim's leg does not make Sharon's testimony unreliable. This inconsistency is not material. Minor inconsistencies or lapses, at times, even enhance the veracity of a witness' testimony as they erase any suspicion of a rehearsed declaration.[16] What is important in this case is that Sharon actually and directly saw that appellant had a gun and that with it, shoot her father and hit him. A second later, she heard several gunshots.

Indeed, Sharon was able to narrate in detail the chain of events leading to Dionisio's death. Sharon also testified in a straightforward and categorical manner. She did not waiver in her identification of appellant, unlike her brother, Jomer, who was not sure of accused Macalla's identity and the latter's participation in the victim's death.[17] At the police line-up, Sharon readily recognized and unhesitatingly pointed out appellant as the person who killed her father.[18] Sharon also testified that she used to see appellant on week-ends engaging in drinking sprees with her father and their neighbors; that appellant was actually a close friend of her father because appellant's mother once resided in the house of her father's mother.[19] Even appellant himself admits that he had a drinking spree with the victim in Cebu and that he knew Sharon and Jomer as they were introduced to him by their father when they were in Cebu.[20]

No ill motive can be ascribed to a twelve-year old[21] girl to falsely accuse and testify against her father's friend. Taking into account the gravity of the crime charged, there is no other reason for Sharon to have testified except to seek justice for the murder of her father. Sharon's testimony therefore is entitled to full faith and credence.

Appellant also claims that Fernando Marinas' testimony is unreliable. Fernando Marinas, appellant's friend and former gangmate, was placed under the witness protection program in a robbery case against appellant and his group.[22] In the case at bar, Marinas' testimony merely divulged appellant's motive in killing Dionisio and appellant's invitation to Macalla to join him in killing Dionisio. As it is, Sharon's testimony alone is sufficient to convict appellant.

The Information charged appellant with the crime of murder qualified by treachery, taking advantage of superior strength, with the aid of armed men and conspiring with his companions in shooting the victim. We agree with the trial court that the killing of Dionisio was murder qualified by treachery. Treachery exists when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and especially to insure its execution, without risk to himself arising from any defense which the offended party might make.[23] It was established that appellant and two other men purposely came to the victim's house and that appellant, armed with a gun, suddenly shot the defenseless victim to death. While Sharon may have warned Dionisio of a possible danger to his person, the attack was, however, executed in such a manner that it was impossible for Dionisio to retaliate.[24] The number of people employed to carry out the evil purpose, the use of a gun, the suddenness of the attack, the number of shots fired plus the fact that Dionisio was defenseless and unarmed at the time of attack--all these circumstances insured his instantaneous death.

We do not agree with the trial court, however, that the penalty to be imposed on appellant is death. Article 248 of the Revised Penal Code as amended by Republic Act 7649 provides that the crime of murder is punishable by reclusion perpetua to death. Where appellant and his companions were armed and far outnumbered the victim, the aggravating circumstances of abuse of superior strength and aid of armed men are absorbed in treachery.[25] There being no other aggravating circumstance, the Solicitor General correctly recommended that the lesser penalty of reclusion perpetua should have been imposed on appellant.

IN VIEW WHEREOF, the decision of the Regional Trial Court, Branch 126 in Criminal Case No. C-48458 is affirmed with the modification that accused-appellant Necesario Hijapon @ "Teteng" is sentenced to suffer the penalty of reclusion perpetua.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Quisumbing, and Gonzaga-Reyes, JJ., on official leave.

[1] Information, Rollo, p. 6.

[2] Exhibits "G" and "H," Rec., pp. 214, 215; TSN of September 5, 1997, pp. 12-14.

[3] TSN of October 30, 1997, pp. 6-12, 16-19.

[4] TSN of October 11, 1995, pp. 18-19; TSN of October 18, 1995, pp. 16-17; TSN of October 25, 1995, pp. 11-13; TSN of October 30, 1995, pp. 12-13.

[5] TSN of October 11, 1995, pp. 30-31; TSN of October 25, 1995, p. 8.

[6] TSN of October 25, 1995, p. 10.

[7] TSN of December 10, 1997, pp. 5-16.

[8] TSN of December 17, 1997, pp. 3-7.

[9] Decision, pp. 8-9, Rollo, pp. 73-74.

[10] Appellant's Brief, pp. 1-2, Rollo, pp. 44-45.

[11] Appellant's Brief, pp. 11-13, Rollo, pp. 54-56.

[12] TSN of October 11, 1995, pp. 7-19.

[13] Id., pp. 25-29.

[14] TSN of October 11, 1995, pp. 35-36.

[15] Id., p. 13.

[16] *People v. Aspiras*, 330 SCRA 479, 494 [2000]; *People v. Antolin*, 330 SCRA 656, 666-667 [2000].

[17] TSN of October 18, 1995, pp. 14-17.

[18] TSN of October 11, 1995, pp. 18-19.

[19] Id., pp. 19-20, 30-32.

[20] TSN of December 10, 1997, pp. 5, 22-23.

[21] Sharon was twelve years of age when she testified--TSN of October 11, 1995, p. 3.

[22] TSN of October 30, 1997, pp. 14-15.

[23] Article 14, par. 16, Revised Penal Code.

[24] While a victim may have been warned of a possible danger to his person, in treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate--*People v. Estorco*, 331 SCRA 38, 48 [2000]; *People v. Javier*, 269 SCRA 181, 196 [1997]; *People v. Panganiban*, 241 SCRA 91, 101 [1995].

[25] *People v. Torrefiel*, 256 SCRA 369, 379 [1996]; *People v. Amondina*, 220 SCRA 6, 11 [1993]; *People v. Mori*, 55 SCRA 382, 403 [1974].

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