THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GUALBERTO MIRADOR ALIAS “GOLING”, JOHN DOE (AT LARGE), PETER DOE (AT LARGE), ACCUSED. GUALBERTO MIRADOR, ALIAS “GOLING”, A...

G.R. No. 135936. September 19, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated May 20, 1998, of the Regional Trial Court, Branch 54, Alaminos, Pangasinan, finding accused-appellant Gualberto Mirador guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of the victim, Rodrigo Nacario, the sum of P50,000.00 as indemnity and P14,500.00 as actual damages.

The information against accused-appellant, John Doe, and Peter Doe alleged —

> That on or about 12:30 o'clock in the morning of May 19, 1995 at Sitio Sapatara Brgy. Viga, municipality of Agno, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously hack RODRIGO NACARIO several times inflicting upon him mortal hack wounds which caused his instantaneous death as a consequence, to the damage and prejudice of his heirs.[2]

Accused-appellant pleaded not guilty to the crime charged, whereupon trial ensued.

The prosecution presented four witnesses, including the wife of the victim, Carmelita Nacario.

Carmelita testified that on May 19, 1995, she, her husband Rodrigo Nacario, and their son, who were sleeping in their house at Sitio Sapatara, Barangay Viga, Agno, Pangasinan, were awakened by the barking of dogs at about 12:30 in the morning. Rodrigo got up to see what it was. Returning to her side, he told her that he saw three persons crawling toward their house. He told Carmelita to ask for help from his parents, whose house was about 50 meters away. However, Rodrigo changed his mind and decided to ask for help himself. On his way to his parents' house, he was seized by three persons who held him and hit him. Carmelita, who was following, witnessed the attack as she was only seven meters away from him and the place was illuminated by the moon. She heard the victim remark: "Sika gayam, pare Goling." ("So it is you, pare Goling.")

Carmelita said she shouted for help as her husband was dragged by accused-appellant and his two companions and struck several times with a bolo by accused-appellant. Carmelita said that accused-appellant and his companions fled after seriously wounding her husband. She said one of the assailants tried to come back, but she repelled him by hitting him with a brick.

After the assailants had gone, Carmelita ran to her husband and took him on her lap. When asked about the identity of the person who had seriously wounded him, the victim allegedly whispered it was Gualberto Mirador.

Not long after, Rodrigo died. His lifeless body was taken to their house. Later, Barangay Kagawad Cesar Novero came and said he would report the incident to the police headquarters in Agno.[3]

Carmelita Nacario submitted a receipt for P10,000.00 issued by Funeraria Medina for funeral services of the victim (Exh. F), another receipt for P500.00 issued by the Diocese of Alaminos as fee for the burial (Exh. G), and a handwritten list of the expenses allegedly incurred for the victim's wake and funeral expenses (Exh. E).[4]

Leopoldo Nacario, the father of the victim, testified that at around 12:30 in the morning of May 19, 1995, he heard his daughter-in-law shouting for help. He immediately responded and saw Carmelita embracing the victim. When he inquired what had happened, Carmelita told him that accused-appellant Gualberto Mirador had hacked the victim. Barangay Kagawad Cesar Novero subsequently arrived and advised them not to move the body of the victim until the police authorities had arrived. He said Carmelita told SPO4 Arturo Navalta that Gualberto Mirador had hacked her husband.[5]

SPO4 Arturo S. Navalta, of the Agno Police Station in Pangasinan, testified that at around 3:30 in the morning of May 19, 1995, he received report of the killing of Rodrigo Nacario. He and three other policemen went to the crime scene at around past 7 o'clock in the morning and saw the body of the victim. The victim sustained several hack wounds on his body. They recovered a bolo with bloodstains and two rubber sandals of different colors and sizes. However, the owners of the bolo and the rubber slippers were never identified.[6]

Dr. Rodrigo Casiano, Jr., medical health officer of Agno, Pangasinan, conducted an autopsy on the victim on May 19, 1995, at around 8 o'clock in the morning, and submitted a medico-legal report (Exh. I) on the results thereof. He opined that the approximate time of death was around 1 o'clock in the morning. According to him, 13 wounds were inflicted on the different parts of the victim's body, to wit:

- Lacerated wound 1 1/2 inches long, right frontal area of the head.

- Incised wound 1 1/2 inches long, 3/4 inch deep along the upper right temporal area.

- Incised wound 4 1/2 inches long, 1/4 inch deep along the right parietal area, cutting the ear horizontally.

- Incised wound 3 1/4 inches long and 1/2 inch deep just below the right ear.

- Incised wound 2 1/2 inches long, 1/2 inch deep along the right maxilliary area.

- Incised wound, gaping, 7 1/2 inches long along the right upper quadrant of the abdomen, extending up to the lateral side of the body and back.

- Incised wound, gaping around 5 inches long, 1/2 inch width, 1 inch deep along the left temporal area of the head with open fracture.

- Incised wound 2 1/2 inches long, 1 inch deep along the right submandibular area of the face.

- Amputated left thumb and amputated left second finger.

- Incised wound 2 1/2 inches long, 1/2 inch deep along the left parietal area of the head.

- Incised wound 5 inches long 1/2 inch deep along the right upper scapular [e]nd of the back.

- Incised wound 5 1/2 inches long, 3/4 inch deep along the mid-scapular area, right upper back.

- Incised wound 2 1/4 inches long, 1/2 inch deep, right hand.[7]

He further testified that wound nos. 2, 3, 4, 6, 7, and 8 were fatal and that wound nos. 9 and 10 were defensive wounds sustained while the victim was defending himself. Based on his findings, Dr. Casiano concluded that the

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victim was facing the assailant when the wounds were inflicted. The cause of death of the victim was hemorrhage.[8]

The defense presented six witnesses,[9] including accused-appellant, who interposed the defense of alibi.

Accused-appellant claimed that, at the time of the attack, he was making salt inside his warehouse located at Sitio Banog, Barangay Cato in the Municipality of Infanta, Pangasinan. He claimed he started work on May 18, 1995 at 8 o'clock in the morning. With him in the warehouse were Norbie Carbon and Sofronio Mirador. He had dinner around 7 o'clock in the evening and then went back to work until about 5 o'clock in the morning of the following day, May 19, 1995. He went to sleep that day at around 5:15 in the morning.[10]

Accused-appellant's testimony was corroborated by two other saltmakers, namely, Norbie Carbon and Sofronio Mirador. Norbie Carbon was employed as saltmaker by Pedro Mirador, the brother of accused-appellant. Sofronio Mirador, the other saltmaker, is also a brother of accused-appellant. According to their testimonies, they made salt from 8 o'clock in the morning of May 18, 1995 until about 5 o'clock the following morning. During that time, accused-appellant was with them in the compound and never left.[11]

Juan Birog, another witness for the defense, testified that he owned an agricultural land which accused-appellant tenanted for 17 years. He said accused-appellant surrendered the land, which is located in Alanipo, Burgos, Pangasinan, in 1994 and the victim Rodrigo Nacario became the new tenant. Juan Birog claimed that when he inquired from Carmelita whether she recognized her husband's assailant, she allegedly answered "No."[12]

Rodrigo Cave was the last witness for the defense. He testified that accused-appellant started working on his land in Atel-batang, Infanta, Pangasinan as tenant in November 1992. He eventually sold the land to accused-appellant.[13]

On May 20, 1998, the trial court rendered its decision, the dispositive portion of which reads:

> WHEREFORE, in consideration of the foregoing and in the light of the evidence presented, the accused is declared GUILTY beyond reasonable doubt of the crime of Murder penalized under R.A. 7659 and he is sentenced to suffer a single indivisible penalty of Reclusion Perpetua.
>
> The accused is ordered to indemnify the heirs of the deceased the sum of FIFTY THOUSAND PESOS (P50,000.00) plus actual damages proved in the sum of P14,500.00 consisting of the funeral expenses to include food and religious services.[14]

Hence, this appeal. Accused-appellant contends:

> - THAT THE HONORABLE TRIAL COURT GRAVELY ERRED IN GIVING RELIANCE AND TOO MUCH WEIGHT TO THE INCREDIBLE TESTIMONY OF CARMELITA NACARIO, WIFE OF THE DECEASED RODRIGO NACARIO.
>
> - THAT THE HONORABLE TRIAL COURT LIKEWISE GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND IRRECONCILABLE INCONSISTENT TESTIMONY OF LEOPOLDO NACARIO, FATHER OF THE DECEASED AND FATHER-IN-LAW OF THE ALLEGED EYEWITNESS CARMELITA NACARIO.
>
> - THAT THE TRIAL COURT LIKEWISE GRAVELY ERRED IN HOLDING THAT THE DEMEANOR OF THE ALLEGED EYEWITNESS IS BEYOND ANY CLOUD OF DOUBT.
>
> - THAT THE HONORABLE TRIAL COURT FURTHER GRAVELY ERRED IN HOLDING THAT WITNESS CARMELITA NACARIO WAS UNDER THE STATE OF SHOCK FROM MAY 19, 1995 TO JUNE 13, 1995.

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- THAT THE HONORABLE TRIAL COURT ALSO ERRED GRAVELY IN RELYING TOO MUCH ON THE WEAKNESS OF THE DEFENSE EVIDENCE, IT BEING MERELY AN ALIBI, AS ITS BASIS OF CONVICTION.

- THAT THE TRIAL COURT ALSO ERRED IN NOT HOLDING THAT THE ACCUSED'S MOTIVE IN THE ALLEGED KILLING WAS WANTING.

- THAT THE LOWER COURT FINALLY ERRED IN FINDING THE ACCUSED GUILTY AS CHARGED OF MURDER WHEN IN FACT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[15]

After reviewing the records of this case, we find no basis for reversing the trial court's decision.

First. Accused-appellant questions the credibility of prosecution eyewitness Carmelita Nacario. He contends that Carmelita did not really know the identity of her husband's assailant as shown by the fact that she admitted she asked the victim who had attacked him.[16]

This contention has no merit. Carmelita explained that she asked the victim who had hacked him to confirm her perception that accused-appellant was the assailant.[17] Carmelita's relationship to the victim of the crime makes her testimony more credible as it would be unnatural for her to accuse somebody other than the real culprit.[18]

Indeed, Carmelita was only seven meters away from her husband when the latter was attacked. The place where the crime was committed was illuminated by the moon.[19] According to the Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA), the moon at 12:30 a.m. of May 19, 1995 was 74% illuminated. This condition enabled Carmelita to recognize accused-appellant. Illumination provided by the moon and even by the stars is sufficient to identify the perpetrators of crimes.[20] Indeed, she knew accused-appellant, who was their kumpadre.[21] She heard the victim say, "Sika gayam, pare Goling," ("So it is you, pare Goling") as the victim recognized accused-appellant.[22]

Accused-appellant makes much of the fact that it was only on June 13, 1995 that Carmelita Nacario executed an affidavit identifying accused-appellant as the person who killed her husband on May 19, 1995. As found by the trial court, however, the delay was satisfactorily explained by the fact that Carmelita was in shock after witnessing the gruesome killing of her husband.[23] It has been held that delay in filing a criminal complaint does not impair the credibility of a witness if is satisfactorily explained.[24] Well-entrenched is the rule that the trial court's assessment of the credibility of the witnesses is entitled to great respect in the absence of any indication that it has overlooked, misapprehended, or misapplied certain facts or circumstances of weight or substance, which if properly considered, would alter the result of the case.[25] In this case, the trial court found the testimony of eyewitness Carmelita Nacario to be straightforward and persuasive insofar as identifying accused-appellant as the person who killed her husband.[26]

Second. Accused-appellant alleges that the trial court erred in giving credence to the testimony of Leopoldo Nacario, whom he claims was biased. He says that contrary to Leopoldo's testimony, Carmelita never told Leopoldo who her husband's assailant was on the day of the incident.

The records, however, show that Carmelita testified that she could not remember if she told Leopoldo, when the latter arrived at the crime scene, that accused-appellant was the one who had killed her husband.[27] On the other hand, the declaration of Leopoldo Nacario that he heard Carmelita Nacario telling SPO4 Navalta that accused-appellant was the assailant[28] is consistent with Carmelita's testimony.[29]

Third. The trial court correctly rejected the defense of alibi by accused-appellant. The testimonies of his witnesses, Norbie Carbon and Sofronio Mirador, cannot prevail over the positive identification by Carmelita

Nacario of accused-appellant as her husband's attacker.[30] Considering that alibis are easy to fabricate with the aid of relatives, friends, or even those not related to the accused, such a defense is generally regarded as weak and unreliable.[31] In this case, the defense of alibi was supported by nothing more than the testimonies of accused-appellant's brother, Sofronio Mirador, and Norbie Carbon, an employee of Pedro Mirador, another brother of accused-appellant. As this Court held: "Alibi becomes less plausible when it is corroborated by relatives and friends who may then not be impartial witnesses."[32] In contrast, the positive and categorical identification by the victim's wife of the accused-appellant as the perpetrator of the crime was buttressed by the fact that no ill motive to testify falsely can be ascribed on her. The defense of alibi must be rejected when the accused's identity is satisfactorily and categorically established by an eyewitness to the offense who has no ill motive to testify falsely against him.[33] Indeed, accused-appellant admitted that the victim's wife had no reason to testify falsely against him since they had a good relationship.[34] Settled is the rule that the testimony of a single eyewitness, if credible and positive, is sufficient to support a conviction even in a charge for murder.[35]

But while the victim's wife may have no reason to hate accused-appellant, the converse was not necessarily so. Carmelita Nacario testified that accused-appellant was angry at her and her husband because in 1994 the land that he was tilling was given by the landowner to her husband as the new tenant. Carmelita Nacario said that accused-appellant wanted another person to succeed him as tenant of the land.[36] Her claim was confirmed by a witness for the defense, Juan Birog, who testified that when accused-appellant surrendered the landholding, accused-appellant asked that his brother-in-law be allowed to succeed him as tenant of the land. However, the landowner wanted a new tenant sooner and offered the landholding to the victim.[37] Accused-appellant admitted that he in fact recommended his brother-in-law to be the next tenant.[38]

It is likewise to be noted that, according to Carmelita, when her husband recognized accused-appellant, her husband exclaimed: "Sika gayam, pare Goling."("So it is you, pare Goling.")[39] The statement was res gestae.[40] It was also a dying declaration made under the consciousness of an impending death, and is admissible as evidence of the cause and surrounding circumstances of such death.[41]

Fourth. Nor did the trial court err in finding accused-appellant guilty of murder on the ground that the killing was committed with treachery as alleged in the information. The information alleged conspiracy between accused-appellant, John Doe, and Peter Doe, with treachery and evident premeditation. Conspiracy was established by the prosecution as shown by the fact that accused-appellant, John Doe, and Peter Doe acted in concert.[42]

There is treachery when: (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.[43] In this case, the evidence shows that accused-appellant and his companions, both of whom are still at large, grabbed and dragged the victim and thereafter hacked him 13 times with a bolo. The victim, who was unarmed, had no opportunity to defend himself. While it is true that the autopsy report, as testified by Dr. Casiano, reveals that there was a frontal attack, such does not negate treachery. Treachery is still present even in a frontal attack when it is sudden and the victim is unarmed.[44] Thus, even if the victim is forewarned of the danger to his person, treachery may still be appreciated if it is carried out in a way which made it impossible for the victim to defend himself or to retaliate.[45]

However, evident premeditation cannot be appreciated as the prosecution failed to prove that the execution of the criminal act was preceded by thought and reflection upon the resolution to carry out the criminal intent within a span of time sufficient to arrive at a calm judgment.[46]

Based on the foregoing considerations, accused-appellant is guilty of murder and should suffer the penalty of

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reclusion perpetua. The trial court's award of P50,000.00 for civil indemnity is in line with the prevailing doctrine and no proof is needed since it is intended as indemnity for the death of the victim.[47] However, the award of P14,500.00 as actual damages should be reduced to P10,500.00 considering that only the latter amount, which covers funeral and burial expenses, is duly supported by receipts. The balance of P4,000.00 must be deleted as only a handwritten list of alleged expenses during the victim's wake was presented. In addition, consistent with this Court's rulings,[48] accused-appellant should be ordered to pay the additional amount of P50,000.00 as moral damages.

WHEREFORE, the decision of the Regional Trial Court, Branch 54, Alaminos, Pangasinan, is AFFIRMED with the MODIFICATION that the award of actual damages is reduced to P10,500.00 and accused-appellant is ordered to pay the heirs of Rodrigo Nacario the amount of P50,000.00 as moral damages in addition to the amount of P50,000.00 awarded as civil indemnity by the trial court.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Judge Jules A. Mejia.

[2] Records, p. 1.

[3] TSN (Carmelita Nacario), pp. 3-14, Feb. 13, 1997; TSN (Carmelita Nacario), pp. 4-15, March 21, 1997.

[4] TSN (Carmelita Nacario), pp. 12-14, Feb. 13, 1997.

[5] TSN (Leopoldo Nacario), pp. 3-11, June 3, 1997.

[6] TSN (SPO4 Arturo S. Navalta), pp. 3-5, Nov. 22, 1995; TSN (SPO4 Arturo S. Navalta), pp. 2-5, Jan. 24, 1996.

[7] TSN (Dr. Rodrigo Casiano, Jr.), pp. 4-8, May 7, 1997.

[8] Id., pp. 9-10.

[9] However, the direct testimony of the first witness, Dominador Marzan, was expunged due to his failure to appear in court for subsequent hearings.

[10] TSN (Gualberto Mirador), pp. 3-11, Jan. 21, 1998.

[11] TSN (Norbie Carbon), pp. 3-11, July 3, 1997; TSN (Sofronio Mirador), pp. 3-10, Sept. 25, 1997; TSN (Sofronio Mirador), pp. 5-6, Nov. 12, 1997.

[12] TSN (Juan Birog), pp. 3-4, Dec. 18, 1997.

[13] TSN (Rodrigo Cave), pp. 3-4, Feb. 25, 1998.

[14] Decision, p. 14; Records, p. 192.

[15] Brief for the Accused-Appellant, pp. 2-3.

[16] Id., p. 11.

[17] TSN (Carmelita Nacario), p. 5, March 21, 1997.

[18] People v. Villanueva, 302 SCRA 380 (1999).

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[19] TSN (Carmelita Nacario), p. 5, Feb. 13, 1997.

[20] People v. Lopez, 312 SCRA 684 (1999).

[21] TSN (Carmelita Nacario), pp. 3, 5, Feb. 13, 1997. Carmelita and the victim were principal sponsors in the wedding of accused-appellant's daughter.

[22] Id., p. 6; Exh. D.

[23] Decision, p. 14; Records, p. 192.

[24] People v. Mira, G.R. No. 123130, Oct. 2, 2000; People v. Brogas, 315 SCRA 216 (1999); People v. Patalin, 311 SCRA 186 (1999).

[25] People v. Basadre, G.R. No. 131851, Feb. 22, 2001; People v. Belga, G.R. No. 129769, Jan. 19, 2001; People v. Gulion, G.R. No. 141183, Jan. 18, 2001.

[26] Decision, p. 10; Records, p. 188.

[27] TSN (Carmelita Nacario), p. 11, March 21, 1997.

[28] TSN (Leopoldo Nacario), p. 10, June 3, 1997.

[29] TSN (Carmelita Nacario), pp. 4, 6, March 21, 1997.

[30] Decision, pp. 10-11; Records, pp. 188-189.

[31] People v. Gopio, G.R. No. 133925, Nov. 24, 2000; People v. Del Rosario, G.R. No. 134581, Oct. 26, 2000.

[32] People v. Agomo-o, 334 SCRA 279, 300 (2000) citing People v. Araneta, 300 SCRA 80, 95 (1998).

[33] People v. Enoja, 321 SCRA 7 (1999).

[34] TSN (Gualberto Mirador), pp. 6-7, Feb. 10, 1998.

[35] People v. Toyco, G.R. No. 138609, Jan. 17, 2001; People v. Pascual, 331 SCRA 252 (2000); People v. Pirame, 327 SCRA 552 (2000).

[36] TSN (Carmelita Nacario), pp. 16-17, March 21, 1997.

[37] TSN (Juan Birog), pp. 5-6, Dec. 18, 1997.

[38] TSN (Gualberto Mirador), pp. 7-8, Feb. 10, 1998.

[39] TSN (Carmelita Nacario), p. 6, Feb. 13, 1997.

[40] As held in People v. Pirame, 327 SCRA 552, 561-562 (2000):

> Res gestae refers to those exclamations and statements made by either the participants, victims, or spectators immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.

[41] Rules On Evidence, Rule 130, §37.

[42] People v. Birayon, G.R. No. 133787, Nov. 29, 2000.

[43] People v. Aquino, G.R. No. 130613, Oct. 5, 2000.

[44] People v. Biñas, 320 SCRA 22 (1999).

[45] People v. Jabian, G.R. No. 139213-14, April 4, 2001.

[46] People v. Ronas, G.R. Nos. 128088 & 146639, Jan. 31, 2001.

[47] People v. Bato, G.R. No. 127843, Dec. 15, 2000; People v. De Guzman, G.R. No. 137806, Dec. 14, 2000; People v. Balmoria, G.R. No. 134539, Nov. 15, 2000.

[48] People v. Ronas, G.R. Nos. 128088 & 146639, Jan. 31, 2001; People v. Galo, G.R. NO. 132025, Jan. 16, 2001; People v. Pablo, G.R. Nos. 120394-97, Jan. 16, 2001.

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