

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY CIRILO, ACCUSED-APPELLANT.

G.R. No. 134245. December 01, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

For review is the Decision[1] dated May 27, 1998 of the Court of Appeals, Special First Division, affirming the Decision[2] of the Regional Trial Court of Iloilo City, Branch 28, convicting herein appellant, Gerry Cirilo, of the crime of murder.

Gerry Cirilo was charged with the crime of murder, as defined and penalized under Article 248 of the Revised Penal Code, in an Information that reads:

That on or about November 30, 1990, in the Municipality of Passi, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a homemade shotgun locally known as "pugakhang", with treachery and evident premeditation and with a decided purpose to kill, did then and there willfully, unlawfully and feloniously attack, assault and shot one Efren Dableo with said weapon with which he was then provided, hitting and inflicting upon the latter gunshot wounds on the vital parts of his body which caused his instantaneous death thereafter.

Contrary to law.[3]

On May 31, 1991, appellant was released on bail upon an order granting his motion for admission to bail.

Upon being arraigned on June 24, 1991, appellant Gerry Cirilo, assisted by counsel, pleaded "Not Guilty" to the charge as contained in the Information in this case.

The evidence of the prosecution shows that on November 30, 1990, at around 7:20 o'clock in the evening, Lorna Panes together with Alicia Diaz and Efren Dableo was outside her house in Barangay Bitaoogan, Passi, Iloilo. Panes was in front of Diaz while Dableo was at her right side. At a distance of about one and one half (1 ½) to two (2) meters from her left, appellant Gerry Cirilo appeared in a squatting position and aiming a shotgun at them. She had a clear view of appellant's face inasmuch as she was holding a kerosene torch ("mitsa"). Appellant warned them not to shout, or he would kill them.[4] Appellant then attempted to enter her house through the kitchen door while she stopped upon hearing a gunshot. She saw the victim, Efren Dableo, bleeding just below his chest but she could not seek help for the reason that appellant was menacingly pointing his gun at her. Her relatives arrived after Cirilo fled through the fence and at that point of time Dableo was already dead.[5]

On the same evening, the barangay captain of Barangay Bitaoogan and Barangay Councilman Eddie Andador investigated the shooting incident. For fear of her life, Panes did not reveal to them the identity of the assailant. On the following day, the police came to investigate. However, Panes was not in her house. She revealed the identity of the appellant as the person who killed Dableo only to her father-in-law, Manuel Panes.[6]

Two weeks after the shooting incident, Alicia Diaz and Lorna Panes executed their sworn statements at the

Philippine National Police Station in Passi, Iloilo. They disclosed before the police that the appellant, Gerry Cirilo, was the person who shot Efren Dableo. Subsequently, Panes sold their house and transferred to Barangay Mapili, San Enrique, Iloilo due to rumors that the appellant, who remained at large, would kill them.[7]

Police Officer 3 Abelardo Puljanan together with other policemen of the Passi, Iloilo Police missed Lorna Panes when they went to Barangay Bitaoagan on December 1, 1990 to interrogate her. They were able to interrogate her husband and other relatives who denied any knowledge of the identity of the assailant.[8]

Barangay Councilman Eddie Andador of Barangay Bitaoagan, testified that the family of Lorna Panes slept in Andador's house after the shooting incident for the reason that they feared the assailant might return to kill them. They denied any knowledge of the identity of the person who shot Efren Dableo. Andador admitted that he helped the father of appellant Cirilo to look for a bail bond for the provisional liberty of the latter.[9]

Dr. Leonardo Deza, M.D., conducted the autopsy on the body of the deceased, Efren Dableo. His findings showed that the cause of death was hemorrhage secondary to gunshot wounds.[10]

The other prosecution witness, Alicia Diaz, was not able to testify inasmuch as she died before the trial of the case started.[11]

For his defense, appellant Gerry Cirilo testified that he was a resident of Barangay Bitaoagan, Passi, Iloilo. From May 1990 up to the time of his arrest on May 1991, he worked as guard of the bodega located near the house of a certain Felipe Pacino in Barangay Bitaoagan, Passi, Iloilo. On the night of the shooting incident, he was within the vicinity of the Felipe Pacino's house while he was guarding the bodega. He arrived at about 5:30 o'clock in the afternoon and left at 7:00 o'clock in the morning of the following day. He came to know that Efren Dableo was shot to death from a certain Adelino only in the morning of December 1, 1990.[12] In the afternoon of that same day, the police requested him to proceed to the scene of the crime together with eight (8) other persons. He learned that the suspect was not yet identified. However, in May 1991, the appellant was arrested for the killing of Efren Dableo.[13]

Felipe Pacino, the alleged employer of appellant, testified that he was an overseer of the Thomas Ford's estate. His house is located in Barangay Bitaoagan, Passi, Iloilo. He had hired appellant to work as a guard in his bodega that contains fertilizers. Appellant worked from 5:30 o'clock in the afternoon until the morning of the following day. On November 30, 1990 at about 7:00 o'clock in the evening, he saw appellant guarding his bodega. At around 7:30 o'clock in the evening, appellant ate dinner with his family. He learned about the shooting incident on the next day from Adelino Lamit. After appellant's arrest, Pacino helped him look for bail.[14]

After weighing the evidence, the trial court rendered a decision finding the accused guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, DECISION is hereby rendered , finding the accused, Gerry Cirilo, GUILTY, beyond reasonable doubt, of the crime, of Murder, as charged, in the aforementioned information.

Considering that at the time of the commission of the offense, the death penalty has been abolished by the Cory Constitution, and not yet reinstated by the legislative, the aforementioned accused, is hereby sentenced, to suffer indeterminate penalty of imprisonment, ranging from 14 years, 8 months, and one day, as minimum, to 17 years, 4 months and 1 day, Reclusion Temporal, as maximum, to indemnify the heirs of the late Efren Dableo, in the amount of P50,000.00 and to pay the cost.

SO ORDERED.[15]

On February 28, 1995, the trial court ordered the cancellation of appellant's bail bond and his detention at the Iloilo Rehabilitation Center. On March 14, 1995, appellant Gerry Cirilo appealed the decision of the trial court to

the Court of Appeals.

In his appeal to the Court of Appeals, the appellant raised the following assignment of errors:

I

The testimony of lone prosecution witness Lorna Panes is uncorroborated, inconsistent (with itself and with the evidence), wavering and vacillating, hence, the lower court was in error in giving it full faith and credence, and in considering it as sufficient to convict the appellant of the crime of Murder.

II

The lower court erred in shifting the burden of proof from the prosecution to the defense when, without scrutinizing the evidence of the prosecution, it concluded that the offense charged was committed because the alibi of the accused is a weak defense, and this is contrary to the doctrine in *People vs. Abores* that the rule that the alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases, and that in *People vs. Jorge* that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.

III

The lower court erred in finding appellant guilty beyond reasonable doubt of the crime of Murder when the prosecution has failed to sufficiently establish his guilt, especially the alleged qualifying aggravating circumstances which are without basis in the facts and in the evidence."^[16]

Upon motion for admission to bail filed by the appellant, the Court of Appeals allowed him to post bail pending appeal. On March 29, 1995, the trial court approved the bail bond and ordered the Provincial Warden of Iloilo City to release the appellant. After the submission of pleadings by the parties, the appellate court on May 27, 1998 promulgated a decision, the dispositive portion of which reads:

WHEREFORE, the appealed decision is hereby AFFIRMED with the modification that the imposable penalty should be Reclusion Perpetua, there being neither mitigating nor aggravating circumstances attending the crime.

In conformity with the ruling of the Supreme Court in *People vs. Saldivia* (203 SCRA 461, 464-65) and *People vs. Cruz* (203 SCRA 682, 698), the Division Clerk of Court is hereby ORDERED TO REFRAIN FROM ENTERING JUDGMENT and TO ELEVATE the records of this case to the Supreme Court for review, pursuant to Section 13, Rule 124 of the Revised Rules of Court.

The bail bond on appeal posted by the accused (pp. 178-181, Record), which is contrary to the directive of the Supreme Court in Administrative Circular 12-94, is cancelled. Let a warrant immediately issue for the arrest of the accused and his detention at the National Penitentiary until the final disposition of this case.

SO ORDERED.^[17]

This case was elevated to this Court by virtue of the second paragraph of Section 13, Rule 124 of the Rules of Court which provides that:

Section 13. Quorum of the Court. xxx

Whenever the Court of Appeals should be of the opinion that the penalty of reclusion perpetua or higher should be imposed in a case, the Court after discussion of the evidence and the law involved shall render judgment imposing the penalty of reclusion perpetua or higher as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

Upon receipt of a certification that appellant has no record of confinement in the Bureau of Corrections in Muntinlupa City, this Court rendered a resolution dated July 7, 1999 ordering the bondsmen to inform the Court

within ten (10) days from notice of the fact of surrender and that, in case of non-surrender within ten (10) days from notice, his arrest shall be ordered. The bondsmen failed to make a reply. On June 26, 2000, we required the counsel of the said bondsmen to inform the Court of the whereabouts of the appellant. Up to the present, the appellant cannot be located and appeared to have jumped bail.

We affirm the decision of the Court of Appeals convicting the appellant of the crime of murder. Appellant was positively identified by eyewitness Lorna Panes as the person who shot to death Efren Dableo. She testified that during the night of the shooting incident the kerosene torch that she was holding illuminated the face of the appellant who was then aiming a shotgun at them.

Appellant cannot successfully impeach the credibility of Lorna Panes by simply pointing out the discrepancy in her affidavit and her testimony during the trial to the effect that her testimony mentions the kerosene torch as a means of illumination while her affidavit states that she saw appellant due to the bright moon. Under Section 13, Rule 132 of the Rules of Court, it is provided that:

Sec. 13. How witness impeached by evidence of inconsistent statements. Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.

The records do not show that during the trial the defense properly laid the predicate to impeach the credibility of prosecution witness Lorna Panes. The inconsistency was only pointed out in the appellant's brief. When a witness is not given an ample opportunity to explain the discrepancies in a declaration earlier made and her testimony in court, her impeachment is inadequate.[18]

In any event, this Court has ruled that discrepancies between the affidavit of a witness and his testimony in court do not necessarily discredit the witness because it is a matter of judicial experience that affidavits, being taken ex-parte, are almost always incomplete and often inaccurate. Besides, the testimonial discrepancies could have been caused by the natural fickleness of memory, which tends to strengthen, rather than weaken credibility as they erase any suspicion of rehearsed testimony.[19]

Appellant contends that prosecution witness Lorna Panes contradicted herself on several occasions. On direct examination Panes testified that she saw appellant right after the shooting incident while, on cross-examination, she admitted that she saw appellant even before the shooting incident. She also admitted that before the shooting incident she saw two (2) persons whom she did not recognize, running away from her house. This, according to appellant, disproved her allegation that she saw appellant during the shooting incident. In addition, she testified on direct examination that, right after the shooting incident, the victim was brought to the house of her in-laws. On cross-examination she told the court that the victim was brought to the hospital. These are minor inconsistencies that cannot override the said prosecution witness' positive identification of the accused as the perpetrator of the crime. Although there may be inconsistencies in minor details in Lorna Panes' testimony, the same do not impair her credibility as a witness. Minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than indicia of falsehood, and they often bolster the probative value of the testimony.[20]

Appellant also contends that prosecution witness Lorna Panes executed her affidavit identifying appellant as the assailant only on December 21, 1990. On the other hand, she allegedly denied having any knowledge regarding the identity of the assailant before executing her said affidavit. We find the delay as not sufficient to undermine her credibility. The delay of a witness in reporting to the police authorities the crime she has witnessed, when adequately explained, does not impair the said witness' credibility, neither will it render her testimony biased nor

will it destroy its probative value.[21] Panes already explained that she was overwhelmed with fear and that, in fact, her family transferred their residence to another barangay due to threats that they would be killed by the appellant.

Appellant argues that if prosecution witness Lorna Panes really feared for her life, it appeared strange that she disclosed appellant's identity as the perpetrator of the crime only when he was still at large and could not get back at her. Appellant claims that he had no power to cause fear on the said prosecution witness inasmuch as he was a mere watchman. However, the fact that appellant is a guard by profession does not discount the possibility that he can instill fear on others. It should be noted that after prosecution witness Lorna Panes executed her affidavit before the police investigators, she and her family transferred their residence to Barangay Mapili, San Enrique, Iloilo. Obviously, she was afraid that her disclosure of appellant's identity would enrage the latter.

The appellant's contention that the conduct of Panes on the night of the shooting incident is implausible fails to persuade the Court. Appellant points out that when he allegedly pointed the gun at the victim, Panes did not attempt to get away from the line of fire nor to warn her companions of the impending danger. She did not even bother to ask the assailant the reason why he was pointing the gun at them. Contrary to normal human behavior, she opened the door as if everything was just fine. We believe, however, that Panes' behavior does not detract from her credibility. Witnesses of startling occurrences react variedly depending upon their situation and state of mind. There is no standard form of human behavior when one is confronted with a strange, startling or frightful experience.[22]

On the other hand, appellant's defense is mere alibi which is weak. He claimed that on the night of the shooting incident, he was at the premises of Felipe Pacino's house guarding fertilizers inside the bodega. His testimony was corroborated by Pacino. The defense of alibi cannot prevail over appellant's positive identification by eyewitness Panes, who had no ill motive to testify against him. Alibi is inherently weak, for it is easy to contrive and concoct. For alibi as a defense to prosper, it is not enough for the accused to prove that he was somewhere else when the crime occurred. He must also demonstrate that it was physically impossible for him to have been at the scene of the crime.[23] In the case at bar, Pacino's house is just one half ($\frac{1}{2}$) kilometer away from Panes' house. In ten (10) minutes, one can reach on foot the house of Panes from that of Pacino. It was, therefore, not physically impossible for the appellant to be at the scene of the crime at the time of the shooting incident. Besides, Panes had been to the house of Pacino and attested that, contrary to appellant's claim, there is no bodega near Pacino's house.[24]

Significantly, from the time the subject decision of the Court of Appeals in this case was promulgated and up to the present, appellant has remained at large. His bondsmen failed to surrender him when required by this Court. In fact, the Court of Appeals correctly noted the evasion of arrest by the appellant as an indication of guilt. It took almost four and a half ($4\frac{1}{2}$) months for the warrant of arrest issued on January 7, 1991 by the investigating judge to be served on the appellant on May 20, 1991.[25] The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.[26] One type of act that can be given in evidence against the accused is flight. In criminal law, flight means an act of evading the course of justice by voluntarily withdrawing oneself to avoid arrest or detention or the institution or continuance of criminal proceedings. The unexplained flight of the accused person may, as a general rule, be taken as evidence having tendency to establish his guilt.[27] In fact, we have held that once an accused escapes from prison or confinement or jumps bail or flees to a foreign country, he loses his standing in court, and unless he surrenders or submits himself to its jurisdiction, he is deemed to have waived any right to seek relief from the court.[28]

Appellant also disputes the appreciation of the qualifying aggravating circumstance of treachery and the ordinary aggravating circumstance of nighttime, as found by the trial court. We find that treachery on the part of the appellant was present in the case at bar. The essence of treachery is the sudden and unexpected attack by an

aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, without the slightest provocation on the part of the victim.[29] The elements of treachery are: (1) the means of execution employed gives the person no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[30]

From the narration of eyewitness Panes, it appeared that appellant took advantage of the dark for a sudden and successful attack on Dableo. If not for the kerosene torch, Panes, Diaz and Dableo could not have noticed appellant's presence. When they saw the appellant, he was already in an attacking position. The attack on Dableo was sudden and swift. From appellant's posture, it could also be deduced that he deliberately or consciously adopted the means of execution. It was not by accident or provocation that he attacked Dableo. He was there waiting in ambush for the said victim.

It is a settled rule that nocturnity may not be taken as an aggravating circumstance separate and independent of treachery. The reason for this rule is that nighttime forms part of the peculiar treacherous means and manner adopted to insure the execution of the crime.[31] Inasmuch as nighttime was adopted by appellant to facilitate the means of execution of the crime, it is absorbed by the qualifying aggravating circumstance of treachery.

In the case at bench, the offense of murder as charged in the Information and as proven by the evidence happened on November 30, 1990 or before the enactment on December 31, 1993 of R.A. No. 7659 which amended Article 248 of the Revised Penal Code by increasing the imposable penalty for murder from reclusion perpetua to death. Article 248 of the Revised Penal Code, before its amendment by R.A. No. 7659, provides that:

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 temporal in its maximum period 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

Inasmuch as the killing of the victim, Efren Dableo was attended by treachery, the crime committed by appellant Gerry Cirilo was murder. There was no aggravating or mitigating circumstance attending the commission of the crime.

In the case at bench, the imposition of the penalty of reclusion perpetua for murder qualified by treachery and without any attendant aggravating or mitigating circumstance is in consonance with the ruling of this Court in *People vs. Muñoz*[32] and *People vs. de la Cruz*. [33]

WHEREFORE, the appealed Decision of the Court of Appeals, finding the appellant Gerry Cirilo GUILTY, beyond reasonable doubt, of the crime of MURDER and sentencing him to reclusion perpetua is hereby AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Portia Alino-Hormachuelos and concurred in by Associate Justices Arturo B. Buena (now Associate Justice of the Supreme Court) and Bernardo P. Abesamis; Rollo, pp. 31-40.

[2] Penned by Judge Edgar D. Gustilo, CA Rollo, pp. 8-22.

- [3] CA Rollo, p. 7.
- [4] TSN, dated August 19, 1991, pp. 22-24.
- [5] TSN, dated August 19, 1991, pp. 4-9.
- [6] TSN, dated August 19, 1991, pp. 9-21.
- [7] TSN, dated August 19, 1991, pp. 16-21.
- [8] TSN, dated October 21, 1991, pp. 1-11.
- [9] TSN, dated November 12, 1991, pp. 2-11.
- [10] TSN, dated August 19, 1991, pp. 2-3.
- [11] TSN, dated August 19, 1991, p. 6.
- [12] TSN, dated December 16, 1991, pp. 17-22.
- [13] TSN, dated December 16, 1991, p. 22.
- [14] TSN, dated December 16, 1991, pp. 1-12.
- [15] CA Rollo, pp. 21-22.
- [16] Appellant's Brief, pp. 3-4; CA Rollo pp. 36-37.
- [17] Decision, p. 9; Rollo, pp. 31-39.
- [18] *United States v. Baluyot*, 40 Phil 385, 406 (1919); *People v. Resabal*, 50 Phil 780, 785 (1927); *People v. Escosura*, 82 Phil 41, 45 (1948).
- [19] *People v. Molina*, , 311 SCRA 517, 526 (1999).
- [20] *Id.*, at 526.
- [21] *People vs. Ondalok*, 272 SCRA 631, 639 (1997).
- [22] *People v. Tahop*, 315 SCRA 465, 473 (1999).
- [23] *People vs. Rabang*, 315 SCRA 451, 459 (1999).
- [24] TSN, dated January 27, 1992, pp. 1-4.
- [25] Court of Appeals Decision, p. 7; Rollo, p. 31.
- [26] Rules of Court, Rule 130, sec. 26.
- [27] *United States v. Alegado*, 25 Phil 510-511 (1913).
- [28] *People vs. Agbulos*, 222 SCRA 196, 200-201, (1993).
- [29] *People v. Macuha*, 310 SCRA 14, 23-24 (1999).
- [30] *People v. Atrejenio*, 310 SCRA 229, 244 (1999).
- [31] *People vs. Pardo*, 79 Phil 568, 579 (1947).

[32] 170 SCRA 107, 120-125.

[33] 216 SCRA 476, 484.

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