

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CORNELIO GELIN AND MANUEL GELIN, ACCUSED-APPELLANTS.

G.R. No. 135693. April 01, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Dolores, Eastern Samar, Branch 4, in Criminal Case No. 14 (91-7), convicting accused-appellants of the crime of Murder and sentencing each of them to suffer the penalty of reclusion perpetua; to jointly and severally indemnify the heirs of the victim in the amount of P50,000.00 as death indemnity; and to pay the costs.

The information charging accused-appellants of the crime of murder states:

That on or about the 10th day of February 1991, at about 6:00 o'clock in the afternoon, more or less at Bo. Borong, Brgy. No. 4 Poblacion Can-avid, Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping one another with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, shoot, stab and wound one Dionisio Gelin with deadly weapons, namely: a rifle and a small bolo locally known as "Depang" which the accused conveniently provided themselves for the purpose thereby inflicting injuries on the different parts of the body of said Dionisio Gelin which resulted in his instantaneous death.

CONTRARY TO LAW, with the aggravating circumstances of abuse of superior strength and abuse of authorities, both accused being members of the CAGU of Can-avid, E. Samar.[2]

At their arraignment on December 3, 1991, accused-appellants pleaded not guilty.[3] The case then proceeded to trial.

The version of the prosecution is as follows: Joel Gelin, the son of the victim, Dionisio Gilen, was on his way home at around 6:00 in the evening of February 10, 1991 when he met his second cousins, brothers Cornelio Gilen and Manuel Gilen, accused-appellants herein. Manuel poked a small bolo ("depang") on Joel's neck, while Cornelio threatened to shoot him with a long firearm. Joel was aware of the existing land dispute between accused-appellants and his family, thus, he suggested that they settle it amicably. Accused-appellants refused and forced Joel to bring them to the house of the victim. Upon reaching the house, they saw the victim, and without warning, Cornelio shot him. To ensure the victim's death, Manuel stabbed him on the chest. Joel could do nothing as the accused-appellants also threatened to kill him. Thereafter, accused-appellants took Joel with them and returned their gun to the army camp where they were serving as CAGU members. When Joel was finally released by the accused-appellants, he rushed to the house of his cousin, Romeo Anacio, and ordered his brother, Benjamin Gelin,[4] to report the incident to the police station.[5]

Prosecution witness Ida Balagbis testified that she was in the house of the victim when the latter was shot. From the kitchen where she was then washing the dishes, she saw the victim a meter away from her and standing by the

annex ("suy-ab") of the house. At the sound of gunshots, she turned and saw accused-appellant Cornelio Gelin holding a gun. The victim was lying on the ground. Standing close to Cornelio was accused-appellant Manuel Gelin who was poking a "debang" on Joel. The two assailants were only three meters away from Ida Balagbis. Frightened, Ida immediately fled and informed her father of the shooting incident.[6]

The results of the post-mortem examination conducted on the victim by Dr. Marcial A. Adal are as follows:

- Well developed, well nourished individual in the state of Rigor-Mortis.

- Wound, penetrating, Sternum.

Length - 1 inch, width - 1/2 inch, depth - 1 1/2 inches.

- Gun-shot wounds, thru and thru (2).

Entrance-left Lumbar Region 2 inches far apart length- 1/2 inch, width 1/2 inch, presence of powder burns.

Exit-right lumbar region with right colon extruded.

Length – 4 inches, width - 1 inch. Opening the abdominal cavity, the right and left large intestines injured, as well as the small intestines, pancreas and kidneys.[7]

Cause of death: Item No. 3.

In their defense, accused-appellants denied the accusation against them and claimed that at the time the crime was allegedly committed, they were inside the camp of the Philippine Army stationed in Can-avid, Eastern Samar. Accused-appellant Cornelio Gelin, a former CAFGU member, alleged that on February 10, 1991, he was on duty for two hours at the camp from 4:00 in the afternoon to 6:00 in the evening. After his shift, he stayed in the camp and left at 7:00 in the morning the following day.[8] For his part, accused-appellant Manuel Gelin testified that at about 6:00 in the evening of February 10, 1991, he was resting inside the army camp as he was nursing a fever. He declared that he was too weak and was able to go home only the following morning at 8:00.[9]

To bolster their theory, accused-appellants presented Sgt. Wilfredo Peralta and Alfredo S. Edaro, who both declared that the Gelin brothers were inside the camp from 6:00 in the evening of February 10, 1991 until the next day.[10]

On June 11, 1998, the trial court found the version of the prosecution credible and rendered the assailed decision. The dispositive portion thereof reads:

WHEREFORE, premises considered, the Court hereby renders judgment finding accused CORNELIO GELIN and MANUEL GELIN guilty beyond reasonable doubt of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, sentences said accused persons to suffer the indivisible penalty of RECLUSION PERPETUA, with the accessories of the law; to pay the heirs of the victim DIONISIO GELIN jointly and severally, the amount of FIFTY THOUSAND PESOS (P50,000.00) as indemnification, and to pay the costs. The bail bond posted by each accused are hereby ordered cancelled pursuant to Section 5, paragraph 1 of Supreme Court Administrative Circular No. 12-94.

SO ORDERED. [11]

In their Brief, accused-appellants raised the following assignment of errors:

I

THE LOWER COURT ERRED IN OVERLOOKING, MISAPPRECIATING AND/OR MISUNDERSTANDING CERTAIN FACTS AND CIRCUMSTANCES OBTAINING IN THE CASE.

II

THE LOWER COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF [THE] ALLEGED PROSECUTION EYE-WITNESSES AND IN DISREGARDING ACCUSED'S (sic) DEFENSE OF ALIBI; and,

III

THE LOWER COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANTS UPON REASONABLE DOUBT.[12]

Accused-appellants attempt to destroy the credibility of the prosecution witnesses by pointing out inconsistencies in their testimonies. Said inconsistencies, however, are so minor and trivial that they cannot impair the main thrust of the witnesses' testimony that they saw accused-appellants at the scene of the crime, and describing with clarity their active participation in the killing of the victim. For instance, it is immaterial whether it was Ben Gelin or Joel Gelin who caused the shooting incident to be listed in the police blotter; or whether Joel Gelin told the authorities who were the culprits. Verily, these matters are irrelevant to the elements of the crime and are thus not grounds for their acquittal.[13] At any rate, the police officer who took down the report explained that it was Ben Gelin who went to the police station to report the incident but it was Joel whom he listed as the informant because he was the one who ordered his younger brother, Ben, to go to the police. Moreover, Joel Gelin clarified that he initially withheld the identity of the persons who killed his father because accused-appellants, who were CAFGU members, threatened to kill him.[14]

Furthermore, the non-presentation of other witnesses to corroborate the testimony of Ida Balagbis and Joel Gelin is of no consequence. The matter of deciding whom to present as witness for the prosecution is not for the accused or for the trial court to decide, as it is the prerogative of the prosecutor.[15] More importantly, the testimony of Ida Balagbis and Joel Gelin, which are worthy of belief, are sufficient to convict accused-appellants. Courts are not precluded from rendering judgment based on the testimony even of a single witness. The weight and sufficiency of evidence is determined not by the number of the witnesses presented but by the credibility, nature, and quality of the testimony.[16]

Accused-appellants rely heavily on the presence of powder burns on the periphery of the wound sustained by the victim. The presence thereof, according to them, prove that the victim was shot at close range, contrary to the claim of prosecution witness Ida Balagbis that the victim was shot from a distance of 3 meters.[17] So, also, accused-appellants declared that the victim must have died hours before 6:00 in the evening of February 10, 1991, judging from the necropsy report that the victim was in rigor mortis when Dr. Marcial A. Adal examined his body at around 7:00 of the same evening. In addition, accused-appellants make much of the testimony of Dr. Adal that the gunshot wound was inflicted post-mortem.

The contentions are without merit. The testimony of Ida Balagbis is merely an approximation of the distance between the victim and accused-appellant Cornelio. Such error in her calculation cannot militate against her credibility. In the same vein, the testimony of Dr. Adal that the gunshot wound was inflicted post-mortem is not sufficient to destroy the theory of the prosecution. Note that said testimony was never stated in the necropsy report nor explained by Dr. Adal in his testimony. Indeed, these minor lapses even tend to strengthen the evidence presented by the prosecution because they erase any suspicion of a rehearsed testimony.[18]

Then, too, Dr. Adal clarified that rigor mortis was just beginning to set in when he examined the cadaver of the victim.[19] This jibed with the testimony of the prosecution witnesses that the victim was shot at around 6:00 in the evening of February 10, 1991. Rigor mortis, which consists in the stiffening of the muscular tissues and joints of the body, setting in at a greater or less interval after death, may be utilized to approximate the length of time the body has been dead. In temperate countries, it usually appears three to six hours after death but in warmer

countries, it may develop earlier.[20] There is also the medical view that the early setting in of rigor mortis may be due to exhaustion or muscular irritability.[21] These factors therefore explain the setting in of rigor mortis at the time the cadaver of the victim was examined.

The acts of both accused-appellants, collectively and individually, clearly show and point to a conspiracy because of a common purpose, concert of action, and community of interest.[22] The brothers evidently and concurrently had in mind the killing of the victim. Likewise, from all indications, the mode of attack adopted by them ensured the accomplishment of their criminal objective without risk to themselves as the deceased did not give any provocation and was then unarmed when they shot and stabbed him. [23]

As to the aggravating circumstances of evident premeditation, abuse of superior strength and abuse of authority, the trial court correctly disregarded them considering that the prosecution failed to prove their attendance in the instant case.

The defenses of denial and alibi put up by accused-appellants cannot prosper. Such defenses are inherently weak and cannot prevail over the positive identification of accused-appellants. Moreover, they failed to meet the test that there must be clear and convincing proof of physical impossibility for the accused to be at the locus criminis at the time of the commission of the crime, in order that his defense of alibi may prosper.[24] The distance between the army camp in Can-avid and the place where the crime was committed is approximately 500 meters and can be traversed by more or less a 5-minute walk.[25] Hence, the possibility of the presence of accused-appellants at the scene of the crime at the time of the commission of the offense at bar is not at all precluded.

The facts as assessed by the trial court clearly established the culpability of accused-appellants. The settled rule is that, the findings of facts of the trial judge are to be accorded great weight and are not to be disturbed, unless the judge had clearly overlooked facts of substance and value which, if taken into account, would affect the result of the case.[26] In the present case, the Court sees no compelling reason to depart from this rule.

The trial court correctly held that treachery attended the killing of Dionisio Gelin, thus qualifying the crime to Murder. The attack on Dionisio, who was unarmed, was deliberate and unexpected such that the latter did not have an opportunity to defend himself. There is treachery when the following requisites are present: (1) the employment of means, method, or manner of execution to ensure the safety of the malefactor from defensive or retaliatory action on the part of the victim and (2) the deliberate or conscious adoption of such means, method, or manner of execution.[27]

Before the effectivity of Republic Act No. 7659, on December 31, 1993, murder was punishable by reclusion temporal maximum to death.[28] There being neither mitigating nor aggravating circumstance, the penalty should be imposed in its medium period,[29] i.e., reclusion perpetua.

Anent accused-appellants' civil liability, the Court affirms the award of P50,000.00 as indemnity ex delicto and further orders accused-appellants to pay P50,000.00 as moral damages, which needs no proof other than the fact of death of the victim,[30] as well as damages for the loss of earning capacity of the victim which shall be computed using the formula:[31]

Net = Life expectancy x Gross Annual Income (GAI) - Living expenses

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

Capacity

The records reflect that the victim died at the age of 57[32] and was then earning a total of P5,000.00 a month

from his farm and cockpit business.[33] As computed, the loss of earning capacity of the victim would be P459,000.00, thus:

$$\begin{aligned} &= 2/3 [(80-57)] \times P5,000.00 (12) - 50\% \\ &= 2/3 (23) \times P60,000.00 - 50\% \\ &= 15.3 \times P30,000.00 \\ &= P459,000.00 \end{aligned}$$

WHEREFORE, in view of all the foregoing, the Decision of the Regional Trial Court of Dolores, Eastern Samar, Branch 4, in Criminal Case No. 14 (91-7), finding accused-appellants Cornelio Gelin and Manuel Gelin guilty beyond reasonable doubt of the crime of Murder and sentencing each of them to suffer the penalty of reclusion perpetua, is AFFIRMED with the MODIFICATION that in addition to the payment of P50,000.00 death indemnity and costs, accused-appellants are further ordered to jointly and severally pay the heirs of the victim the amounts of P459,000.00 for the loss of earning capacity of the victim and P50,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J., (Chairman), and Kapunan, JJ., concur.
Puno, J., on official leave.

[1] Penned by Judge Celso F. Lorenzo, Sr.

[2] Rollo, p. 9.

[3] Records, p. 26.

[4] Sometimes referred to as "Ben Gilen" and "Pen Gilen" in the records.

[5] TSN, July 8, 1992, pp. 2-9.

[6] TSN, February 26, 1992, pp. 4-8; May 27, 1992, pp. 4-7.

[7] Exhibit "A".

[8] TSN, February 2, 1994, pp. 2-6.

[9] TSN, May 17, 1994, pp. 2-4.

[10] TSN, February 16, 1993, pp. 3-6; August 3, 1993, pp. 5-7.

[11] Rollo, p. 44.

[12] Rollo, pp. 75-76.

[13] *People v. Maglente*, 306 SCRA 546, 567 [1999], citing *People v. Lagmay*, 215 SCRA 218 [1992].

[14] TSN, April 18, 1995, pp. 3-5.

[15] *People v. Porras*, 255 SCRA 514, 527 [1996], citing *People v. Eligino*, 216 SCRA 321 [1992]; *People v. Alerta, Jr.*, 198 SCRA 656 [1991].

[16] *People v. Gapasan*, 243 SCRA 53, 59-60 [1995], citing *People v. Abo*, 230 SCRA 612 [1994].

[17] TSN, May 27, 1992, p. 5.

- [18] *People v. Libungan*, 220 SCRA 315, 320-321 [1993], citing *People v. Madriaga*, 211 SCRA 698 [1992].
- [19] TSN, September 16, 1992, pp. 6-7.
- [20] *People v. Dulay*, 217 SCRA 103, 119 [1993], citing Solis, *Legal Medicine* 127 [1987 ed.].
- [21] *People v. Taruc, et al.*, 171 SCRA 75, 82 [1989], citing John Glaister & Edgar Rentoul, *Medical Jurisprudence and Toxicology*, 12th Ed., pp. 113, 173; Douglas J.A. Kerr, *Forensic Medicine*, 5th Ed., p. 59; Gonzalez, Vance, Helpert and Umberger, *Legal Medicine, Pathology and Toxicology*, 2nd Ed., p. 56.
- [22] *People v. Polanco*, 251 SCRA 503, 506 [1995], citing *Siton v. Court of Appeals*, 204 SCRA 473 [1991]; *People v. De Leon and Alarcon*, 245 SCRA 538 [1995].
- [23] *People v. Macuha*, 310 SCRA 14, 23-24 [1999], citing *People v. Vermudez*, 302 SCRA 276 [1999]; *People v. Caritativo*, 256 SCRA 1 [1996]; *People v. De Castro*, 252 SCRA 341 [1996]; *People v. Abrenica*, 252 SCRA 54 [1996]; *People v. Ponayo*, 235 SCRA 226 [1994]; *People v. Balanon*, 233 SCRA 679 [1994].
- [24] *People v. Villanueva*, 208 SCRA 810, 814 [1992].
- [25] TSN, April 15, 1994, pp. 7-8.
- [26] *People v. Orehuela*, 232 SCRA 82, 91 [1994], citing *People v. Arenas*, 198 SCRA 172 [1991]; *People v. Somera*, 173 SCRA 684 [1989]; *People v. Baysa*, 172 SCRA 706 [1989]; *Aguirre v. People*, 155 SCRA 337 [1987].
- [27] *People v. Bayotas*, 348 SCRA 627, 634 [2000].
- [28] Article 248, Revised Penal Code.
- [29] Article 64(1), Revised Penal Code.
- [30] *People v. Ortiz*, G.R. No. 133814, July 17, 2001.
- [31] *People v. Enguito*, 326 SCRA 508, 529 [2000].
- [32] Exhibit "B".
- [33] TSN, January 22, 1992, p. 5.

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