PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ATTY. ROBERTO DIONISIO, DEFENDANT-APPELLANT.

G.R. No. 137676. September 27, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 7, Malolos, Bulacan in Criminal Case No. 134-M-96 finding a member of the Bar and two others guilty of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua.

On January 26, 1996, an information[2] for murder was filed against Atty. Roberto Dionisio, Nestor Gulperic and William Ramos, to wit:

> "That on or about the 25[th] day of January, 1996, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms and with intent to kill one Raul Borlongan, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and shoot with the said firearms they were then provided the said Raul Borlongan, hitting the latter on his head, thereby causing him serious physical injuries which directly caused his death.
>
> CONTRARY TO LAW."

Upon arraignment, all the accused entered a plea of not guilty. Thereafter, trial on the merits ensued.

The theory of the prosecution, as summarized by the Solicitor General in the People's brief,[3] is as follows:

> "On January 25, 1996, around 7:00 p.m., Jose Macapugay, Danny Pasco, Dennis Quilet and Raul Borlongan were drinking and conversing in the yard of the rented house of the Borlongans at Maunlad Homes, Caingin, Malolos, Bulacan (p. 5, TSN, February 20, 1996; p. 9, TSN, February 7, 1996). Suddenly, a white car stopped. Appellant, together with Nestor Gulperic and William Ramos alighted from said car. About ten (10) seconds thereafter, appellant entered the yard and unceremoniously fired at Raul hitting him on the head. Thereupon, Nestor and William successively fired at Raul hitting him on various parts of his body (pp.7-10, February 20, 1996).
>
> As the shooting was taking place, Dennis ran away while Jose and Danny remained seated (p.15, Ibid). Thereafter, appellant, together with Nestor and William, fled aboard the white car leaving Raul slumped on his chair (pp. 11 & 30, Ibid). Immediately, Jose and Danny brought Raul to the Bulacan Provincial Hospital where he was pronounced dead on arrival (p. 14, Ibid).
>
> About 11:00 o'clock p.m. of the same day, Dr. Dominic Aguda, NBI medico-legal officer, was asked by Rudy Fernandez, manager of St. Matthew Funeral Homes, located in Malolos, Bulacan, to conduct an autopsy on the cadaver of Raul (pp. 6-8, TSN, February 28, 1996).
>
> Dr. Aguda's examination yielded the following findings (Exhibit "C"), viz:

> `x x x Borlongan sustained three (3) gunshot wounds: one on the right upper cheek (Exhibit "D-1"), another on the left anterior chest (Exhibit "D-2 and the third at the left arm of the deceased (Exhibit "D-3"). He likewise prepared a second cohematic diagram (Exhibit "E") showing the parts of the body of the victim where two (2) bullets were recovered (Exhibit "E-3"). He recovered one of the bullets inside the cranium of the victim and it lacerated the brain, while the other bullet was found by him lodged inside the posterior thoracic cavity or thorax (TSN, February 28, 1996, p.22), after passing through and piercing the left auricle and the aorta of the victim's heart. Either of the said injuries is fatal (p. 23, Ibid). He also prepared the certificate of death of Raul C. Borlongan stating that the latter died as a result of various gunshot wounds that he sustained on January 25, 1996 (Exhibits "G" and "G-1"). He forwarded the two (2) bullets which he recovered from the body of Raul C. Borlongan to the NBI Firearms Investigation Division for ballistic examination as evidenced by a written request that he made for the purpose (Exhibit "F")."

The three accused denied participation in the slaying of Raul Borlongan and raised alibi as their defense.

Accused William Ramos testified that on the night of January 25, 1996, he and his wife Teresita were in the house of his mother at Tibagan, Bustos, Bulacan to get the money promised by her which is needed for the processing of his papers in going abroad. They left his mother's house approximately 7:30 that evening and arrived home in Alido Subdivision, Malolos, Bulacan around 9 o'clock. Early morning the next day, several policemen arrived in their house, informing him that he was one of the suspects in the murder of Raul Borlongan. Forthwith, they brought him to the Municipal Hall of Malolos. There Mayor Danilo Domingo inquired whether he was with Atty. Dionisio. He answered in the negative.[4] His wife, Teresita Ramos, corroborated his story.[5]

The other accused, Nestor Gulperic, declared on the witness stand that in the evening of January 25, 1996, the day the crime transpired, he was in his house at Longos, Calumpit, Bulacan recuperating from a kidney ailment which kept him bedridden for three consecutive days. The following morning, several policemen came and told him that Atty. Dionisio wanted to see him at the Municipal Hall. Despite his sickness which made walking difficult, he went with the policemen since Atty. Dionisio is his godfather. At the treasurer's office, Mayor Domingo arrived and told him to admit his guilt as Atty. Dionisio had already confessed having committed the crime. He vehemently professed his innocence, saying he could not even walk at the time the crime occurred.[6]

Accused Dionisio testified that on the night Raul Borlongan was killed, he was at the house of Sotero Santiago in Ligas, Malolos, Bulacan, which is ten to twelve kilometers away from the crime scene. He arrived at Ligas between 5:00 to 5:30 o'clock in the afternoon of January 25, 1996 to visit his friends and political leaders. A drinking session started when Milling Eugenio, Angela Natividad, Manoling Alcoriza, Barangay Captain Pabling Santiago and others arrived. Between 9:00 to 9:30 o'clock that evening, he left Sotero's house accompanied by some friends to Sta. Rita, Bulacan where he boarded a jeepney going home to Alido Subdivision, Tabang, Guiguinto, Bulacan. He arrived in their house at about 10:30 that night.[7]

Sotero Santiago and Flaviano Santiago corroborated Dionisio's testimony. According to them, from 5:00 or 6:00 o'clock in the afternoon until 9:00 or 9:30 o'clock in the evening of January 25, 1996, Atty. Dionisio was engaged in a drinking spree with them in Ligas, Malolos, Bulacan.[8]

After trial, judgment[9] was rendered by the lower court, the dispositive portion of which reads:

> "WHEREFORE, the court finds the three accused, Atty. Roberto S. Dionisio, Nestor G. Gulperic and William G. Ramos, guilty beyond reasonable doubt as principals by direct participation of the crime of murder, qualified by treachery, as defined in and penalized under Article 248 of the Revised Penal Code, and hereby sentences each of them to suffer the penalty of reclusion perpetua, and to indemnify the heirs of their victim, Raul Borlongan, jointly and severally, the sum of P50,000.00, and the further sum of P85,000.00 representing funeral and other expenses incidental thereto.

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SO ORDERED."

Hence, this appeal, but only by Atty. Roberto Dionisio, ascribing to the trial court the following errors:

- "THE LOWER COURT ERRED IN NOT DISMISSING THE INSTANT CASE AND RENDERING A VERDICT OF ACQUITTAL IN FAVOR OF THE ACCUSED-APPELLANTS.

- THE TRIAL COURT ERRED IN CITING THE TESTIMONY OF SPO4 ALEX LEONCIO OF THE MALOLOS PNP AS LEAD WITNESS TO JUSTIFY A WRONGFUL DECISION.

- THE TRIAL COURT ERRED IN THE PROMULGATION OF JUDGMENT WITHOUT NOTICE TO APPELLANTS, ESPECIALLY ATTY. ROBERTO S. DIONISIO, COUNSEL FOR HIMSELF AND FOR THE OTHER CO-ACCUSED AND WITHOUT FIRST RESOLVING THE MOTION TO REOPEN TRIAL OF THE ABOVE CASE.

- THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING SPECIAL CIRCUMSTANCE OF THE CASE ON THE BASIS OF WHICH IT CAN BE CONCLUDED THAT OTHER PARTY IS BEHIND THE COMMISSION OF THE CRIME.

- THE TRIAL COURT ERRED IN DECLARING INADMISSIBLE RELEVANT DOCUMENTARY EVIDENCE OF THE DEFENSE, WHICH WERE PROPERLY OFFERED BY APPELLANT.

- THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF JOSE MACAPUGAY AND DANILO PASCO AS EVIDENCE TO THE IDENTITIES OF THE ACCUSED AS THE ALLEGED PERPETRATORS OF THE CRIME.

- THE TRIAL COURT ERRED IN FAILING TO ACKNOWLEDGE THAT DIRTY POLITICS INTRUDED IN THE ABOVE CASE."[10]

After a meticulous assessment of the evidence on record, we find no compelling reason to deviate from the trial court's finding that appellant, together with his co-accused, are responsible for the death of Raul Borlongan.

Appellant claims that when the prosecution witnesses, Jose Macapugay and Danilo Pasco, reported the incident to the police station after bringing the victim to the hospital or three (3) hours from the commission of the crime, they could not give the names of the assailants. According to appellant, such failure on their part casts doubt on their credibility. Suffice it to say that delay in revealing the identity of the malefactors does not necessarily taint the credibility of witnesses,[11] especially if the delay has been sufficiently explained.[12] In one case, even the failure of witnesses to volunteer information to law enforcement officers did not impair their credibility.[13] Macapugay and Pasco explained that they failed to identify the perpetrators of the crime at that time because of fear. It must be emphasized that appellant is not an ordinary citizen. He is a lawyer and a former vice-mayor of Malolos. Naturally, considering his influence and standing in the community, those witnesses would hesitate to point to him as the author of the crime. At any rate, Macapugay and Pasco were able to identify appellant and his companions during the hearing, thus:

"Atty. Faylona:

q- Mr. Macapugay, where were you on the evening of January 2, 1996 at about 7:30 in the evening?

Witness:

a- In the house being rented by Raul Borlongan, sir.

q- Why were you there?

a- We were having drinking spree while having conversation.

q- With whom were you having a conversation?

a- I was having a conversation with Raul Borlongan and Danny Pasco and Dennis Quilet.

Court:

q- Were they all drinking?

a- Yes, Your Honor.

q- What were you drinking?

a- Liquor, Your Honor.

q- When did you start?

a- About 7:00 o'clock.

q- What was the occasion?

a- None, Your Honor.

Atty. Faylona:

q- Was there any unusual incident that transpired during that time?

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a- Yes, sir, there was.

q- Will you kindly relate what that unusual incident was?

Witness:

a- About the shooting incident with respect to Raul Borlongan.

q- Who shot Raul Borlongan?

a- It was Atty. Dionisio and his companions, sir.

q- Who were these companions of his?

(Witness pointing to person inside the courtroom which (sic) he does not know the name.)

Court:

You point.

(Witness pointing to a person in white shirt who when asked gave the name of William Ramos. Witness pointing to another man in stripes shirt who when asked gave the name Nestor Gulperic.)"[14]

Danilo Pasco

"Fiscal:

q-

... 7:30 p.m. do you recall any unusual incident that happened?

a-

Yes, sir.

q-

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Tell us, Mr. Witness, what was that unusual incident?

a-

About the shooting of Raul Borlongan.

q-

Now, Mr. Witness, how that "pamamaril" of Raul Borlongan happened?

a-

A car stopped.

q-

And after that car stopped, what happened Mr. Witness?

a-

Someone alighted from the car.

q-

Who is that person, if you know, Mr. Witness?

a-

It was Atty. Dionisio, sir.

q-

Who else, Mr. Witness, if any?

a-

The other two.

q-

And do you know the names of the other two?

a-

I do not know, sir.

Fiscal:

q-

Now, Mr. Witness, if Atty. Dionisio and the other two which (sic) you could not name is (sic) inside the courtroom, will you be able to identify him (sic)?

a-

Yes, sir.

q-

Will you please look around inside this courtroom and point to us Atty. Dionisio first.

(Witness pointing to a person in blue "barong" who gave the name of Atty. Dionisio.)

q-

Now, these persons which (sic) you could not name as you claim if they are inside the courtroom will you be able to identify them?

a-

Yes, sir.

q-

Will please look around and point to us these persons.

(Witness pointing to a person in white shirt who when asked gave the name of William Ramos.)

q-

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> How about the other, Mr. Witness?
>
> (Witness pointing to a man in avocado shirt who gave the name Nestor Gulperic.)"[15]

Appellant also contends that the testimony of Dr. Dominic Aguda of the NBI Medico-Legal Division, who conducted an autopsy on the cadaver of Raul Borlongan, contradicts the testimony of Danilo Pasco. While Dr. Aguda declared that the distance between the victim and the assailants was more than three (3) feet, however, Pasco testified that the distance was only one foot. Moreover, the testimony of Dr. Aguda that the bullet extracted from the victim came from a 9-mm gun runs counter to Macapugay's statement that the assailant used a "de bola" revolver.

Time and again, this Court has ruled that minor discrepancies and inconsistencies in the testimonies of the witnesses are but natural and would not impair their credibility.[16] In fact, an eyewitness to a brutal murder cannot be expected to recall the precise details of the unpleasant incident which is usually executed in the blink of an eye.[17] Hence, whether the distance of the assailants from the victim was more than three feet or one foot or whether the gun was a "9-mm" one or a "de bola" revolver is inconsequential and does not detract from the established fact that appellant and the other two accused killed Raul Borlongan on January 25, 1996.

As aptly observed by the trial court:

> "The accounts given by Macapugay and Pasco on how the three accused alighted from a car and fired their guns in rapid succession at Borlongan were clear, vivid and were in complete accord with each other and sufficient to prove the guilt of the three accused herein beyond moral certainty as to overthrow the presumption of innocence in their favor."[18]

The credibility of Macapugay and Pasco is further enhanced by the fact that no ill motive was shown on their part when they testified against appellant and his co-accused. This Court has held that when there is no evidence to indicate that the witnesses for the prosecution were moved by improper motive, the presumption is that such witnesses were not so moved and that their testimonies are entitled to full faith and credit.[19]

Well-entrenched is the doctrine that findings of the trial court as to the credibility of witnesses are accorded great weight, even finality, on appeal, unless the trial court has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case. Having had the opportunity to personally observe the witnesses' demeanor and manner of testifying, the trial judge is in a better position to pass judgment on their credibility.[20] Here, no circumstance exists which warrants a different finding.

As to the other errors raised by the appellant, the same deserve scant consideration. It must be noted that appellant was incarcerated and was under the custody of the Provincial Warden of Bulacan. Thus, we are convinced that the trial court sent a notice of the promulgation of judgment to appellant through the warden. This is shown by the fact that appellant was present during the promulgation. As to the testimony of SPO4 Alex Leoncio which was allegedly deemed expunged from the records per agreement of the parties, we believe that even if the trial court excluded it from the mass of evidence for the prosecution, still appellant and his co-accused could be convicted. The testimonies of Macapugay, Pasco and Dr. Aguda are sufficient to prove their guilt beyond reasonable doubt.

Appellant further argues that had a paraffin test been conducted, the results could have sustained his acquittal. We are not persuaded. The absence of nitrates will not conclusively prove that appellant did not discharge a firearm at the time of the murder since it is possible that he used gloves in firing the gun or thoroughly washed his hands

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thereafter. In People vs. Legaspi,[21] People vs. Acuram[22] and People vs. Pascual,[23] we reiterated the rule that negative findings of the paraffin test do not conclusively show that the accused has not fired a gun.

Finally, appellant's defense of alibi must fail for it is inherently weak and easily fabricated,[24] particularly when it is corroborated by relatives and friends of the accused,[25] as in this case. For alibi to prosper, the requirements of time and place must be strictly met; that is, the accused must not only prove his presence at another place at the time of the commission of the offense but must also demonstrate that it would be physically impossible for him to be at the scene of the crime at that time.[26] In the present case, appellant himself admitted that he was only ten to twelve kilometers[27] away from the crime scene which is accessible, not only by means of private vehicles, but also by public transport, such as a jeepney[28] or tricycle.[29] Thus, it was not physically impossible for him to be at Caingin, Malolos, Bulacan where the killing took place. Such a short distance, as we held in People vs. Almacin[30] and Marco vs. Court of Appeals,[31] does not satisfy the physical impossibility requirement of alibi.

More importantly, appellant's alibi cannot overcome the positive identification[32] made by Macapugay and Pasco that he (appellant) and his co-accused shot the victim.

The trial court's appreciation of the qualifying circumstances of treachery and abuse of superior strength, alleged in the information, is duly supported by the records. Treachery was present when appellant and his co-accused shot the victim suddenly and swiftly, giving him no opportunity for self-defense or retaliation.[33] Moreover, they took advantage of their superior strength when assaulted the victim who was unarmed and could not defend himself.[34] However, abuse of superior strength is absorbed in treachery.[35] The killing, being qualified by treachery, is murder. There being no aggravating or mitigating circumstance, the trial court correctly imposed the penalty of reclusion perpetua.[36]

We will not disturb the trial court's award to the heirs of the Raul Borlongan the sums of P50,000.00 as civil indemnity, without need of further proof other than the death of the victim,[37] as well as P85,000.00 as actual damages representing funeral expenses.[38]

Since the qualifying aggravating circumstance of treachery attended the commission of the crime, the Court also awards exemplary damages pursuant to Article 2230 of the Civil Code. This is in accord with our decision in People vs. Catubig[39] where we held that with respect to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages, which is now fixed at P25,000.00.

WHEREFORE, the decision of the court a quo is hereby AFFIRMED, with MODIFICATION in the sense that appellant Roberto Dionisio is also ordered to pay the heirs of the victim the sum of Twenty Five Thousand Pesos (P25,000.00) as exemplary damages.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.

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[1] Penned by Judge Danilo A. Manalastas dated October 21, 1998.

[2] Records, Volume I, p. 1.

[3] Brief for the Appellee, pp. 2-4.

[4] TSN, April 30, 1998, pp. 5-7.

[5] TSN, April 21, 1998, pp. 3-7.

[6] TSN, May 14, 1998, pp. 6-10.

[7] TSN, June 25,1998, pp. 4-9.

[8] TSN, June 16, 1998, pp. 6-10 (Sotero Santiago); TSN, July 8, 1998, pp. 4-5 (Flaviano Santiago).

[9] Rollo, p. 26.

[10] Brief for Accused-Appellant, pp. 4-28.

[11] People vs. Merino, 299 SCRA 321 (1999); People vs. Aldoviso, 309 SCRA 1 (1999).

[12] People vs. Bautista, 308 SCRA 620 (1999); People vs. Batidor, 303 SCRA 335 (1999).

[13] People vs. Guillermo, 302 SCRA 257 (1999).

[14] TSN, February 20, 1996, pp. 5-6.

[15] TSN, February 28, 1996, pp. 40-41.

[16] People vs. Barera, 262 SCRA 207 (1996).

[17] People vs. Bihison, 308 SCRA 510 (1999).

[18] Decision, p. 14.

[19] People vs. Hernandez, 304 SCRA 186 (1999); People vs. Nava, 306 SCRA 15 (1999); People vs. Balad, 274 SCRA 695 (1997); People vs. Pija, 245 SCRA 80 (1995); People vs. Matildo, 230 SCRA 635 (1994).

[20] People vs. Plazo, G.R. 120547, January 29, 2001.

[21] 331 SCRA 95 (2000).

[22] 331 SCRA 129 (2000).

[23] 331 SCRA 252 (2000).

[24] People vs. Andales, 312 SCRA 738 (1999).

[25] People vs. Enoja, 321 SCRA 7 (1999).

[26] People vs. Almacin, 303 SCRA 399, 410 (1999).

[27] TSN, June 25, 1998, p. 5.

[28] Ibid, p. 8.

[29] Ibid, pp. 6, 9.

[30] supra.

[31] 273 SCRA 276, 285 (1997).

[32] People vs. Deang, et al., G.R. No 128045, August 24, 2000.

[33] People vs. Aglipa, 337 SCRA 181 (2000).

[34] People vs. Mosquerra, G. R. No. 129209, August 9, 2001.

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[35] People vs. Centeno, 172 SCRA 607, 612 (1989).

[36] Art. 248, Revised Penal Code.

[37] People vs. Mosquerra, supra.

[38] TSN, September 9, 1996, p. 14.

[39] G.R. No. 137842, August 23, 2001.

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