PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO CACHOLA AND FREDDIE MENDOZA, ACCUSED-APPELLANTS.

G.R. No. 135047. March 16, 2001

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

Appellants Freddie Mendoza (hereafter FREDDIE) and Ricardo Cachola (hereafter RICARDO) were both convicted of the crime of murder on 1 June 1998 by Judge Antonio M. Laggui, of the Regional Trial Court of Aparri, Cagayan, Branch 10, in a decision[1] the dispositive portion of which states:

> WHEREFORE, the court hereby renders judgment in
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> 1.
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> --
>
> Criminal Case No. 10-586 finding the accused Richard Cachola and Freddie Mendoza NOT GUILTY of the crime of murder as charged in the Information for the disappearance and alleged death of one Buenafe G. Cabael for insufficiency of evidence, and acquitting them from the said charge;
>
> 2.
>
> --
>
> Criminal Case No. 10-585 finding the accused Richard Cachola and Freddie Mendoza GUILTY beyond reasonable doubt of the crime of Murder, with the aggravating circumstances of dwelling and nocturnity, for hacking to death Magno Cabael and sentencing them to ...
>
> 2.1
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> --
>
> suffer the extreme penalty of death by lethal injection;
>
> 2.2
>
> --
>
> pay jointly and severally the heirs of the deceased Magno Cabael the mandatory death indemnity of P50,000.00, and the costs of litigation.
>
> SO ORDERED.

The prosecution's version of the events is as follows:

Dolores Cabael testified that in the evening of 17 February 1995 she and Mariano Cabael were in their house at Bicud, Lal-lo, Cagayan. Dolores was then folding clothes, while Mariano was sitting on a wooden bench beside

the window. Moments later, the two saw RICARDO and FREDDIE enter the house of Magno Cabael which was about four meters away from Dolores and Mariano's house. The two observed that RICARDO and FREDDIE were armed with "tabas" (bolos), and once inside Magno's house, they started hacking Magno. Dolores and Mariano heard their sister-in-law, Buenafe Cabael, screaming for help. Dolores ran out of her house with a kerosene lamp and proceeded to Magno's house. When Dolores reached the front of Magno's house, she saw RICARDO and FREDDIE bringing Buenafe down. Upon reaching the ground, RICARDO and FREDDIE mauled Buenafe. Dolores was three meters away from them when she witnessed this. RICARDO and FREDDIE then brought Buenafe with them towards Cabayabasan, Lal-lo, Cagayan, about ten kilometers from Bicud, Lal-lo, Cagayan. When Dolores and Mariano went up Magno's house, they saw Magno dead, lying in a pool of his own blood. Dolores cried out for help and some people came and carried Magno's body to her house.[2]

The following day, 18 February, a post-mortem examination was conducted on Magno's body by Dr. Cesar R. Real, Municipal Health Officer of Lal-lo, Cagayan. His findings showed the following injuries:

> - Wound hacked, 6 inches in length involving skin, soft tissue clavicular bone 1 inch, lateral to the base, neck extremities starting 1 inch below the clavicle extending to the level of the scapular bone, right;
>
> - Wound hacked, 5 inches in length 0.5 cm. lateral to wound No. 1;
>
> - Wound hacked, 5 ½ inches lateral to wound No. 2;
>
> - Avulsion, scalp, parietal lobe, brain right;
>
> - Avulsion, 2[nd] phalanx middle, little finger, left;
>
> - Wound incised, 2 ½ inches in length, kneejoint, right.
>
> Cause of death--Cardio-respiratory arrest secondary to cerebral hemorrhage due to hack wounds.[3]

Dr. Real issued a death certificate for Magno Cabael.

Two months after the hacking death of Magno, the remains of Buenafe were exhumed by the police. When the remains were brought to his clinic, Dr. Real told Buenafe's nearest of kin to consult instead a medico-legal expert to establish the cause of Buenafe's death.[4]

FREDDIE and RICARDO were subsequently charged with Murder in two separate informations docketed as Criminal Cases Nos. 10-585 and 10-586 of Branch 10 of the Regional Trial Court of Aparri, Cagayan. The accusatory portion of the Information in Criminal Case No. 10-585 reads:

> That on or about February 17, 1995, in the municipality of Lal-lo, province of Cagayan and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, with intent to kill, with evident premeditation, and with treachery, conspiring together and helping one another, did then and there willfully, unlawfully, and feloniously assault, attack and hack one Magno Cabael, inflicting upon the latter several hack wounds which caused his death.

The accusatory portion of the Information in Criminal Case No. 10-586 reads:

> That on or about February 17, 1995, in the municipality of Lal-lo, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, with intent to kill, with evident premeditation and with treachery conspiring together and helping one another, did then and there feloniously assault, attack and maul one Buenafe Cabael, after mauling the latter, took her away. In the latter part of April, 1995, the skeletal remains of said Buenafe Cabael was found dumped at the eastern part of Cabayabasan Cemetery, Lal-lo, Cagayan.[5]

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After the prosecution had rested its case, the defense filed a demurrer to evidence, but the same was denied. Thus, RICARDO and FREDDIE were required to present their evidence.

FREDDIE testified that he had been residing at San Pedro, Lasam, Cagayan, since 1985 until the time the incident occurred. Before 1985, he was a resident of Cabayabasan, Lal-lo, Cagayan. On 17 February 1995, he stayed on his farm the whole day doing his chores. After finishing the day's work, he went back to his house, fed the pigs and took supper with his family. Then, he went directly to bed and did not leave the place again. FREDDIE claimed that he did not know Magno Cabael, Mariano Cabael and Buenafe Cabael. Further, he denied that he was a close friend of RICARDO, claiming that they would meet each other only at parties. He admitted, though, that his home at San Pedro, Lasam, Cagayan was very near Bicud, Lal-lo, and that the same could easily be negotiated by bicycle or motorbike.[6]

FREDDIE's testimony was bolstered by defense witness Felipe Tolentino, a carpenter hired by the former, who stated that he was working in FREDDIE's house from 15 February 1995 to 20 February 1995 and that he resided therein during the said period. Felipe stated that he slept in the sala of FREDDIE and that on 17 February he went to sleep at 7 p.m. He did not notice FREDDIE leave the house the whole night and he slept until 5 a.m. the next day.[7]

For his part, RICARDO testified that he did not know Magno Cabael and Buenafe Cabael. On 17 February 1995, he was at Cabayabasan, Lal-lo, farming his land. In the evening, he took his supper and went to bed. He never left his house the whole night. RICARDO denied knowing FREDDIE, and claimed that he did not know that Magno Cabael had been killed and that Buenafe had been abducted. He admitted that barangays Cabayabasan and Bicud are adjacent to each other.[8]

Manuel Cabael, a nephew of Magno, Mariano, and Dolores Cabael, testified in favor of the defense. He stated that he was in his house at Bicud, Lal-lo, at the time of the incident and when he went to help Mariano and Dolores, they told him they did not see who killed Magno.[9]

Mariano Cabael was presented as rebuttal witness. He asserted that he saw FREDDIE and RICARDO go up the house of Magno and that they later brought Buenafe down and took her away.

As stated at the beginning of this ponencia, the trial court convicted FREDDIE and RICARDO for the murder of Magno but acquitted them in the case of Buenafe for lack of evidence.

They appealed to us from the judgment of conviction. In their Appellants' Brief, they assert that the trial court erred in:

> - ADMITTING THE IDENTIFICATION OF THE ACCUSED, IGNORING CLEAR EVIDENCE TO THE CONTRARY;
>
> - GIVING CREDENCE TO THE TESTIMONIES OF THE TWO EYEWITNESSES WHOSE DEMEANOR BELIED THEIR CLAIMS;
>
> - IGNORING MATERIAL CONTRADICTIONS AND INCONSISTENCIES IN THE TESTIMONIES OF THE WITNESSES, GIVING WEIGHT TO FALSE AND INCREDIBLE CLAIMS;
>
> - DISREGARDING THE UNDISCREDITED CORROBORATED ALIBIS OF THE ACCUSED;
>
> - APPRECIATING TREACHERY WITHOUT PROOF; AND
>
> - APPRECIATING NOCTURNITY AS ATTENDANT AGGRAVATING CIRCUMSTANCES.

As regards the first three assigned errors, FREDDIE and RICARDO maintain that Mariano Cabael was initially

unable to identify them in his Sworn Statement for he originally stated that "Ising Cachola with an unidentified companion" were the perpetrators of the crime. They claim that he was obviously confused regarding the identity of the killers as "Ising" is the brother of RICARDO. The testimony of Dolores Cabael, they assert, is no more convincing because she suddenly appeared to testify but never gave any previous statement to the police regarding the crime. In fact, she told her nephew, Manuel Cabael, that she could not identify the perpetrators of the crimes.

FREDDIE and RICARDO also criticized the demeanor of Mariano Cabael in the witness stand. They claimed Mariano would suddenly laugh without any reason and give incoherent and nonsensical answers. They similarly branded Dolores' demeanor as incomprehensible and unintelligible.

FREDDIE and RICARDO then point out inconsistencies in the testimony of Mariano: he observed that the bolo used was long when it was only about 6 inches; that during preliminary investigation he stated that at the time of the incident, he was sitting on a ladder but during trial he said that he was sitting on a wooden board; and that he would keep changing his age when asked to give it.

The main issue in this appeal is the credibility of the two prosecution witnesses, Mariano and Dolores. It is a settled rule that findings of the trial court are accorded great weight and respect since it had the opportunity to observe the demeanor of the witnesses as they testified, and availed of the various aids to determine whether the witnesses were telling the truth or concocting lies. Unless substantial facts and circumstances have been overlooked or misunderstood by the trial court, which if considered would materially affect the result of the case, the findings of said court should be sustained. In the present case, a careful and thorough examination of the records discloses that no facts and circumstances of substance were overlooked or misunderstood by the trial court. Dolores Cabael testified in this manner:

> Q
>
> While you were in your house at Bicud, Lal-lo, Cagayan at 9:00 in the evening. Do you remember of any unusual incident that happened?
>
> A There was sir.
>
> Q What was that?
>
> A They came up, sir.
>
> Q Who came up Madam witness?
>
> A Bobot Mendoza, sir.
>
> Q Who else came up?
>
> A Ricardo Cachola, sir.
>
> Q When Bobot Mendoza and Ricardo Cachola, went upstairs as you said, to what house did they go up?
>
> A The house of my brother, sir.
>
> Q What is [the] name of your brother?
>
> A Magno Cabael, sir.
>
> Q
>
> How far is your house wherein you saw these two (2) persons went up the house of Magno Cabael, your brother to the house of Mariano Cabael? [sic]

A Four (4) meters, sir.

x x x

Q

Now, when Ricardo Cachola and Bobot Mendoza were already inside the house of Magno Cabael and Buenafe Cabael, tell this honorable Court how the incident happened the mauling and the taking down of your sister-in-law?

A

Bobot Mendoza hacked by brother [sic] and this Ricardo Cachola brought down my sister-in-law, sir.

Q How many times did Bobot Mendoza hack your brother Magno Cabael?

A Several times, sir.

x x x

Q Before February 17, 1995, have you already know [sic] this Bobot Mendoza?

A Yes, sir.

Q Why?

A I know him, sir because they are my relatives.

Q Before February 17, 1995, have you also already known Ricardo Cachola?

A Yes, sir.

Q Why?

A He is the nephew of my mother, sir.

Q

Now, if that Bobot Mendoza, who hacked several times your brother, Magno Cabael, is in court could you point to him?

A Yes, sir.

Q Do you know the first name of Bobot Mendoza?

A I know him to be Bobot Mendoza, sir.

Q If that Bobot Mendoza if he is in court, please point to him get down from the witness stand?

A

(The witness gets down from the witness stand and points to the person in court who gives his name as Freddie Mendoza)

x x x

Q If that Ricardo Cachola is in court could you point to him also?

A Yes, sir.

Q

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Please go down from the witness stand and go near him and point to the person in court who gives his name as Ricardo Cachola.[10]

(Mariano was brought back as a rebuttal witness and reiterated his positive identification of appellants as the killers of Magno.)

Q

Where did you see Ricardo Cachola and Freddie Mendoza on February 17, 1995 at around 9:00 o'clock in the evening?

A Inside the house of my brother, sir.

Q What is the name of your brother?

A Magno Cabael, sir.

Q And what transpired in the house of Magno Cabael?

A They went upstairs before they killed, sir.

Q Who went upstairs?

A Ricardo Cachola, sir.

Q Was Ricardo Cachola alone in going upstairs of the house?

A They were two (2), sir.

Q What is the name of the companion of Ricardo Cachola?

A Bobot Mendoza, sir.

Q Do you know [the] real name of Bobot Mendoza?

A That is the name that I know, sir.

Q As Bobot Mendoza is in court, can you point to him?

A

Yes, sir.

Q Will you please point to him?

COURT INTERPRETER:

(The witness pointed to a person seated at the accused bench [sic] who gave his name as Freddie Mendoza)

Q If that Ricardo Cachola is in court, can you point at him?

A Yes, sir.

Q Please point to him?

COURT INTERPRETER:

(The witness pointed to a person in court and gave his name as Ricardo Cachola)

FISCAL UNCIANO:

Q Who killed your brother Magno Cabael?

A The two (2) of them, sir.[11]

FREDDIE and RICARDO maintain that their alibis should not have been disregarded by the trial court as they presented corroborative witnesses in support thereof. Time and again, we have ruled that for the defense of alibi to prosper, it must meet the requirements of time and place. Thus, the accused must establish by clear and convincing evidence that he was so far away and that it was not possible for him to have been physically present at the locus criminis or its immediate vicinity at the time the crime was committed.[12] FREDDIE and RICARDO failed to discharge this burden. On the stand, FREDDIE admitted that his residence at San Pedro, Lasam, Cagayan was very near the place where the killing occurred, which was at Bicud, Lal-lo, Cagayan, and that the distance between them could be negotiated by motorbike. RICARDO likewise admitted in his testimony that Cabayabasan, Lal-lo, Cagayan where his house is located is adjacent to Bicud. The short distances and negligible travel time between the residences of FREDDIE and RICARDO and the place of the commission of the crime negate their defense of alibi. Beyond this, their alibi was likewise rendered incredible in view of the positive identification by eyewitnesses who narrated the details of the killing.[13]

FREDDIE and RICARDO also argue that the trial court should not have appreciated the attendant circumstance of treachery since no evidence established it. They cite two conflicting versions forwarded by the prosecution witnesses as to events surrounding the killing. Dolores testified that Buenafe was first brought down from the house and then Magno was killed, while Mariano stated that Magno was first killed then Buenafe was taken away. They maintain that if Dolores were to be believed, Magno could have armed himself in the meantime so the element of suddenness or unexpectedness was lost. They also allege that the trial court should not have appreciated nocturnity as an attendant aggravating circumstance considering that the prosecution failed to establish that they deliberately sought out nighttime to kill Magno.

Treachery was present in this case. The attack on Magno was sudden and unexpected. Under prevailing jurisprudence, treachery exists when the offender commits any of the crimes against persons, employing means, methods, or forms which tend directly and especially to insure the execution of the crime without risk to himself arising from the defense which the offended party might make.[14] Indeed, treachery attended the killing of Magno as the prosecution witnesses saw that FREDDIE and RICARDO, armed with bolos, attacked Magno without warning. Coldly and deliberately, they hacked the unsuspecting and unarmed Magno. Thus, the trial court did not err in finding that treachery qualified his killing and the crime committed was murder.

However, we believe that the trial court erred in appreciating nocturnity as an aggravating circumstance. There is no showing that FREDDIE and RICARDO especially sought nighttime to facilitate the commission of the crime or to insure escape.[15] In fact, the testimonies of the witnesses that the lights in Magno's house were turned on negate the notion that nighttime was especially sought for or taken advantage of by them.[16]

As for the other attendant circumstance of dwelling, we hold that there was no definite testimony or evidence to prove that the house where the victim was killed was also his dwelling. Such circumstance cannot be presumed to exist in this case considering that such a presumption can spell the difference between mere incarceration and death for FREDDIE and RICARDO.[17]

Therefore, while treachery qualified the killing to murder, the death penalty should not be imposed considering that there is no other aggravating circumstance. Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion perpetua to death. There being neither generic aggravating nor mitigating circumstances, the proper penalty to be imposed should be the lower of the two indivisible penalties,[18] which is reclusion perpetua.

WHEREFORE, the Decision of the Regional Trial Court of Cagayan, Branch 10, in Criminal Case No. 10-085 finding accused-appellants RICARDO CACHOLA and FREDDIE MENDOZA guilty beyond reasonable doubt as principals of the crime of murder is AFFIRMED, with the sole MODIFICATION that the penalty is reduced from death to reclusion perpetua.

Costs against accused-appellants.

SO ORDERED.

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

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[1] Original Record (OR), 298.

[2] TSN, 18 February 1997, 5-15.

[3] Exhibit "A," Post-Mortem Report.

[4] RTC Decision, 5.

[5] RTC Decision, 1-2.

[6] TSN, 7 October 1997, 5-11.

[7] TSN, 27 November 1997, 4-7.

[8] TSN, 27 November 1997, 26-30.

[9] Id., 11-14.

[10] TSN, 18 February 1997, 6-10.

[11] TSN, 4 March 1998, 3-5.

[12] People v. Bariquit, GR No. 122733, 2 October 2000.

[13] Supra note 12.

[14] People v. Galido, GR No. 128883, 22 February 2000.

[15] TSN, 18 February 1997, 46.

[16] People v. Cruz, 262 SCRA 237, 244 [1996].

[17] People .v. Abendan, GR No. 131813, 29 September 2000.

[18] People v. Lozada, GR No. 130589, 29 June 2000.

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