

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HILARION BERGONIO, JR., ACCUSED-APPELLANT.

G.R. No. 133981. September 13, 2000

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Tabaco, Albay-Branch 18, the dispositive portion of which runs thus:

"WHEREFORE, with the foregoing, this Court finds accused, Hilarion Bergonio, Jr., GUILTY beyond reasonable doubt of the offense of MURDER and hereby sentences him to suffer the penalty of RECLUSION PERPETUA; to indemnify the heirs of Hilario Berango, the amount of P50,000.00; and, to pay the cost.

The period of detention that accused, Hilarion Bergonio, Jr. had undergone shall be counted to (sic) his favor.

With respect to accused, Romeo Boarao, for failure of the prosecution to prove the latter's guilt beyond any whisper of doubt, either as principal or as an accomplice, this Court hereby pronounces a judgment of ACQUITTAL in his favor; consequently, any officer of the law having custody of said accused is hereby directed to cause his immediate release, unless detained for some other lawful cause.

SO ORDERED."[2]

Romeo Boarao @ "Bodbod" and appellant Hilarion Bergonio, Jr. were charged with the crime of Murder of one Hilario Berango in an Information dated August 10, 1994, viz:

"That on or about the 21st day of December, 1993 at 9:00 o'clock in the evening, more or less, at Barangay San Pablo, Municipality of Bacacay, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with treachery, by taking advantage of nighttime and the fact that the victim was sleeping, did then and there wilfully, unlawfully and feloniously attack and hack HILARIO BERANGO Y DE MESA while sleeping inside his nipa hut hitting the latter fatally on his left neck which caused his instantaneous death, to the damage and prejudice of his heirs.

ACTS CONTRARY TO LAW."[3]

On September 16, 1994, Boarao and Bergonio pleaded "not guilty" to the charge.[4] The trial of the case[5] then ensued.

The evidence shows that on December 21, 1993 at about 9:00 o'clock in the evening, Noel de Mesa[6] and Hilario Berango were inside the latter's house at San Pablo, Bacacay, Albay. While Noel was lying beside the sleeping Berango, appellant Bergonio @ "Jr. Barrameda" suddenly came and hacked Berango with a bolo.[7] Noel ran away and was chased by the appellant and Boarao. Noel proceeded to the house of his Tiya Veronica and informed her of the incident. The two of them then broke the news to Berango's mother, Bella.[8] The lifeless body of Berango was later brought to Veronica's house.[9]

Noel and his two (2) aunts reported the matter to the police. He executed an affidavit where he positively identified the appellant as the one who hacked Berango.[10] The killing of Berango was entered in the police blotter.[11] Dr. Merlie Beltran conducted an autopsy of the victim's body and found hack wounds on Berango's neck, cutting the carotid artery, jugular vein, esophagus and trachea.[12] He testified that the wounds could have been caused by a sharp-edged instrument like a bolo.[13]

The defense presented appellant Bergonio and his co-accused Boarao who both interposed the alibi that they were in Catanduanes on the date and time when the crime was committed. Both testified that they went to Tabaco on December 18, 1993 where they spent the night at the house of Boarao's sister, Marilyn, and then proceeded to Catanduanes the following day.[14] Bergonio was allegedly invited by his friend Joel Lunas to work at a construction site in Catanduanes.[15] Boarao, on the other hand, was requested by his friend Armando to haul sand to be used in making hollow blocks.[16] They stayed in Catanduanes for six months and returned to San Pablo in June, 1994.[17] Marilyn corroborated the testimonies of Bergonio and Boarao that the two accused spent the night at her house in Tabaco on December 18, 1993 and left for Catanduanes the following day.[18]

On August 15, 1997, the trial court convicted the appellant but acquitted Boarao. In exonerating Boarao, the trial court ruled that:

"The charge is against the two accused for having allegedly killed the deceased, Hilario Berango, on December 21, 1993; let us therefore closely examine the participation of Boarao in view of Noel de Mesa's testimony that it was Hilarion Bergonio, Jr. who hacked the deceased once; there is nothing, however, on record that would indicate that the accused conspired with each other; that both accused appear to be united in its execution, thereby rendering the act of one as the act of the other, neither was Boarao's presence and company indispensable and essential to the perpetration of the murder by co-accused, Hilarion Bergonio, Jr.; also, the prosecution is wanting in evidence that accused Boarao rendered acts of aid and assistance, either prior to or simultaneous with the commission of the crime, rendered knowingly for Hilarion Bergonio, Jr. and not by mere fact of having been present at its execution, unless his presence was to encourage Hilarion Bergonio, Jr. as to apparently increase the odds against the deceased, Hilario Berango, which the prosecution failed to prove."[19]

In his appeal, appellant assigns the following errors:

"I

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF MURDER INSPITE OF THE FACT THAT HE WAS NOT POSITIVELY IDENTIFIED AS THE PERPETRATOR OF THE KILLING.

II

COROLLARY TO THIS, THE COURT A QUO ERRED IN NOT ACCORDING CREDENCE AND WEIGHT TO THE ALIBI INTERPOSED BY THE ACCUSED-APPELLANT WHICH IS SUFFICIENT TO ACQUIT HIM IN THE LIGHT OF THE WEAKNESS OF THE PROSECUTION'S EVIDENCE.

III

THE COURT A QUO ERRED IN HOLDING THAT TREACHERY AND NIGHTTIME ATTENDED THE COMMISSION OF THE CRIME DESPITE THE FACT THAT THE PROSECUTION FAILED TO ESTABLISH THE SAME BEYOND REASONABLE DOUBT."[20]

We affirm the trial court's verdict convicting the appellant.

In his first assigned error, appellant discredits the testimony of prosecution eyewitness Noel de Mesa, thus:

1. Noel admitted that he was merely told to sign his affidavit which was written in English, a language which he did not understand and that its contents were never explained to him before he affixed his signature to it;[21]
2. Noel testified that the crime happened in November, 1993 contrary to the date alleged in the Information which is December, 1993;[22]
3. Noel testified that the author of the crime is a certain "Jr. Barrameda." The appellant, allegedly, is not known by any alias;[23] and
4. Noel could not discern the features of the culprit as the prosecution failed to establish that the evening of the incident was a moonlit night.[24]

We reject the arguments. Noel's admission that he could neither read nor understand the content of his affidavit since the same was written in English is not sufficient to destroy his credibility. It is well known that an affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement.[25] In the case at bar, Noel testified that when he was being questioned by the police officers concerning the incident, the investigation was conducted in Bicolano, a language he understood.[26] A police officer prepared the affidavit but its content was translated to him by the administering officer, Judge Arsenio Base, Jr. of Bacacay-Malinao Municipal Court.[27]

Examining the evidence, we find that the identity of the appellant as the author of the gruesome murder was positively and clearly established by Noel's testimony in open court:

"Q:

Now, will you tell us that (sic) you were with a certain Hilario Berango sleeping at a certain place at San Pablo, Bacacay, Albay, will you tell us whether there was an unusual incident, if any?

A:

Yes, sir.

Q:

What was the incident that happened?

A:

Hilario Berango was hacked inside the house.

Q:

Where were you also (sic) when Hilario Berango was hacked?

A:

I was also inside the house.

Q:

What were you doing there?

A:

I was lying down.

Q:

How far were you from Hilario Berango when he was hacked?

A:

We were near to each other.

Q:

Who was the one who hacked? Do you know?

A:

Yes, sir.

Q:

Who? Tell the court who was that person?

A:

The one in white t-shirt.

Q:

Is he the one you mentioned earlier that (sic) a certain Jr. Barrameda?

A:

Yes, sir.

Q:

Were you able to know that it was Jr. Barrameda who hacked Hilario Berango?

A:

I was still awake."^[28] (*italics supplied*)

The supposed contradiction between the date of the commission of the crime as alleged in the Information which is December, 1993 and the testimony of Noel that the incident happened in November of 1993 is of de minimis importance. The testimony of a witness must be considered in its entirety.^[29] A reasonable reading of Noel's testimony with respect to the date of the commission of the crime will show that he was referring to the same date as alleged in the Information. Hence, when Noel was asked as to his whereabouts at 9 p.m. of December 21, 1993, he stated that he was at the house of his Tiya Bella to sleep with Berango.^[30] The alleged discrepancy in date

was further clarified during cross examination when Noel was asked if he was referring to another incident when he mentioned the date as November, thus:

"ATTY. HERNANDEZ:[31]

You have also reported the said incident, the alleged hacking. By the way, when you were asked how (sic) the hacking incident happened, it was about sometime in the month of November, is that correct?

WITNESS:

I cannot remember.

Q:

But you have stated when you were asked by prosecutor here, as to when was (sic) the incident happened, then you answered during the direct-examination that it happened sometime in November, is it not?

A:

Yes, sir. I answered.

Q:

xxx Now, considering that you have stated that the incident happened in November, then, I can simply say now that you are referring to another incident, is it not?

WITNESS:

It is not another incident.

ATTY. HERNANDEZ:

Now, we will request that the answer given in dialect (sic) be included in the record.

COURT:

Let the answer of the witness in bicol dialect (sic) be entered in the record, the phrase "BAKO MAN PO".

Now when you said "BAKO MAN PO", when we will be translating it in English it would mean 'IT WAS NOT'. "[32] (*italics supplied*)

Noel's reference to November instead of December is a minor lapse on his part. Truthful witnesses can make mistakes, but such innocent lapses do not necessarily affect their credibility.[33] The lapse of Noel cannot affect his positive testimony that the appellant killed Berango.

Similarly, the reference of Noel to the culprit's name as "Jr. Barrameda" and not Hilarion Bergonio, Jr. does not weaken the prosecution's case. Noel unwaveringly pointed to the appellant in open court as the one who hacked Berango. He identified the appellant with nothing less than absolute certainty. "Jr. Barrameda" and Hilarion Bergonio, Jr. obviously refer to one and the same person. A person may have or be known by several aliases, irrespective of his knowledge or consent to the use thereof. In fact, appellant was called by his co-accused Boarao as "Jun Fernandez" which is also a different name. We thus find the appellant's denial that he was not known by any alias[34] too weak a reason to warrant his acquittal.

To be sure, identification of a person is not established solely through knowledge of his name. Familiarity with physical features particularly those of the face, is actually the best way to identify a person.[35] The identity of criminals should not be confused with the witness' knowledge of his real name. The weight of the eyewitness account is premised on the fact that the said witness saw the accused commit the crime, and not because he knew his name.[36] Experience shows that precisely because of the unusual acts of ferocity perpetrated before their eyes, eyewitnesses can remember with a high degree of reliability the identity of criminals whose faces would in the very nature of things, have been forcefully impinged upon and etched into their memories.[37]

Noel testified that he was able to see the appellant when the latter hacked Berango since there was a moon on that night.[38] The defense failed to rebut this testimony of Noel. We have ruled that moonlight is sufficient illumination for a person to identify another.[39] The amount of light emitted by the moon is relative. While there are evenings of pitch darkness, there are moonlit nights when the brightness of the moon is sufficient to enable one to see distinct details of objects.[40] Based on the testimony of Noel, the nipa hut where the crime was committed has no walls and was full of holes.[41] These factors, and the fact that Noel was lying beside Berango when the latter was hacked, enabled Noel to see the face of the appellant. Furthermore, Noel had an opportunity to take a second look at the appellant when Noel fled but was chased by the appellant and Boarao.

The records show that Noel has no motive to testify falsely against the appellant. When there is no evidence that the principal witness was actuated by improper motive, his testimony is entitled to full faith and credit.[42]

Positive identification cannot be defeated by alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[43] In the case at bar, the identification of the appellant as the perpetrator of the crime was unequivocally established by prosecution eyewitness Noel.

Appellant's alibi is also unworthy of belief. If it is true that Bergonio was in Catanduanes on the date when Berango was killed, he should have presented any of his co-workers from that province to corroborate his alibi. Alibi must be supported by credible corroboration from disinterested witnesses, and where the defense of alibi is not corroborated, it is fatal to the accused.[44]

In support of his claim that the qualifying circumstance of treachery cannot be appreciated in this case, appellant alleges that prosecution eyewitness Noel was not able to actually perceive how the felony was commenced or how it was committed as he was asleep at that time as stated in his Affidavit,[45] the pertinent portion of which provides:

"Q-

What was that incident you are referring to?

A-

Last December 21, 1993, at about 9:00 o'clock in the evening while I and Hilario Berango were sleeping inside his nipa hut[46] situated at San Pablo, Bacacay, Albay I was awoken (sic) when Hilario Berango happened to touch me and immediately I saw Hilarion Bergonio Jr. who was inside the nipa hut still in the act of hacking Hilario Berango."[47]

Noel's declaration in court that he was still awake[48] when he saw the appellant hack Berango allegedly contradicts his affidavit. Discrepancies and inconsistencies between statements in an affidavit and those made on the witness stand do not necessarily discredit a witness.[49] Sworn statements taken ex parte are generally considered to be inferior to the testimony given in open court and should not affect the credibility of the witness.[50] The rationale behind such rule is aptly explained in *People vs. Ramos*,[51] thus:

"The evident and realistic reason is that testimonies given during trial are much more exact and elaborate than those stated in sworn statements. Ex parte affidavits are usually incomplete and often inaccurate for varied reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Witnesses cannot be expected everytime, except when told, to distinguish between what may be consequential and what may be mere insignificant details. Additionally, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement, hence, omissions and misunderstanding by the writer are not infrequent."[52]

Noel's testimony in court that he was still awake and saw the appellant when the latter hacked Berango is categorical, spontaneous and consistent. He testified in this wise:

"Q:

Where were you also (sic) when Hilario Berango was hacked?

A:

I was also inside the house.

Q:

What were you doing there?

A:

I was lying down.

x x x

x x x x x x

Q:

Were you able to know that it was Jr. Barrameda who hacked Hilario Berango?

A:

I was still awake."^[53] (italics supplied)

Despite the opposing counsel's cross examination, Noel remained firm in his declaration:

"ATTY. HERNANDEZ:^[54]

x x x considering that you have stated and instructed by the prosecutor here and considering that when you were given the information you were giving it in bicol dialect (sic) and you were asked in bicol (sic) and it was merely the police officer who translated this in English. So, I can simply say now that you have said that during your giving of information to the police officer was that you were sleeping together with Hilario Berango, was it not?

WITNESS:

I was not asleep yet. I was still awake.^[55]

x x x

x x x x x x

Q:

x x x Now, as you have stated that you were merely lying (sic) together with the deceased because that was (sic) they told you and what you have stated right after the incident before the police, is it not?

A:

I was not then asleep, I was still awake."^[56] (italics supplied)

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.^[57] Treachery is present in this case since Berango was fast asleep when he was hacked by the appellant.^[58] It has been consistently held that there is

treachery where the accused killed the victim while the latter was asleep because in such cases, the victim was not in a position to put up any form of defense.[59]

The Solicitor General correctly opined that nighttime cannot be appreciated as an aggravating circumstance since it is absorbed in treachery.[60] Nighttime was evidently an integral part of the peculiarly treacherous means and manner adopted to ensure the execution of the crime, or that it facilitated the treacherous character of the attack.[61]

We further rule that the aggravating circumstance of dwelling[62] attended the commission of the crime. The appellant hacked the victim at the latter's house. The appellant's deliberate invasion of the tranquility of the victim's dwelling shows greater perversity.[63]

IN VIEW WHEREOF, the decision of the trial court finding appellant guilty of murder and sentencing him to reclusion perpetua and to pay the amount of P50,000.00 to the heirs of the victim and the cost of suit is affirmed.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Pardo, JJ., concur.

Ynares-Santiago, J., on leave.

[1] Penned by Judge Mamerto M. Buban, Jr.

[2] Decision dated August 15, 1997, pp. 9-10; Rollo, pp. 27-28.

[3] Rollo, p. 10.

[4] Records, p. 32-A.

[5] Docketed as Criminal Case No. T-2558.

[6] Then a fifteen-year old minor when he testified in court.

[7] TSN, February 9, 1995, pp. 6-11.

[8] Id., pp. 14-16.

[9] Id., pp. 16-17.

[10] Id., p. 21.

[11] As testified to by prosecution witness SPO1 Noel Vergara, TSN, February 8, 1995, pp. 4, 13-14.

[12] Exh. "A", Records, p. 4.

[13] TSN, December 15, 1994, pp. 8-9.

[14] TSN, Direct Examination of Hilarion Bergonio, Jr., October 20, 1995, pp. 6-7; TSN, Direct Examination of Romeo Boarao, May 3, 1996, pp. 5-9.

[15] TSN, October 20, 1995, p. 8.

[16] Id., May 3, 1996, pp. 9-10.

[17] Id., October 20, 1995, p. 9-10; TSN, May 3, 1996, p. 12.

[18] Id., August 23, 1996, p. 6.

- [19] Decision, p. 9; Rollo, p. 27.
- [20] Brief for the Accused-Appellant, p. 1; Rollo, p. 57.
- [21] Id., p. 7; Rollo, p. 63.
- [22] Id., p. 9; Rollo, p. 65.
- [23] Id., pp. 10-11; Rollo, pp. 66-67.
- [24] Id., p. 11; Rollo, p. 67.
- [25] People vs. Nang, 289 SCRA 16 (1998); citing People vs. Reyes, 316 Phil. 1 (1995).
- [26] TSN, February 9, 1995, pp. 23-24.
- [27] Id., p. 39.
- [28] Id., pp. 8-10.
- [29] People vs. Tanilon, 293 SCRA 220 (1998); People vs. Calegan, 233 SCRA 537 (1994).
- [30] TSN, February 9, 1995, pp. 6-7.
- [31] Counsel for the accused herein appellant and Boarao.
- [32] TSN, February 9, 1995, pp. 33-34.
- [33] People vs. Calegan, supra.
- [34] TSN, October 20, 1995, pp. 12-13.
- [35] People vs. Verzosa, 294 SCRA 466 (1998).
- [36] People vs. Barredo, 297 SCRA 246 (1998).
- [37] People vs. Teehankee, Jr., 249 SCRA 54 (1995); People vs. Campa, 230 SCRA 431 (1994).
- [38] TSN, February 9, 1995, p. 45.
- [39] People vs. Villaruel, 261 SCRA 386 (1996); People vs. Gamboa, Jr., 145 SCRA 289 (1986); People vs. Pueblas, 127 SCRA 746 (1984).
- [40] People vs. Prades, 293 SCRA 411 (1998).
- [41] Supra note 38, p. 46.
- [42] People vs. Alfeche, 294 SCRA 352 (1998).
- [43] People vs. Javier, 269 SCRA 181 (1997).
- [44] People vs. Ligotan, 262 SCRA 602 (1996); People vs. Caguioa, Sr., 259 SCRA 403 (1996).
- [45] Brief for the Accused-Appellant, p. 14; Rollo, p. 70.
- [46] Exhibit "3-A-1" for the Defense; Records, p. 3.
- [47] Exhibit "3" for the Defense.
- [48] TSN, February 9, 1995, pp. 10, 39.

[49] *People vs. Ramos*, 296 SCRA 559 (1998).

[50] *People vs. Ramos*, *supra*; *People vs. Lazaro*, 249 SCRA 234 (1995).

[51] *Supra* note 49.

[52] *Id.*, p. 570.

[53] TSN, February 9, 1995, pp. 9-10.

[54] Counsel for the accused-appellant and Boarao.

[55] *Supra* note 53, pp. 38-39.

[56] *Id.*, p. 41.

[57] No. 16, Article 14 of the Revised Penal Code.

[58] TSN, February 9, 1995, pp. 10-11.

[59] *People vs. Fabro*, 277 SCRA 19 (1997); *People vs. Maalat*, 275 SCRA 206 (1997); *People vs. Evangelista*, 256 SCRA 611 (1996); *People vs. Caringal*, 176 SCRA 404 (1989); *People vs. Atencio*, 22 SCRA 88 (1968); *People vs. Dequiña*, 60 Phil 279 (1934).

[60] Brief for the Appellee, p. 10; Rollo, p. 113.

[61] *People vs. Artiaga*, 274 SCRA 685 (1997); *People vs. Tabag*, 268 SCRA 115 (1997).

[62] No. 3, Article 14 of the Revised Penal Code.

[63] *People vs. Feliciano*, 256 SCRA 706 (1996).

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