# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELCHOR GARCIA Y BARTOLOME, ACCUSED-APPELLANT.

*G.R. No. 135666. July 20, 2001*

Ponente: DE LEON, JR., J.

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**DE LEON, JR., J.:**

This is an appeal from the Decision[1] of the Regional Trial Court, Branch 24, Echague, Isabela, finding accused-appellant Melchor Garcia y Bartolome guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

The Information dated August 25, 1995 charging appellant of the crime of murder reads:

> That on or about the 21[st] day of May, 1995, in the municipality of San Agustin, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly and without giving him chance to defend himself, assault, attack and shoot with a gauge 12 shotgun one Roel Diego, who as a result thereof, suffered gunshot wound on his left posterior aspect of the left thorastic region which some of the lead pierce the heart which directly caused his death.
>
> CONTRARY TO LAW.[2]

When arraigned, appellant Melchor Garcia y Bartolome pleaded not guilty.[3] Thereafter, trial on the merits ensued.

The evidence of the prosecution established that at about 2:00 o'clock in the early morning of May 21, 1995, Roel Diego, Federico Perez, Jr., and Edgar Agliam were having a drinking spree inside the make-shift stall of Everlyn Camungao at Barangay Dabubu Grande, San Agustin, Isabela. It was the fiesta of the said barangay.[4]

Roel Diego, Federico Perez, Jr., and Edgar Agliam were seated on a table one meter and six (6) inches long and thirty-four (34) inches wide. The back of Roel Diego faced the entrance of the make-shift stall. There was a thin, almost transparent pink curtain (Exh. "D") placed at the entrance. A 100-watt electric bulb which was suspended from the roof of the stall illuminated the area. Outside, it was bright because of the light.[5]

Adjacent to the stall of Everlyn Camungao was another stall where accused-appellant Melchor Garcia and his companions were conversing. The two (2) stalls were separated by a bamboo as a divider. Appellant and his companions could be seen from the place where Roel Diego and his companions were drinking beer. They were more than three (3) meters apart.[6]

Appellant went out of the stall where he was seated and proceeded to the entrance of the stall of Everlyn Camungao. Appellant, who was holding a shotgun, was two (2) meters away when he fired one shot through the pink curtain at Roel Diego hitting him at his back and causing him to fall. Appellant then ran away. The victim was brought to the doctor but he was dead on arrival.[7] He sustained multiple gunshot wounds at the posterior aspect of his left thoracic region, thereby causing his death.[8]

Edgar Agliam, a close friend of the appellant, testified that he saw the appellant shoot Roel Diego from behind the curtain because the curtain was thin and there was light. Agliam was then facing the curtain while Roel Diego was seated in front of him. The appellant was standing behind Roel Diego when he shot the latter. At that time Agliam was only two (2) meters away from the appellant.[9]

Everlyn Camungao testified that at the time of the incident, she was talking to Roel Diego and his companions while she was facing the door because her five-year old son was sleeping near the door. She saw appellant who was then standing behind the curtain shoot Diego with a shotgun, hitting the left side of his back. She was less than two (2) meters away from appellant at that time.[10]

Ofelia Diego, wife of the victim, testified that while she was in HongKong on May 21, 1995, her agency informed her, by long distance, to go home as soon as possible. On May 27, 1995, upon her arrival at their residence at San Agustin, Isabela, she was shocked to find her husband dead. She spent about Seventy Thousand Pesos (P70,000.00) as wake and burial expenses including expenses for the ninth-day prayer, but she failed to adduce documentary evidence to support the said expenses. For the shock, loss of hope and sadness which she suffered due to her husband's death, she asked the Court for moral damages in the amount of One Million Two Hundred Thousand Pesos (P1,200,000.00). She testified that her late husband was physically healthy and died at the age of 29; that he was a farmer cultivating five (5) hectares of land planted with corn and palay; that he had an annual gross sales of Three Hundred Thousand Pesos (P300,000.00); and that after deducting all expenses, his annual income during a normal season was Two Hundred Thousand Pesos (P200,000.00). They have four (4) children, ages 11, 10, 5 and 3, and she worried about the support needed by her children.[11]

Accused-appellant Melchor Garcia put up the defense of denial and alibi. He testified that at about 3:00 o'clock in the afternoon of May 20, 1995, he was at Dabubu Grande, on the occasion of its fiesta, watching a basketball game until 5:00 o'clock in the afternoon. Then he stayed in the gymnasium because it was raining. The rain stopped at around 6:00 o'clock in the evening and he was on his way home when his cousin, Gilbert Ulep, saw him and called him to drink at the store of his girlfriend, Reyna Tamondong. At the store, they gave him one glass of beer but his stomach could not take it, so he just conversed with them. When he arrived, Roel Diego was already there in the company of Edgar Agliam and Federico Perez, Jr., drinking beer at the stall of Everlyn Camungao which was beside the store of Reyna Tamondong. The two (2) stores were separated only by a horizontal bamboo. At 10:00 o'clock in the evening when he went to urinate beside the stall of Reyna Tamondong, he saw Edgar Agliam and Cris (Federico Perez, Jr.) conversing. Then he went inside the stall of Reyna Tamondong and stayed there until 11:00 o'clock in the evening, after which he walked home. He arrived home at 11:30 o'clock in the evening and thereafter slept.[12]

He denied the statement of Everlyn Camungao that Roel Diego and his companions arrived at the stall of Everlyn Camungao at about 2:00 o' clock in the early morning of May 21, 1995 because when he arrived at the stall of Reyna Tamondong at 6:00 o'clock in the evening, they were already there. When he went home at 11:00 o'clock in the evening, Roel Diego and his companions were still at the stall of Camungao. He denied that he killed Roel Diego as he was sleeping at home when the crime was committed. Contrary to the testimony and demonstration of prosecution witness Evelyn Camungao, he denied that he shot Roel Diego with his right and left hands holding the butt and the barrel of a shotgun, respectively, while the forefinger of his right hand held the trigger. He countered that he was left-handed and not right-handed. The court made appellant write his name, using his right and left hands (Exhs. "2", "2-A" to "2-D").[13]

On cross-examination, appellant testified that when the crime was committed on May 21, 1995, he was residing at Dabubu Pequeño, San Agustin which was about one kilometer away from the crime scene. From the stall of Reyna Tamondong, it took him thirty (30) minutes by foot to reach his residence. He asked Gilbert Ulep to testify


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for him, but Gilbert did not want to be involved because the victim was his neighbor. Appellant clarified that there was light coming from an electric bulb, which was hanging on a bamboo from the ceiling of the store right above them. Thirty (30) meters away from the door of their stall was a house with no light coming therefrom. In the adjacent stall where Roel Diego and his companions were drinking, there was also light from an electric bulb installed at the middle of the stall. There were no other lights outside. He does not know any reason why he is accused of killing Roel Diego.[14]

Amor Bartolome testified that the appellant is his nephew-being the son of his sister Natividad (Naty) Bartolome Garcia. Amor resides at Dabubu Pequeño, San Agustin, Isabela with appellant's mother, Naty, their younger sister, Sally Gay, and younger brother, Teatro. On May 20, 1995, Amor slept at 8:30 in the evening. Appellant attended the barangay fiesta held at Dabubu Grande. Appellant arrived home at 11:30 o'clock in the evening. Amor looked at the time at the wall clock when appellant arrived. Upon arrival, appellant went to his room and laid down. Appellant did not leave the house after he arrived that night. Amor woke up at 6:00 o'clock in the morning the next day, May 21, 1995, and saw appellant still in the room. Dabubu Pequeño adjoins barangay Dabubu Grande.[15]

On June 1, 1998, the trial court rendered judgment, the dispositive portion of which reads:

> WHEREFORE, finding the accused Melchor Garcia guilty beyond reasonable doubt of the crime of murder and absent any mitigating or aggravating circumstance, the Court hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the heirs of the deceased Roel Diego P4,760,000.00 for loss of earning capacity without subsidiary imprisonment in case of insolvency.
>
> Costs against the accused.
>
> SO ORDERED.[16]

Appellant ascribes to the trial court the following errors:

> - THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF EDGAR AGLIAN, FEDERICO PEREZ, JR. AND EVELYN CAMUNGAO THAT THEY RECOGNIZED THE ACCUSED AS THE PERSON WHO SHOT ROEL DIEGO.
>
> - THE TRIAL COURT ERRED IN CONCLUDING THAT THE ACCUSED WAS AMBIDEXTROUS.
>
> - THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED BECAUSE HIS DEFENSE OF ALIBI WAS WEAK AND UNCORROBORATED.
>
> - THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED FOR LACK OF PROOF BEYOND REASONABLE DOUBT.
>
> - THE TRIAL COURT ERRED IN ORDERING THE ACCUSED TO INDEMNIFY THE HEIRS OF THE DECEASED IN THE AMOUNT OF P4,760,000.00.
>
> - THE TRIAL COURT ERRED IN DENYING THE MOTION TO WITHDRAW CASH BAIL.[17]

Appellant contends that his guilt has not been proven beyond reasonable doubt, based on the following arguments:

> - The shooting was sudden, unexpected and fast, and it was dark outside the stall and behind the curtain where the assailant shot Roel Diego so the prosecution witnesses could not have recognized the assailant. Illumination only came from the 100-watt-bulb inside the stall of Everlyn Camungao, which was not bright enough to extend beyond the door which was covered by a curtain where the assailant was positioned.


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- Roel Diego and his companions were drinking and conversing when Roel was shot swiftly and unexpectedly, thus, it is more credible to believe that the prosecution witnesses, upon hearing the gunshot and seeing Roel Diego fall, first attended to him rather than ascertained the identity of the gunman by looking towards the door. They did not see or could not see the person who shot Roel Diego but they knew that he was shot by someone and they mistakenly thought and suspected him to be the assailant.

- All the three prosecution witnesses could not identify any other person who were within the premises of the stalls except him.

- The testimonies of the prosecution witnesses as to the time of his arrival and what he and his companions were doing in the stall were conflicting.

- Witness Everlyn Camungao demonstrated that the assailant was right-handed, and the trial court erred in finding that he was not left-handed, but ambidextrous.

- He had no motive to kill Roel Diego.

- The trial court erred in disregarding his defense of alibi.

The resolution of this appeal questioning the conviction of appellant of the crime of murder hinges on the credibility of the prosecution witnesses and the sufficiency of evidence adduced to convict the appellant.

Generally, when the issue is one of credibility of witnesses, appellate courts will not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[18] The exceptions to the rule are: (1) when patent inconsistencies in the statements of witnesses are ignored by the trial court, or (2) when the conclusions arrived at are clearly unsupported by the evidence.[19] In the instant case, the exceptions are inapplicable and we see no reason to disturb the findings of the trial court.

Contrary to the assertions of appellant, the trial court correctly found that the prosecution witnesses recognized the appellant as the person who shot Roel Diego because the place was well lighted and they were near the appellant.[20] Prosecution witness Everlyn Camungao testified that the place was brightly lighted by a 100-watt light bulb.[21] The back of the victim, Roel Diego, was facing the door and the appellant.[22] Camungao was standing and facing the door when she saw the appellant shoot Roel Diego behind the curtain and thereafter fled.[23] She knew the appellant because her nieces and nephews were his classmates and she often saw him whenever she passed by his house.[24] Prosecution witness Edgar Agliam also declared that he saw the appellant shoot Roel Diego behind the curtain because the curtain was thin and there was light.[25] Agliam was then facing the curtain and was only two (2) meters away from appellant.[26] He said that he grew up with the appellant and that they were close friends.[27] Prosecution witness Federico Perez, Jr., likewise stated that the make-shift restaurant of Camungao was illuminated by a bright light.[28]

The absence of evidence of improper motive on the part of the principal witnesses for the prosecution strongly tends to sustain the conclusion that no improper motive exists and that their testimonies are worthy of full faith and credit.[29]

The trial court correctly found that the crime was committed with treachery. 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.[30] 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 and without the slightest provocation on the part of the victim.[31] In

the instant case, the appellant suddenly and unexpectedly went behind the curtain at the back of the victim and shot him, giving the victim no opportunity to defend himself. The attendant circumstance of treachery qualifies the killing to murder under Article 248 of the Revised Penal Code, thus:

> 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 perpetua 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.
>
> xxx xxx xxx

The court a quo correctly imposed the lesser penalty of reclusion perpetua considering that no mitigating or aggravating circumstance attended the commission of the crime.[32]

We agree with the Solicitor General that it does not matter that the prosecution witnesses failed to identify the companions of the appellant. What is material is that they consistently pointed to the appellant as the assailant of the victim. The inconsistencies in the testimonies of the prosecution witnesses regarding the arrival of appellant and what he and his companions were doing in the stall refer to minor details which do not touch upon the commission of the crime or detract from their positive identification of the appellant as the assailant; therefore, the said minor inconsistencies do not affect either the substance of the prosecution witnesses' declarations, their veracity or the weight of their testimony.[33] Minor inconsistencies do not discredit but rather strengthen the testimony of a witness as they erase any suspicion of a rehearsed testimony.[34]

With reference to the trial court's observation that appellant was ambidextrous, the Solicitor General opined that even if appellant could write better with his left hand, it does not mean that he could not have used his right hand to shoot the victim. A left-handed person can shoot with a shotgun at close range, even if he uses one of the fingers of his right hand to pull the trigger. Above all, appellant was positively identified by prosecution witnesses Edgar Agliam and Everlyn Camungao as the assailant of the victim, Roel Diego.

The prosecution did not have to establish appellant's motive to kill Roel Diego. Motive becomes material only when the evidence is circumstantial or inconclusive, and there is some doubt on whether a crime has been committed or whether the accused has committed it.[35] Motive is not necessary when there is a clear and positive identification of the perpetrator of the crime,[36] as in the case at bar.

Appellant's defense of denial and alibi cannot prevail over his positive identification[37] by prosecution witnesses Agliam and Camungao. A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[38] For alibi to prosper, the accused must prove not only that he was somewhere else when the crime was committed but he must likewise demonstrate that it was physically impossible for him to be at the scene of the crime at the time of its commission.[39] The court a quo was not convinced of the appellant's alibi that he was sleeping in his house when the crime was committed at 2:00 o'clock in the morning as appellant presented as witness only his uncle, Amor Bartolome, who allegedly saw him when he arrived home at 11:30 in the evening of May 20, 1995 and that he thereafter slept. However, he did not present as witness his cousin, Gilbert Ulep, who invited him to the stall of Reyna Tamondong, and, Ulep's girlfriend, Reyna Tamondong, who could have possibly testified as to the time when appellant left the stall. Considering that the residence of the appellant was only about one kilometer away or only thirty (30) minutes away by foot from the crime scene, appellant failed to establish that it was physically impossible for him to be present at the locus criminis at the time that the crime was committed.


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Although the prosecution in the case at bar did not present evidence to support the widow's claim for loss of earning capacity, such failure does not necessarily prevent recovery of damages where the testimony of the said surviving spouse was sufficient to establish a basis for which the court can make a fair and reasonable estimate of the damages for the loss of earning capacity of the victim.[40] The formula[41] for computing the loss of earnings of the victim, is as follows:

Net Life Gross Living

Earning = expectancy x Annual - expenses

Capacity [2/3 (80- age at death)] income (GAI) (50% of GAI)

= [(2/3) (80-29)] x P200,000.00 - P100,000.00

= [(2/3) (51)] x P100,000.00

= 34 x P100,0 00.00

= P3,400,000.00

The victim's wife, Ofelia Diego, testified that Roel Diego, as a farmer, had an annual gross sales of Three Hundred Thousand Pesos (P300,000.00), and that after deducting his expenses of production, he had an annual gross income of Two Hundred Thousand Pesos (P200,000.00) during a normal season. From this, is further deducted the amount of his living expenses. As there is no proof as to the amount of the living expenses of the deceased, it is estimated to be fifty (50%) per cent of his gross annual income.[42] In the instant case, fifty (50%) per cent of the gross annual income of the victim is One Hundred Thousand Pesos (P100,000.00). After deducting the amount of living expenses from his gross annual income, his net annual income is One Hundred Thousand Pesos (P100,000.00). The life expectancy of the victim, Roel Diego, is 34, which when multiplied by the net annual income of One Hundred Thousand Pesos (P100,000.00) is equivalent to Three Million Four Hundred Thousand Pesos (P3,400,000.00), which is the amount of the indemnity due for the loss of earning capacity of the said deceased.

Appellant is also ordered to pay the heirs of the victim, Roel Diego, civil Indemnity in the amount of Fifty Thousand Pesos (P50,000.00) which is granted without need of proof other than the fact that a crime was committed resulting in the death of the victim and that the accused-appellant was responsible therefor.[43] We also find it proper to award moral damages, pursuant to Article 2206(3) of the New Civil Code, in the amount of Fifty Thousand Pesos (P50,000.00) to the surviving spouse of the victim, who asked for moral damages[44] on account of the shock, loss of hope and mental anguish which she suffered due to the death of her husband.[45]

The trial court did not err in denying appellant's motion for the release of his cash bail despite Section 11 (now 14), Rule 114 of the Rules of Court, which provides that money deposited as bail shall be "applied to the payment of the fine and costs." The court a quo in its Decision ordered the accused-appellant to indemnify the heirs of the victim, Roel Diego, for the loss of earning capacity of the victim, and hence, it did not release the cash bail after its application to the costs of suit and the balance thereof, if any, to the payment of said indemnity. The court a quo in its decision did not impose a fine.

Besides, the cash bail of the accused-appellant has been cancelled by the court a quo,[46] that is, after the conviction of accused-appellant who was thereafter arrested and detained at the provincial jail of Ilagan, Isabela. Hence, appellant is not entitled to a return of his cash bail.

WHEREFORE, the assailed Decision of the Regional Trial Court of Echague, Isabela, Branch 24, finding the accused-appellant, Melchor Garcia y Bartolome, guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua is hereby AFFIRMED with the modification that appellant is also ordered to pay the heirs of the victim, Roel Diego, Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (50,000.00) as moral damages and Three Million Four Hundred Thousand Pesos (P3,400,000.00) for the loss of earning capacity of the said deceased victim.

**SO ORDERED.**

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.
Quisumbing, J., on official business.

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[1] Penned by Judge Henedino P. Eduarte; Rollo, pp. 16-21.

[2] Records, p. 1.

[3] Records, p. 38.

[4] TSN, February 18, 1998, pp. 9-10; TSN, May 28, 1996, pp. 5, 15-16; TSN, August 15, 1996, pp. 5, 21.

[5] TSN, May 28, 1996, pp. 5-7, 10-11; Exhs. "D", "D-l"; TSN, May 30, 1996, p. 7; TSN, August 15, 1996, pp. 5-6, 9-10, 21-23.

[6] TSN, May 28, 1996, pp. 17-18; TSN, August 15, 1996, p. 25.

[7] TSN, February 18, 1998, pp. 10-11, 13, 16-17, 22-27; TSN, May 28, 1996, pp. 8-12, 19-28; TSN, May 30, 1996, pp. 11-13, TSN, August 15, 1996, pp. 6, 12-13, 19, 24.

[8] Exh. "A", Records, p. 8; Exh. "C", Records, p. 10; TSN, March 26, 1996, pp. 8-9.

[9] TSN, February 18, 1998, pp. 11-12, 22-24, 26-27, 30.

[10] TSN, May 28, 1996, pp. 5-6, 8-9, 25-28.

[11] TSN, March 26, 1996, pp. 6-16.

[12] TSN, January 16, 1997, pp. 3-9, 11.

[13] TSN, January 16, 1997, pp. 10-12.

[14] TSN, February 18, 1998, pp. 10-22.

[15] TSN, November 26, 1996, pp. 3-11.

[16] Rollo, p. 21.

[17] Rollo, pp. 31-32.

[18] People v. Decil1o, et al., G.R. No. 121408, October 2, 2000, p. 7.

[19] Id.

[20] Rollo, p. 9.

[21] TSN, May 28, 1996, pp. 10-11, 21.

[22] TSN, May 28, 1996, p. 12.

[23] TSN, May 28, 1996, pp. 25-28.

[24] TSN, May 28, 1996, pp. 21-22.

[25] TSN, February 18, 1998, pp. 11, 20, 22-23.

[26] TSN, February 18, 1998, pp. 12, 23.

[27] TSN, February 18, 1998, p. 20.

[28] TSN, August 15, 1998, pp. 5-6.

[29] People v. Ravanes, 284 SCRA 634, 641 (1998).

[30] Article 14 (16), Revised Penal Code.

[31] People v. Vermudez, 302 SCRA 276, 284 (1999).

[32] Article 63 (2), Revised Penal Code.

[33] People v. Irenea, 164 SCRA 121, 127 (1988).

[34] People v. Carreon, 282 SCRA 544 (1997); People v. De Guia, 280 SCRA 141 (1997).

[35] People v. Astorga, 283 SCRA 420, 433 (1997).

[36] People v. Villamor, 284 SCRA 184, 195 (1998).

[37] People v. Nazareno, 260 SCRA 256, 282 (1996).

[38] People v. Alvero, G.R. Nos. 134536-38, April 5, 2000.

[39] People v. Banela, 301 SCRA 84, 93 (1999).

[40] People v. Gutierrez, Jr., 302 SCRA 643, 667 (1999); People v. Daroy, et al., G.R. No. 118942, July 18, 2000.

[41] People v. De Guzman, 326 SCRA 131, 145 (2000); People v. Go-od, et al., 331 SCRA 612, 626 (2000); People v. Bonito, et al., G.R. No. 128002, October 10, 2000.

[42] People v. Templo, G.R. No. 133569, December 1, 2000..

[43] People v. Marollano, 276 SCRA 84, 113 (1997).

[44] TSN, March 26, 1996, p. 12.

[45] Supra.

[46] Records, p. 169.


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