# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERSON ACOJEDO Y EMIA, ACCUSED-APPELLANT.

*G.R. No. 138661. November 19, 2001*

Ponente: PARDO, J.

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**PARDO, J.:**

The case is an appeal from the decision[1] of the Regional Trial Court, Dumaguete City, Branch 44, finding accused Jerson Acojedo y Emia[2] guilty beyond reasonable doubt of murder, and sentencing him to reclusion perpetua and to indemnify the heirs of the victim Joel Garde in the sum of P50,000.00.

On September 28, 1993, 3[rd] assistant provincial prosecutor of Negros Oriental Romeo T. Katada filed with the Regional Trial Court, Dumaguete City an information[3] charging accused Jerson Acojedo y Emia with murder, reading as follows:

> "That at about one o'clock in the early dawn of May 4, 1993, at sitio Balansini, Barangay Humay-humay, Guihulngan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and by means of treachery and evident premeditation did then and there willfully, unlawfully and feloniously assault, attack and stab with the use of a sharp bladed weapon, one Joel Garde, inflicting on the victim the following injuries, to wit:
>
> "1. Wound, stabbed, right back, at the para-vertebral line at the level of the mid-scapular area - T & T;
>
> Entrance: wound, stabbed, 1 ½ inch long by ½ inch width penetrating the chest including the other vital organs;
>
> Exit: ½ inch long by 1/3 inch width, front medial to right areola;
>
> "2. Wound, stabbed, right back upper scapula, 1 inch long by 3/6 inch width, superficial;
>
> "which injuries caused the death of the victim soon thereafter.
>
> "Contrary to Article 248 of the Revised Penal Code.
>
> "Dumaguete City, Philippines, September 22, 1993."

On January 27, 1994, the trial court arraigned the accused.[4] He pleaded not guilty.[5] Trial ensued.

In the evening of May 3, 1994, there was a dance in sitio Balansini, Barangay Humay-humay, Guihulngan, Negros Oriental to culminate its fiesta celebration. Joel Garde, together with his wife Mary Garde and son Joel Garde, Jr., attended the dance.[6]

At around one o'clock dawn of May 4, 1993, Joel went out of the dance hall to urinate in a nearby area, about five (5) meters away.[7] Mary, who was near Joel because she was asking him to go home already, saw the accused Jerson Acojedo following him from the dance floor to the place where he urinated. While Joel was urinating, Jerson stabbed him twice at the back with a hunting knife. Joel fell to the ground. When Mary shouted for help, Jerson ran away. The two stab wounds caused Joel's instantaneous death.[8]

Mary had known accused Jerson for a long time because they lived in adjoining barangays. She positively identified Jerson as her husband's assailant.[9] Mary also testified that on April 8, 1993, her husband and Jerson had an altercation regarding money Joel had in his possession belonging to somebody else that Jerson wanted to collect. Joel refused to give the money to Jerson. This infuriated Jerson.[10]

The prosecution presented Dr. Fe L. Mercado, physician at the Guihulngan District Hospital, who conducted a post mortem examination on the body of Joel Garde. As per Medico Legal Report,[11] the victim sustained one penetrating wound and one superficial wound at the back. The first one was fatal, which caused his death.[12]

Accused Jerson, who lived in Barangay Planas, adjoining barangay of Humay-humay, put up the defense of denial and alibi. He claimed that he had been plowing his farm the whole day of May 3, 1993, and retired early in the evening to prepare for the next day's toil. He never left his house after he ate supper.[13] His mother, Dalia Acojedo, corroborated his testimony and testified that she saw her son, accused Jerson, fast asleep in their house in the middle of the night the incident took place.[14]

Accused Jerson relies heavily on the affidavit of desistance[15] executed by Mary Garde, wife of the victim. The affidavit stated that Mary Garde was no longer interested in pursuing the case against accused Jerson because she was not certain as to the identity of her husband's assailant. The barangay captain of Humay-humay, Dorie Talledo, testified that Mary Garde failed to appear in court despite subpoena several times on account of her uncertainty as to accused Jerson's identity.[16]

After due trial, on March 26, 1999, the trial court promulgated a decision, the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, accused JERSON ACOJEDO is hereby found GUILTY beyond reasonable doubt of the crime of murder and the Court hereby imposes upon him the penalty of reclusion perpetua. Accused shall indemnify the heirs of the victim, Joel Garde in the sum of Fifty Thousand Pesos (P50,000.00).
>
> "SO ORDERED.
>
> "GIVEN this 16[th] day of March, 1999 in the City of Dumaguete, Philippines.
>
> "(Sgd.) ALVIN L. TAN
> "Judge"[17]

Hence, this appeal.[18]

In his brief, accused-appellant claims that the trial court erred in giving full weight and credence to the testimony of prosecution witnesses and in disregarding his defense of denial and alibi.[19]

We find the appeal without merit.

Findings of facts of the trial court are generally accorded weight and are not disturbed on appeal unless substantial facts had been overlooked which, if considered, would materially affect the result of the case.[20]

In the case at bar, the lower court found the testimonies of the prosecution witnesses credible and straightforward. They positively identified accused-appellant Jerson Acojedo.[21] In an attempt to discredit prosecution witness Mary Garde, the defense presented her as a hostile witness. Mary Garde's testimony as a hostile witness[22] only served to bolster the prosecution's evidence, thus:

> Q:
>
> Mrs. Garde, this affidavit the thumbmark of which has been identified by you is written in English, can you tell


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us what is your educational attainment?

A:

I have not gone to school. I am uneducated.

Q:

You have not ever gone to grade one?

A:

I have gone to grade one.

xxx xxx xxx

Q:

Now, considering being in grade one, have you been taught in English, read and write English?

A:

No.

Q:

This affidavit of desistance which you have identified the thumbmark, is in English, can you tell us if you understood the affidavit of desistance?

A:

I did not understand.

Q:

Why, if you did not understand the contents of this affidavit, why did you put your thumbmark.

A:

Because I was just forced.

Court:

Who forced you? You were forced by whom?

A:

By the mother of the accused.

Q:

Do you mean to say, since you were forced you just sign the affidavit of desistance without understanding it?

A:

Yes.

Q:

Do you know the effect of placing your thumbmark in your affidavit?

A:

I do not know.

Q:

You did not know also that this affidavit contains as part thereof that it was not Jerson Acojedo who killed your husband?

A:

I did not know.

Q;

Why, what is the real truth?

A:

That Jerson Acojedo really killed my husband because I was present at the time of the incident.

Lucia Tangeres, municipal clerk of court, and witness for the defense, testified that she translated the contents of the affidavit into the dialect, and after which, Mary Garde, accompanied by accused-appellant's mother, affixed her thumb mark over the same.[23] However, she also stated that when she asked Mary Garde why she executed the affidavit, the latter replied that it was because of poverty and the distance from her place to the court in the poblacion.[24] An affidavit of desistance is regarded with suspicion as it can be easily obtained through intimidation,[25] and attains no probative value in light of the affiant's testimony to the contrary.

Accused-appellant Jerson's and his mother's conflicting testimonies further weaken his defense of alibi. Accused-appellant Jerson testified that it would take two (2) hours to walk from his place to where the dance was held.[26] His mother, on the other hand, testified that it would take only thirty (30) minutes to go to barangay Humay-humay.[27]

The testimony of defense witness Dorie Talledo, barangay captain of Humay-humay,[28] has been discredited inasmuch as it was established that she is the aunt of accused-appellant Jerson Acojedo.[29] Relationship per se does not affect the credibility of a witness. However, in the case at bar, Dorie Talledo's relationship with accused-appellant, taken together with the self-serving and conflicting testimonies of accused-appellant and his mother, assumes importance. "Indeed, blood relatives tend to be naturally protective of each other and are not above giving false testimonies in favor of one another, especially a relative in danger of being convicted."[30]


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Lastly, we agree with the trial court that treachery attended the commission of the crime. There is overwhelming evidence to show that the victim, Joel Garde, was totally unaware of the attack and was defenseless when he was stabbed at the back. Thus:[31]

Q:

May I know from you which side or part of the dance hall was your husband being stabbed by Jerson Acojedo?

A:

Quite a distance from the dance hall because he had to urinate, then he was stabbed at the back.

Q:

Could you demonstrate or show to this Court that relative position of your husband to Jerson Acojedo when he was being stabbed?

A:

Jerson Acojedo was facing the back of my husband, the first stabbed it hit at the back and pulled out his weapon again and stabbed my husband the second time and that's the time my husband fell down to the ground.

Q:

You mean, the back of your husband was facing Jerson Acojedo at the time he was hacked.

A:

Yes.

Q:

You said your husband fell to the ground after being stabbed by Jerson Acojedo two times. You being the wife, what was your reaction, if any?

A:

I shouted for help and told them help because my husband fell down.

Q:

How about Jerson Acojedo what did he do after stabbing your husband two times?

A:

Jerson Acojedo ran away.

The victim's son, Joel Garde, Jr., then fourteen (14) years old, testified[32] in this wise:

Q:


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You mean your father was stabbed to death by Jerson Acojedo on May 4, 1993?

A:

Yes.

Q:

He was stabbed at about 1:00 o'clock early morning?

A:

Yes.

Q:

Can you tell the Honorable Court when he was stabbed by Jerson Acojedo?

A:

When he was urinating.

INTERPRETER: The witness is demonstrating how his father was stabbed by Jerson Acojedo.

Q:

Where was Jerson Acojedo when he stabbed your father, was he in front of your father or at the back of your father?

A:

At the back.

Q:

Where were you when your father was stabbed by Jerson Acojedo?

A:

I was near him.

Q:

At the back of your father?

A:

Yes.

Q:

More or less, how far were you at the back of your father?

A:

About one meter.

xxx xxx xxx

Q:

Now, after your father was stabbed by Jerson Acojedo, did he say something?

A:

No, he immediately died after being stabbed.

xxx xxx xxx

Q:

After Jerson Acojedo stabbed your father and your father died, what did Jerson Acojedo do?

A:

He ran away after stabbing.

Q:

Could you tell us how long after was Jerson Acojedo arrested by the authorities?

A:

It took long because he fled.

Q;

More or less how long?

A:

More or less three months.

The sudden and unexpected attack on an unsuspecting victim constitute treachery.[33]


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We rule out, however, the presence of the aggravating circumstance of evident premeditation. "To establish evident premeditation, there must be proof of (a) the time when the accused determined to commit the crime; (b) an overt act manifestly indicating that the accused clung to his determination to commit the crime; and, (c) the lapse of a sufficient period of time between the determination and the execution of the crime, to allow the accused an opportunity to reflect upon the consequences of the act."[34] The evidence is not sufficient to prove that all these elements attended the commission of the crime.

The trial court failed to award moral damages to the heirs of the victim. Moral damages may be awarded in a murder case to the heirs of the victim without need of proof of moral suffering.[35]

WHEREFORE, the Court AFFIRMS with modificiation the decision of the Regional Trial Court, Dumaguete City, Branch 44, in Criminal Case No. 934-G, sentencing accused-appellant Jerson Acojedo y Emia to reclusion perpetua and to indemnify the heirs of the victim in the amount of P50,000.00.

In addition, he shall pay the heirs of the victim P50,000.00 as moral damages, and costs.

**SO ORDERED.**

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

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[1] In Criminal Case No. 934-G, decision dated March 16, 1999. Judge Alvin L. Tan, presiding (Original Record, pp. 242-251; Rollo, pp. 18-29).

[2] Accused signed his name as "Jelson Acojido" in the subpoenas served on him (Original Record, pp. 21, 79, 94, 111, 127, 141).

[3] Original Record, pp. 1-2.

[4] Original Record, p. 31

[5] Ibid., p. 32.

[6] TSN, March 24, 1994, p. 6

[7] TSN, October 6, 1994, p. 11.

[8] Ibid., pp. 18-21.

[9] TSN, March 24, 1994, p. 5; TSN, October 6, 1994, pp. 6-9.

[10] TSN, March 24, 1994, pp. 8-9.

[11] Exh. "B", Original Record, p. 6.

[12] TSN, December 2, 1994, pp. 8-11.

[13] TSN, August 2, 1996, pp. 7-11.

[14] TSN, September 9, 1998, pp. 5-6.

[15] Exh. "1", Original Record, p. 239.

[16] Exh. "2", Original Record, p. 154; TSN, September 23, 1996, p. 3.

[17] Original Record, pp. 242-251; Rollo, pp. 18-29.


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[18] Original Record, p. 252; Rollo, p. 30. On November 22, 1999, we accepted the appeal (Rollo, p. 32).

[19] Appellant's Brief, Rollo, pp. 48-65.

[20] People vs. Bahatan, 349 Phil. 205, 218 (1998), citing People vs. Villas, 343 Phil. 166, 180 (1997).

[21] TSN, January 31, 1995, p. 3.

[22] TSN, September 23, 1996, pp. 7-8 (emphasis supplied).

[23] TSN, December 5, 1995, pp. 7-8, 12.

[24] TSN, December 5, 1995, p. 11.

[25] People vs. Castillo, G. R. No. 139339, January 19, 2001.

[26] TSN, August 2, 1996, p. 6.

[27] TSN, September 9, 1998, p. 10.

[28] TSN, May 22, 1998, p. 2.

[29] TSN, September 23, 1996, p. 9.

[30] People vs. Cortez, G. R. No. 131924, December 26, 2000.

[31] TSN, March 24, 1994, pp. 7-8 (emphasis supplied).

[32] TSN, January 31, 1995, pp. 4-7 (emphasis supplied).

[33] People vs. Maderas, G. R. No. 138975, January 29, 2001; People vs. Cachola, G. R. No. 135047, March 16, 2001; People vs. Sarmiento, G. R. No. 126145, April 30, 2001.

[34] People vs. Cortez, G. R. No. 131924, December 26, 2000, citing People vs. Francisco, 315 SCRA 114, 127 [1999]; People vs. Quinao, 336 Phil. 475, 492 [1997].

[35] People vs. Sullano, 331 SCRA 649, 662 [2000].


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