

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GALING ESMANA AND DAGA GINANG, ACCUSED-APPELLANTS.

G.R. No. 137035. November 23, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Branch 20, Tacurong, Sultan Kudarat, convicting Galing Esmana and Daga Ginang of murder, sentencing each of them to reclusion perpetua, and to pay the amount of fifty thousand (P50,000.00) pesos as indemnity, twenty thousand (P20,000.00) pesos as actual damages, thirty thousand (P30,000.00) pesos as moral damages, twenty thousand (P20,000.00) pesos as exemplary damages, and costs.

On September 19, 1995, First Assistant Provincial Prosecutor Emmanuel S. De Peralta of Sultan Kudarat filed with the Regional Trial Court, Tacurong, Sultan Kudarat an information charging Galing Esmana and Daga Ginang with murder, committed as follows:

"That in the evening of June 3, 1995, at Sitio Old Bantangan, Barangay Lasak, Municipality of Columbio, Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with firearms, conspiring, confederating together and mutually aiding one another, with intent to kill, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously, attack, assault and shot one ADELINO LASTIMOSO with the use of the aforementioned weapons, thereby inflicting gunshot wound upon the latter which directly caused his death.

"CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code of the Philippines, as amended by Republic Act 7659."[2]

At the arraignment on February 8, 1996, both accused pleaded not guilty.[3] Trial on the merits ensued.

The facts are as follows:

At around 7:00 in the evening of June 3, 1995, Rogelio Armada, a farmer and resident of Barangay Lasak, Columbio, Sultan Kudarat, was in his house together with Serianing Lastimoso and her husband, Adelino Lastimoso, and their first cousin.[4] They heard dogs barking outside the house, so Rogelio and Adelino decided to verify the cause of the disturbance. Rogelio took a flashlight and bolo with him. The two men went outside and descended from the house. When they reached the bottom of the stairs, they looked around. Adelino Lastimoso stood two meters ahead of Rogelio.

Suddenly, Rogelio heard gunfire. Thereafter, he realized that Adelino had been shot.[5] Rogelio beamed his flashlight at the source of the gunfire and illuminated the faces of two persons, accused Galing Esmana and Daga Ginang. They were about ten meters away and armed with long and short firearms.[6] Galing Esmana was in a crouching position and pointing his long firearm at Adelino.[7] When the two men saw the flashlight beamed on them, they immediately turned around and ran away.[8] Rogelio knew them personally because they were his

neighbors.

Rogelio called the wife of Adelino to come down from the house. Serianing emerged from the house and saw her wounded husband trying to climb the stairs. Adelino, with a gunshot wound on his abdomen, managed to reach the top of the stairs. Serianing met him and embraced him.

Adelino Lastimoso told his wife that Galing Esmana and Daga Ginang shot him.[9] He also told her that he had been shot in the abdomen and breast.[10] Serianing assisted Adelino inside the house and attended to him.

Meanwhile, Rogelio ran to the house of the barangay captain. It was 7:30 in the evening when Rogelio reached the house of Barangay Captain Beltran Arandia.[11] Arandia immediately gathered his officials and they proceeded to the place of the shooting.

Adelino Lastimoso was taken to the Poblacion, Columbio, Sultan Kudarat for medical treatment.

In the afternoon of the following day, June 4, 1995, Adelino Lastimoso reached Cotabato Regional Hospital, Cotabato City. Although Adelino was still alive when he was admitted in the hospital, he died a few hours later. Dr. Giovanni Deles, the surgical resident physician on duty at the time, concluded that the death of Adelino Lastimoso was due to cardio-respiratory arrest and infection in the blood stream of the victim caused by the gunshot wound in his abdomen.[12]

On June 29, 1995, Rogelio Armada and Serianing Lastimoso proceeded to the police station to give sworn statements regarding the incident.[13]

On August 7, 1995, both Galing Esmana and Daga Ginang were arrested in the basketball court of Barangay Lasak while playing basketball.[14]

Accused Galing Esmana and Daga Ginang denied any participation in the killing of Adelino Lastimoso.

Accused Daga Ginang alleged that on June 3, 1995, at around 6:00 in the evening, he was at home while his wife prepared supper. Because supper was not ready, he decided to go to the store of Lucito Admanda about forty meters away from his house. At the store, he bought three bottles of "shiok tong" and started drinking. He consumed one and a half bottles of "shiok tong" before his wife arrived to tell him to go home. Supper was ready, so Daga Ginang took the remaining one and a half bottles with him and left the store.[15]

Lucito Admanda, owner of the store, testified that it was around 6:40 in the evening when the wife of Daga Ginang entered the store to fetch her husband. The Ginang spouses left the store shortly afterwards.[16]

Accused Daga Ginang and his wife went home and ate dinner. Accused Daga Ginang admitted that he did not have a watch so he did not know what time it was when they finished eating dinner.[17] After dinner, he went to sleep.

Norma Ginang, wife of accused Daga Ginang, stated that she stayed home with her husband after dinner as he finished drinking one and half bottles of "shiok tong" which he bought from the store. Thereafter, they went to bed. Upon cross-examination, Norma admitted that she could not distinguish the different days, or remember what particular day it was. She said that her husband usually played basketball in the afternoon after work before heading to the store to drink.[18]

When accused Daga Ginang learned he was one of the suspects in the killing of Adelino Lastimoso, he did not do anything because he believed he was innocent.[19] He did not even know Adelino Lastimoso.[20] He was puzzled that he became a suspect when he did not have any misunderstanding with the deceased or with any other member of his family.[21] He denied all the allegations made by Rogelio Armada regarding his presence at the place of the

shooting.

On the other hand, accused Galing Esmana alleged that on June 3, 1995, at around 7:00 in the evening, he was at home in Old Bantangan, Lasak, Cumbio, Sultan Kudarat eating supper with his two (2) wives and his ten (10) children.

Dalawan Esmana, Galing's father, who lived six meters away, testified that before 7:00 in the evening of June 3, 1995, he saw Galing cutting firewood for cooking. Dalawan also saw his son cooking and eating dinner afterwards.[22] Dalawan admitted that he did not have a watch, and merely depended on the radio for the time of the day.[23]

After supper, accused Galing Esmana maintained that he went to sleep. He denied being in front of the farmhouse of Rogelio Armada that night. He did not know the reason why he would be one of the suspects in the killing of Adelino Lastimoso, claiming that he did not know the spouses Lastimoso very well because they were new in the place. When he learned that he was suspected of killing Adelino, he did not do anything or leave the place because he was innocent.[24]

On September 28, 1998, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, upon all the foregoing considerations, the Court finds the accused, Galing Esmana and Daga Ginang, guilty beyond reasonable doubt of the crime of MURDER. Accordingly, the Court hereby sentences each of the accused to suffer the penalty of Reclusion Perpetua: to indemnify, jointly and severally, the heirs of the deceased victim, Adelino Lastimoso:

- a) the amount of P50,000.00, as statutory indemnity to death;
- b) the total amount of P20,000.00, as actual damages, incurred as a result of the emergency treatment of the deceased victim at the Cotabato Regional Hospital, Cotabato City, as well as, for the death, wake and burial of the said deceased victim;
- c) the amount of P30,000.00, as moral damages, plus P20,000.00, by way of exemplary damages; and to pay the costs.

"IT IS SO ORDERED.

"Given this 28[th] day of September, 1998 at Tacurong, Sultan Kudarat, Philippines.

"GERMAN M. MALCAMPO

"Regional Trial Court Judge"[25]

Hence, this appeal.[26]

Accused-appellants contend that the evidence is insufficient to prove their guilt beyond reasonable doubt. In the alternative, they argued that they could not be convicted of murder, but merely of homicide, because there was no adequate proof that evident premeditation and treachery attended the commission of the crime.

The contention is untenable.

In resolving the issue of credibility of witnesses, we must yield to the oft-repeated rule that the trial court's evaluation of the testimony of a witness is accorded the highest respect because of its direct opportunity to observe the witness on the stand and to determine if he was telling the truth or not.[27] Prosecution witness Rogelio Armada's identification of accused-appellants as the persons responsible for the killing of Adelino Lastimoso is convincing to sustain accused-appellants' conviction. He saw accused-appellants run away from his

house, holding a gun each, immediately after a gunshot was heard. Rogelio could not have erred in the identity of accused-appellants since he was assisted by the illumination provided by his flashlight, and his familiarity with accused-appellants, who were his neighbors.

Moreover, prosecution eyewitness Rogelio Aramda had no ill-motive to impute the crime against the two accused-appellants. Where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[28]

On the other hand, we are unable to give credence to accused-appellants' alibi that they were at home when the murder was committed. In countless cases, we have declared that positive identification destroys the defense of alibi and renders it impotent,[29] especially where such identification is categorical and credible, as in this case.

Accused-appellants contend that the trial court erred in considering treachery and evident premeditation against them.

Indeed, circumstances qualifying a killing to murder must be proven as indubitably as the crime itself.[30] Evident premeditation, for instance, must be clearly proven, established beyond reasonable doubt and must be based on external acts which are evident, not merely suspected, and which indicate deliberate planning.[31] In this case, no evidence was presented to show how and when the plan to kill was hatched or the time which elapsed after the determination of the commission of the crime. Thus, evident premeditation cannot be considered.[32]

However, we find that treachery was present in the case at bar. Two conditions must be met in order to constitute treachery: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[33] In this case, the victim was unarmed, defenseless, and unaware of the fate awaiting him at the bottom of the stairs of the house of Rogelio. Adelino Lastimoso was shot without provocation and without an opportunity to defend himself. Thus, the treacherous nature of his killing is evident.

Considering the presence of the qualifying circumstance of treachery in the killing of Adelino Lastimoso, accused-appellants are liable for murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by R.A. No. 7659. Since neither mitigating nor aggravating circumstance is present in this case, the proper penalty in accordance with Article 63 (2) of the Revised Penal Code is reclusion perpetua.

We note that the trial court awarded exemplary damages. Exemplary damages are to be imposed when the crime was committed with one or more aggravating circumstances.[34] In the absence of any generic aggravating circumstance which attended the commission of the crime, the award of exemplary damages must be deleted for lack of basis.

WHEREFORE, the Court AFFIRMS the decision of the Regional Trial Court, Branch 20, Tacurong, Sultan Kudarat in Criminal Case No. 1454, finding accused Galing Esmana and Daga Ginang guilty of murder; qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code and sentencing each of them to reclusion perpetua, with the accessory penalties of the law, and to pay the amount of fifty thousand (P50,000.00) pesos as indemnity, twenty thousand (P20,000.00) pesos as actual damages, and thirty thousand (P30,000.00) pesos as moral damages. The award of exemplary damages is deleted. Costs against accused, in both instances.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

- [1] In Crim. Case No. 1454, Decision, dated September 28, 1998, Judge German M. Malcampo, presiding, Rollo, pp. 17-47.
- [2] Information, RTC Record, pp. 1-2, Rollo, pp. 5-6.
- [3] Order, RTC Record, pp. 34-35.
- [4] Testimony of Rogelio Armada, TSN, March 5, 1996, p. 15.
- [5] Ibid., p. 16.
- [6] Ibid.
- [7] Ibid., pp. 29-30.
- [8] Ibid., pp. 17-19.
- [9] Testimony of Serianing Lastimoso, TSN, March 7, 1996, pp. 7-8.
- [10] TSN, March 7, 1996, p. 8.
- [11] Testimony of Barangay Captain, TSN, April 2, 1996, p. 18.
- [12] Testimony of Dr. Giovanni Deves, TSN, March 5, 1996, pp. 4-11; Death Certificate, RTC Record, p. 6.
- [13] TSN, April 2, 1996, pp. 6-7.
- [14] TSN, April 2, 1996, p. 13.
- [15] Testimony of Daga Ginang, TSN, May 7, 1996, pp. 4-9.
- [16] Testimony of Lucito Andama, TSN, April 11, 1996, pp. 3-12.
- [17] Testimony of Daga Ginang, TSN, May 7, 1996, pp. 3-6.
- [18] TSN, May 2, 1996, p. 8.
- [19] TSN, May 7, 1996, p. 7.
- [20] Ibid., p. 6.
- [21] Ibid., p. 9.
- [22] Testimony of Dalawan Esmana, TSN, April 11, 1996, pp. 17-19.
- [23] TSN, April 11, 1996, pp. 19-20.
- [24] Testimony of Galing Esmana, TSN, May 8, 1996, pp. 2-9.
- [25] Judgment, Original Record, pp. 529-530.
- [26] RTC Record, p. 531, Rollo, p. 48.
- [27] People v. Vertucio, G. R. No. 130667, February 22, 2000; People v. Galam, G. R. No. 114740, February 15, 2000; People v. Andres, 296 SCRA 318 (1998).
- [28] People v. Manuel, 298 SCRA 184 (1998); People v. Alfeche, 294 SCRA 352 (1998).
- [29] People v. Pelen, 313 SCRA 687 (1999).

- [30] People v. Molina, 354 Phil. 746 (1998).
- [31] People v. Peña, 291 SCRA 606 (1998).
- [32] People v. Sambulan, 352 Phil. 336 (1998).
- [33] People v. Caisip, 352 Phil. 1058 (1998).
- [34] People v. Bautista, G. R. No. 131840, April 27, 2000.

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