PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENNY CABANGCALA Y ABRASIA, RENATO CABANGCALA Y ABRASIA ALIAS "RENE", AND DANILO CABANGCALA Y ABRASIA ALIAS "DANNY", ACCUSED-A...

G.R. No. 135065. August 08, 2001

Ponente: MELO, J.

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MELO, J.:

Before this Court on automatic review is the judgment rendered by Branch 51 of the Regional Trial Court of the First Judicial Region stationed in Tayug, Pangasinan, sentencing to death two of herein accused-appellants, as well as the appeal of the third accused-appellant who was still a minor at the time of the commission of the crime of murder.

The Information charged as follows:

> That on or about the 7th day of February, 1997, in the evening, at Brgy. Pangangaan, municipality of Umingan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a bamboo, and with the use of superior strength and evident premeditation, and taking advantage of nighttime, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously, strike, maul, box and hit one DIONISIO PASCUAL, inflicting upon the latter mortal wound on his head and different parts of his body which caused his instantaneous death, to the damage and prejudice of the heirs of DIONISIO PASCUAL.
>
> CONTRARY to Article 248 of the Revised Penal Code.
>
> (Record, p. 1.)

The antecedent facts are summarized as Counterstatement of the Facts in the People's Brief in this wise:

> On February 7, 1997, at around 2:00 o'clock in the afternoon, Rovellano Abrasia, fifteen years old, testified that he and his first degree cousins, the Cabangcala brothers, Benny, Rene and Danny (appellants herein), had just finished cutting cogon in the mountains of Barangay Ricos, Umingan, Pangasinan. He [Rovellano] accompanied Danny to the barber shop of Merced Abrasia in Barangay Pangangaan of the same municipality (pp. 2-6 & 8, tsn. Aug. 14, 1997; pp. 2-3, tsn., Sept. 5, 1997).
>
> While having his haircut, Danny saw the victim Dionisio "Isio" Pascual drinking gin with Anciong Abrasia and Quisot Camacho in front of the house of Corazon Morante (pp. 4-6, tsn., Aug. 14, 1997). Thereupon, Danny pointed to the victim and told Rovellano " that man is Isio Pascual" (pp. 7-8, Ibid.).
>
> Later, Rovellano and Danny went to the latter's house, some 100 meters from Morante's place, where they drank gin together with Benny and Rene (pp. 13-14, tsn. Sept. 1, 1997; pp. 5 to 5-A; tsn., Sept. 3, 1997). There, Rovellano overheard the Cabangcala brothers talking about the victim (p. 14, tsn., Sept. 1, 1997). Rovellano recalled that a week before, Mario Cabangcala, appellant's younger brother, told him that he had a quarrel with

the victim's son (p. 13, tsn., Sept. 2, 1997). At around 5:00 o'clock in the afternoon, that same day, Benny announced a plan to kill the victim (p. 20, ibid.) The four continued drinking until 10:00 o'clock in the evening during which period Danny would occasionally go out to verify if the victim was still at Morante's place (pp. 2, 6 to 8, tsn. Sept. 3, 1997). Danny reported to the group that the victim was still there lying down while his drinking buddies Anciong and Quisot had already gone home (pp. 5 to 7, ibid.).

The Cabangcala brothers then proceeded to execute their plan and, together with Rovellano, waited for the victim at a place halfway within the 100 meter distance between the house of Morante and the Cabangcalas, along a footpath where the expected victim would use in going home (p. 8, id.). When the group spotted the victim, the latter was bidding goodbye to Morante saying, "Mare, I will go home now" (p. 7, id..) Immediately, Benny and Danny went downhill to cut a piece of bamboo about one (1) meter long (p. 9, id.).

As the victim was approaching, Rovellano run and hid behind a " buri palm" (p. 14, tsn. Sept. 5, 1997). The Cabangcala brothers positioned themselves under a bamboo groove around five (5) meters away from Rovellano (p. 10, tsn. Sept. 3, 1997; p. 14, tsn. Sept. 5, 1997.)

The victim stopped on the rice paddy about four [4] meters from Rovellano (pp. 13 to 14, tsn. Sept. 5, 1997). Rovellano noticed that the victim had a companion whom he did not recognize but who immediately fled perhaps sensing danger from the encounter (pp. 9 to 10, & 14, tsn. Sept. 3, 1997). Benny approached the victim and struck him twice with the bamboo hitting the latter on the left cheek and the neck (p. 15, tsn. Aug. 14, 1997). The victim fell, after which Danny and Rene joined Benny in mauling the victim (pp. 15 to 16, ibid.).

The victim pleaded for his life saying "Please have mercy on me. Don't kill me" (p. 17, tsn. Aug. 14, 1997). But the mauling continued. At one point Danny uttered "Nagado nga ammomon. No saan nga diay anak mo nga pinangpakpak na kaniak saanak nga agibales"; meaning "Nonsense, had not your son clubbed me I would not avenge" (ibid.).

When the victim was rendered unconscious, Rene carried him towards the field east of Danny's house (pp. 17 & 19, tsn. id.). There, the victim was mauled further with the piece of bamboo carried by Benny (p. 5, tsn. Sept. 5, 1997). Thereafter, Rovellano accompanied Danny in getting a sled where they loaded the victim and brought him to the mountain of Barangay Ricos (p. 19, tsn. Aug. 14, 1997). Using shovels, the Cabangcala brothers dug a pit where they dumped the victim and covered it with soil (pp. 20 to 21, ibid.). Thereafter, they all went home (p. 21, id.).

On March 14, 1997, the victim' s brother, Fulgencio, and daughter Jennifer, went to the Umingan Police Station and reported to the police that the victim had been missing since February 7, 1997 (p. 3-4, tsn. Oct. 6, 1997). SPO1 Jeremias Fernandez conducted an investigation in Luna Este but failed to obtain favorable results (p. 5, id.).

However, ten (10) days thereafter, on March 24, 1997, Fulgencio returned to the station with a certain Danilo Abrasia who disclosed that he saw the victim sometime in February 1997 in Barangay Pangangaan being mauled by the Cabangcala brothers (id.). Hence, SPO1 Fernandez went to Barangay Pangangaan where a secret informant told him that a certain Rovellano Abrasia had knowledge about the missing person (p. 6, id.). SPO1 Fernandez found Rovellano that night at a certain bakery in the poblacion of Tayug, Pangasinan (id.). When confronted by the police, Rovellano admitted that he was with the Cabangcala brothers when the latter killed the victim in Barangay Pangangaan (pp. 6- 7, id.). The police, thereafter, invited Rovellano to the police station where he executed his statement at around 4:00 o'clock in the morning the following day, March 25, 1997 (pp. 7 to 8, id.; Exh. A., pp. 11-12, Record).

On March 25, 1997, upon being told by Rovellano of the exact place where the victim was buried, SPO1 Fernandez proceeded there together with Rovellano, Fulgencio Pascual, some members of the Umingan Police, and Barangay officials of the mountainous area of Barangay Ricos and reached the place at around 11:00 o'clock in the morning (pp. 8-9, tsn. Oct. 6, 1997). A cadaver was exhumed with the face still complete which

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> Fulgencio identified as that of his brother Dionisio (p. 9, id., see also pictures in pp. 41, 42 & 43, Record). The cadaver was thereafter brought to the municipal hall and thereafter to the cemetery for autopsy (p. 10, id.).
>
> Immediately, SPO1 Fernandez went to the house of Benny Cabangcala with the Barangay Captain of Barangay Pangangaan (pp. 20 & 21, id.) SPO1 Fernandez saw the three (3) appellants in the house of Benny about to leave because there were (3) traveling bags and said appellants were selling a carabao to a buyer from Barangay Prado (p. 22, id.). With the coordination of the said barangay captain, SPO1 Fernandez was able to invite the Cabangcala brothers to the police station to shed light on the killing of Dionisio Pascual (p. 20, id.).
>
> The next day, on March 26, 1997, SPO1 Fernandez prepared a Special Report on his investigation (Exh. E, p. 14, Record). At around 5:00 o'clock in the afternoon of that same day, Dr. Thelma Busto, Rural Health Physician of Umingan, Pangasinan, examined the cadaver and prepared the following post-mortem findings:
>
> Post-Mortem Findings:
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> - Head -multiple fracture of the skull
>
> - Other parts of the body was in state of decomposition.
>
> CAUSE OF DEATH:
>
> Cerebral Hemorrhage sec. to fracture of the skull.
>
> (Exhibit C, p. 16, Record)

Dr. Busto noted that when the cadaver was brought to her the skin was still intact although it was soft, tearing and moist. However, the face was still recognizable (p. 5, tsn. Oct 1, 1997). She prepared a schematic diagram showing multiple fractures with skull, 10 at the back, 4 to 5 at the frontal crown, and 2 on each parietal area (pp. 5-7, id.; Exh. D, p. 15, Record).

The victim's family thereafter took care of his funeral and burial (pp. 3 to 6, tsn. Sept. 26, 1997; p. 26, tsn. Sept. 16, 1997).

Jennifer Pascual Espiritu, one of the victim's daughters, recalled that the last time she saw her father alive was on February 7, 1997. The day before it, on February 6, 1997, the victim came to her house in Barangay Luna Este and went fishing with her neighbor. At night, the victim slept in her house (p. 25, tsn. Sept. 16, 1997). In the morning of February 7, she saw the victim going home to Barangay L Paz taking the route of Barangay Pangangaan (pp. 25 to 26, id.). When she saw her father again was on March 26, 1997, his remains were already in a coffin (p. 26, id).

Dinisio Pascual, Jr. never saw his father again after he left their place on January 8, 1997 (p. 12 to 13, tsn. Oct. 10, 1997). He had to leave for Manila and stay there for about four (4) months because he knew that the Cabangcala brothers planned to kill him (p. 12, id.) on account of his violent encounters with them on December 25, 1996 during the wedding party of a certain Josephine Cabanting in Barangay Luna Este where Dionisio, Jr. had boxed Mario Cabangcala, appellants' younger brother because the latter tried to hit him with a bottle of " beer grande" when he refused to buy beer for them (pp. 4 to 6, id.). Dionisio, Jr. felt very strongly that the he was the reason why the Cabangcala brothers killed his father.

(Rollo, pp. 149-157.)

On the basis of the foregoing facts, the trial court rendered the judgment of conviction, disposing thusly:

> WHEREFORE, guilt having been proved beyond reasonable doubt, the Court hereby convicts the herein accused of the crime of evidently premeditated MURDER defined and penalized under Article 248 of the

> Revised Penal Code as amended by Republic Act No.7659, .with the circumstances of abuse of superior strength and nighttime aggravating the offense.
>
> Accordingly, and pursuant to Article 63 of the same code, the Court hereby sentences the accused BENNY CABANGCALA and RENATO CABANGCALA to suffer the penalty of DEATH.
>
> In regard to the accused DANILO CABANGCALA alias "Danny," the Court applies section 22 of Republic Act 7659 and Article 68, paragraph 2 of the Revised Penal Code, in relation to the Indeterminate Sentence Law, and hereby sentences him to suffer the penalty of from 12 years of prision mayor maximum as MINIMUM to 17 years and one day of reclusion temporal maximum as MAXIMUM.
>
> The subject accused are further hereby ordered to SOLIDARILY indemnify the heirs of deceased DIONISIO PASCUAL for damages in the amount of P50,000.00 for his death, and to pay the costs.
>
> SO ORDERED.
>
> (Record, pp. 225.)

In the automatic review of this case, appellants assign the following errors:

> THE HONORABLE TRIAL COURT ERRED IN CONCLUDING THAT THE PERSON EXHUMED ON MARCH 26, 1997 (sic), IS THAT OF DIONISIO PASCUAL.
>
> THE HONORABLE COURT ERRED IN GIVING CREDIT TO THE BELATED TESTIMONY OF DANILO ABRASIA THAT WITNESS SAW THE INCIDENT.
>
> THE HONORABLE COURT ERRED IN GIVING CREDIT TO THE TESTIMONY OF ROVELLANO ABRASIA.
>
> THE HONORABLE COURT ERRED IN NOT ACCEPTING THE DEFENSE OF ALIBI ADVANCED BY THE ACCUSED.

The Court affirms the conviction of all three accused-appellants.

Firstly, accused-appellants heavily bank on the possibility that the body exhumed by the police authorities upon information disclosed by Rovellano Abrasia on March 25, 1997, is not that of Dionisio Pascual, whereby in the absence of the corpus delicti they cannot be convicted of the crime charged. To cast reasonable doubt, accused-appellants quote prosecution witness Dr, Busto's statement that "when a person was buried on February 7 and exhumed on March 25, the body would be so decomposed that it would be hard to identify the person" (Appellants' Brief, p. 1; Rollo, p. 91).

We are not persuaded for the foregoing statement was obviously taken out of context. Dr. Busto was stating a general proposition that if a cadaver had been buried for 45 days, it would normally be in such a state of decomposition making identification difficult. More so, according to Dr. Busto, if the ground on which the cadaver is buried is wet. The specific finding for this particular cadaver, however, is that although the cadaver when brought to her was in an advanced state of decomposition, its face was still "recognizable" because the "skin was still intact" (p. 5, tsn. Oct, 1, 1997), One day before Dr, Busto saw the cadaver, right at the site where the remains of Dionisio Pascual were exhumed, Fulgencio Pascual (brother of Dionisio), and Victoria Abrasia (a cousin of Dionisio) positively identified it to be that of Dionisio Pascual.

> TESTIMONY OF FULGENCIO PASCUAL:
>
> Q.
>
> And then after digging what was discovered, if there was any?

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A.

I saw the cadaver of my brother first the face, sir.

Q.

How do you know that was the cadaver of your brother?

A.

I know him sir because the face was not yet to decomposed. I could still recognize his face.

Q.

What were the physical features you observed wherein you are now concluding that he was your brother?

A.

We have a resemblance with my brother the only difference is he was taller and thinner than me, sir.

x x x

Q.

Aside from you who else, if any, identified the body right at the place of the exhumation?

A.

My cousin, sir.

Q.

Who?

A.

Victoria Abrasia, sir.

Q.

He (sic) was with you?

A.

Yes, sir, were only two at that time.

(pp. 11 & 12, tsn. Sept. 23, 1997)

Moreover, the body exhumed on March 25, 1997 was given due funeral services. As Dionisio's daughter, Jennifer, averred, she saw her father already in a coffin on March 26, 1997. We agree with the trial court's observation that "nobody mourns the death of a stranger." It is hard for this Court to conceive of the possibility that the family of Dionisio would grieve before the remains of a stranger, much less spend money for funeral services and burial of somebody other than their own deceased. This, coupled with the fact that the location of the exhumation site was pointed to by no less than an eyewitness to the crime and the burial, the Court is convinced that the body recovered on March 25, 1997 is truly that of Dionisio Pascual.

Secondly, accused-appellants find fault in witness Danilo Abrasia's delay in reporting the incident to the authorities. This, according to them, should have been enough basis for the court to disregard his testimony. Besides, they claim, Danilo did not actually witness the commission of the crime but only learned about it through

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Rovellano Abrasia.

We find this contention lacking in merit, as well.

Delay of a witness in revealing to the authorities what he knows about a crime does not render his testimony false, for the delay may be explained by the natural reticence of most people and their abhorrence to get involved in a criminal case. But more than this, there is always the inherent fear of reprisal (People vs. Basilan, 174 SCRA 115 [1989]). We have ruled on several occasions that "the delay of several months in reporting the incident to the police does not affect the witness' credibility, the reluctance of witnesses to volunteer information in a criminal case being of common knowledge (People vs. Sampaga, 202 SCRA 157 [1991]).

Accused-appellants also imply there is no basis for Danilo to be fearful of reprisal because accused-appellants allegedly did not see him during the commission of the crime. In People vs. Dulay (217 SCRA 103 [1993]) we ruled:

> We cannot sustain this contention because whether or not the witnesses feared him only the witnesses can tell. Fear arises in the subject not in the object of the fear. It is defined as an unpleasant emotional state characterized by anticipation of pain or great distress. It is a reaction to an external danger, which is perceived to cause him harm.
>
> (p. 117.)

We cannot discount the possibility that fear develops in the mind of the witness despite the absence of threat from the accused. Besides, reprisal from the accused may come about not only before the witness reports the crime, but it may also develop after the crime is reported. This is the reason for enactment of the law on witness protection. In this light therefore, the fact that accused-appellants did not see Danilo Abrasia witness the crime has no real significance insofar as the said eyewitness' fear is concerned.

Thirdly, accused-appellants contend that the testimony of Rovellano Abrasia is contrary to natural experience because even as he appeared to be a participant in the crime, having been present from the planning stage up to the consummation of the crime, although his cooperation and assistance were not required by the three accused-appellants who were all brothers. They also cite the fact that Rovellano left Barangay Pangangaan immediately after the alleged commission of the crime, an indication, according to them, that he was himself guilty.

We find these circumstances insufficient to discredit Rovellano's testimony. These were all aptly explained by the fact that Rovellano was himself related to the Cabangcala brothers, accused-appellants in this case. We do not find it odd that he could have actually tagged along with them during all that time that accused-appellants were plotting the crime up to the time of the actual commission of the murder. It is also in accord with natural experience for Rovellano to distance himself from his cousins right after the commission of the crime for fear of being implicated. This will not be taken as flight similar to that of an accused avoiding appropriate charges and possibly, a conviction.

It must likewise be noted that his testimony is not the sole basis for the conviction of the three accused-appellants. The major points in his narration were corroborated by other evidence tending to bolster his credibility.

> Besides -
>
> As to the credibility of witnesses it is well established that the findings of fact of the trial court thereon should not be disturbed on appeal said court being in a better position to decide the question, from having itself heard and observed the demeanor of the witnesses on the stand, unless it has plainly overlooked certain facts of substance and value which, if considered, could affect the result of the case.

(People vs. Perez, 265 SCRA 506, 516 [1996])

In the present case, we find no cogent reason to depart from this settled rule.

Finally, we find unpersuasive accused-appellants' insistence that the trial court erred in not giving credence to their defense of alibi.

Two eyewitnesses have positively identified the three accused-appellants as the perpetrators of the crime. Alibi cannot prevail over the positive identification of the appellant by the prosecution witnesses. (People vs. Gabatin, 203 SCRA 225 [1991]; People vs. Tinampay, 207 SCRA 425 [1992]). No jurisprudence in criminal cases is more settled than that alibi is the weakest of all defenses, for which reason it should be rejected when the accused is sufficiently and positively identified by credible eyewitnesses to the crime (People vs. Sumalpong, 284 SCRA 464 [1998]). As we have already ruled, no circumstances are present in the case at hand, which would render Danilo's and Rovellano Abrasia's eyewitness accounts incredible.

Additionally, the distance between accused-appellants' houses where they claim to have stayed when the crime was being perpetrated, does not preclude the possibility that they could also have been at the scene of the crime. They were actually only within fifty meters from the scene of the crime. It is equally settled that:

> The requisite elements for alibi to be appreciated are: (a) to prove his presence in another place at the time of the perpetration of the offense; and (b) to demonstrate that it would thus be physically impossible for him to be at the scene of the crime (People vs. Magpantay, 284 SCRA 96 [1998]).

We, however, cannot affirm the trial court's appreciation of the aggravating circumstances of abuse of superior strength and nighttime.

Regarding abuse of superior strength as aggravating circumstance, what should be considered is not that there were three, four or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense (People vs. Platilla, 304 SCRA 339 [1999]). In the present case, accused-appellants were priorly unarmed, and it was only when they were about to commit the crime, while waiting for the victim to pass by the bamboo groove that they thought of getting some implement, a crude bamboo pole which they cut right there and then. We further note that only Benny approached the victim, striking him with the said piece of bamboo. Only after the victim fell, having been struck twice by Benny, did the two brothers joined in mauling the victim to death. Obviously, the three accused-appellants did not purposely take advantage of their superior strength.

Now, as regards the aggravating circumstance of nighttime, it may also be noted that indeed, the plan to kill the victim was hatched as early as 5 o'clock in the afternoon, but accused-appellants did not execute the plan until 10 o'clock that evening. It may be stressed, however, that for nighttime to be appreciated as an aggravating circumstance, the court must be convinced that the cover of darkness was purposely sought for the purpose of ensuring the consummation of the crime. In People vs. Bitoon (309 SCRA 209 [1999]), we ruled:

> Nighttime could not be appreciated where, as in this case, no evidence was presented showing that nocturnity was specially sought by accused or taken advantage of by him to facilitate the commission of the crime or to ensure his immunity from capture.
>
> (p.221.)

There is no evidence in the present case that accused-appellants intentionally sought the advantage of nocturnity to facilitate the commission of the crime or to ensure immunity from capture. They simply waited for the victim to finish his drinking spree with his companions, which happened to be at around 10 o'clock in the evening, and it

was when the victim was on his way home, that the accused-appellants attacked him.

There being no aggravating circumstances to be appreciated against accused-appellants, the death penalty imposed by the trial court upon accused-appellants Benny and Renato Cabangcala for the crime of murder cannot be affirmed. Accused-appellants Benny and Renato Cabangcala are, therefore, sentenced to the prison term of reclusion perpetua.

As for Danilo Cabangcala, who was a minor when the crime was committed, the correct penalty should be one degree lower which is prision mayor in its maximum period to reclusion temporal in its medium period (10 years and 1 day to 17 years and 4 months). Applying the indeterminate sentence law, :the imposable penalty for the crime of murder in his case where there is neither aggravating nor mitigating circumstance, should be 6 years and 1 day of prision mayor in its minimum period, as minimum up to 14 years and 8 months of reclusion temporal in its minimum period, as maximum.

With regard to civil damages, Dionisio Pascual's heirs should be awarded P50,000.00 as civil indemnity (People vs. Basco, 318 SCRA 615 [1999]). Moral damages, which include physical suffering and mental anguish may be recovered in criminal cases resulting in physical injuries or victim's death, as in this case (People vs. Bromo, 318 SCRA 760 [1999]), which, under prevailing jurisprudence is fixed at P50,000.00 (People vs. Panida, 310 SCRA 66 [1999]).

WHEREFORE, premises considered, accused-appellants' conviction of the crime of murder is AFFIRMED but with MODIFICATION as to the imposable penalty, as above indicated. Accused-appellants are further ordered to solidarily pay the heirs of Dionisio Pascual the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages, with costs in all instances.

SO ORDERED.

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

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