

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMMY ZACARIAS (AT LARGE); RODEL ZACARIAS (AT LARGE); WALLY TICALO; RENE MATUGAS (ACQUITTED), ACCUSED,

G.R. No. 138990. January 30, 2002

Ponente: VITUG, J.

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VITUG, J.:

Wally Ticalo was convicted of murder by the Regional Trial Court, Branch 35, of Ormoc City, and was sentenced to serve the penalty of reclusion perpetua for the death of Christopher Sacay. He was charged, together with three other persons, in an indictment that read:

"The undersigned City Prosecutor, Ormoc City, accuses SAMMY ZACARIAS, RODEL ZACARIAS, WALLY TICALO and RENE MATUGAS of the crime of MURDER, committed as follows:

"That on or about the 25th day of June 1993, at around 12:30 o'clock in the morning, at Purok 7, Brgy. Linao, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused SAMMY ZACARIAS, RODEL ZACARIAS, WALLY TICALO and RENE MATUGAS, conspiring together, confederating with and mutually helping and aiding one another, with treachery, evident premeditation and intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, stab, hack, and wound the person of the victim herein CHRISTOPHER SACAY, without giving the latter sufficient time to defend himself, thereby inflicting upon said CHRISTOPHER SACAY mortal wounds which caused his death. Post Mortem Report is hereto attached.

"In Violation of Article 248, Revised Penal Code."[1]

Rene Matugas and Wally Ticalo were arrested and put to trial; the other two accused remained at large. Matugas, a brother-in-law of Wally Ticalo, was the first to be taken into custody but, following his trial, he was acquitted, on 11 April 1994, by the Regional Trial Court of Ormoc City (Branch 12) for insufficiency of evidence. Ticalo was apprehended on 9 April 1997, arraigned thereafter, and then tried under the aforequoted information. On 03 February 1999, he was found guilty. In its decision, the court a quo concluded:

"Wherefore, all the foregoing considered, the Court finds the accused Wally Ticalo guilty beyond reasonable doubt of the crime of murder and hereby sentences him to imprisonment of forty (40) years reclusion perpetua and to pay the aggrieved party the sum of P50,000.00 as indemnity.

"If the accused is a detainee, the period of his detention shall be credited to him in full if he abides in writing by the terms for convicted prisoners, otherwise, for only four-fifths (4/5) thereof."[2]

The conviction of Ticalo was anchored principally on the eyewitness account of Sergio Pelicano, Sr. On direct examination, Pelicano testified that on 25 June 1993, about 12:30 A.M., while waiting for his son to come home, he heard a commotion just outside his abode. He opened a window overlooking the road and saw a teen-aged boy being chased by Sammy Zacarias and Rodel Zacarias. The boy, Christopher Sacay, was the son of his long-time friend Alejandro Sacay. Seconds later, his two other neighbors, Wally Ticalo and Rene Matugas, also went after

the teen-ager who was by then heading towards the Seventh Day Adventist Church, about 20 meters from Pelicano's house. Pelicano rushed down from his house and followed the group until he was only about 10 meters away from where the four men finally caught up with the boy. He saw Rodel Zacarias hold the young man while the rest took turns in stabbing and hacking the victim.

The autopsy report[3] on the body of the victim conducted by Dr. Calipayan indicated that Christopher Sacay sustained ten hack wounds and seven stab wounds on various parts of his body including his lung, head lumbar vertebra, and kidney.

The accused countered with the defense of denial and alibi. Ticalo claimed that on the day of the stabbing incident he was at his residence in Burauen, Leyte, working in the farm of Rustico Posion. Posion himself recounted that on 24 June 1993, the feast day of St. John the Baptist, he had a drinking spree in his house with the accused which lasted until about ten o'clock in the evening. The following day, 25 June 1993, Posion again met with the accused at seven o'clock in the morning and together weeded the Burauen farm. When asked by the court about the distance between Brgy. Linao, Ormoc and Burauen, Leyte, Posion answered that the towns are far distant away from each other, and no road directly linked the two towns such that from Burauen one still had to pass through Tacloban to reach Brgy. Linao.

Erlinda Matugas, the mother of acquitted accused Matugas, testified that Ticalo had not been a permanent resident of Brgy. Linao. She said that whenever Ticalo would come to town, he would stay at her son's house which was just a wall division away from her own house. On the night of the fateful day, Erlinda Matugas swore, Ticalo was not with her son.

The defense presented at the witness stand Virginia Nudalo who related that she and Pelicano, together with several others, were in a Red Cross Training Seminar from 21 June 1993 up until 03 July 1993. Since it was a stay-in seminar, the participants took supper and spent their evenings at the training center. At midnight of 25 June 1993, Nudalo, on her way to the comfort room, saw Pelicano sleeping along with other male participants just outside the room assigned for the lady participants.

In the end, the trial court accorded greater credence to the positive declaration of Pelicano than to the alibi of Ticalo and the testimony of Nudalo.

In this appeal, the convicted accused claims that the court a quo has gravely erred in finding him guilty of the crime charged.

The Court is not convinced.

It is the peculiar province of the trial court to determine the credibility of a witness because of its superior advantage in observing the conduct and demeanor of the witness while testifying.[4] Absent any showing of a fact or circumstance of weight and influence which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of a witness made by the trial court remain binding on an appellate tribunal.[5]

The conviction of appellant by the court a quo was predicated almost completely on the eyewitness account of Sergio Pelicano, Sr. The defense, however, would attempt to discredit such testimony for an alleged inconsistency. On direct examination, Pelicano stated that he came home from a picnic with his family on the day of the crime. His statement contradicted his earlier testimony in the trial of Rene Matugas, where he said that he was not at home but he was attending a seminar at the Red Cross Training Center from 7:00 A.M. to 9 P.M. on that day. When confronted on cross examination about this incongruence in his declarations, he corrected himself, saying that he did not go on a picnic with his family on 24 June 1993 but that he was indeed attending a seminar

at the Red Cross Training Center in Owak, Ormoc City, per his previous account although he continued that he went home at ten o'clock in the evening in Linao, Ormoc City. The admitted discrepancy should be considered an innocent lapse that would not necessarily affect the credibility of the witness. Even the most truthful witness could at times make mistakes but minor inaccuracies, rather than clouding the testimony, could even enhance the veracity of the narration and erase the suspicion of a rehearsed declaration.[6]

The positive testimony of a single witness could be sufficient for conviction if found to be credible, for truth is established not quantitatively but qualitatively.[7] Where there is nothing to indicate that the witness has been actuated by improper motives, such as in the case at bar, his positive and categorical statement under solemn oath on the witness stand deserves full faith and credence.[8]

In the light of an eyewitness account, establishing appellant as being one of the authors of the crime, the defense of denial and that of alibi are of little worth and weight. It is axiomatic that positive identification, where forthright and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over denial and alibi which are basically negative and self-serving.[9]

A word, in passing, about the manner the trial court imposed the penalty. In the scales of penalties under the Revised Penal Code,[10] reclusion perpetua is the penalty immediately higher than reclusion temporal which has a duration of twelve years and one day to twenty years.[11] The minimum range of reclusion perpetua should then, by necessary implication, start at 20 years and 1 day while the maximum thereunder could be co-extensive with the rest of the natural life of the offender. Article 70, however, provides that the maximum period in regard to the service of sentence shall not exceed 40 years. Reclusion perpetua remains to be an indivisible penalty and, when it is the prescribed penalty, should be imposed in its entirety, i.e., reclusion perpetua sans a fixed period for its duration, regardless of any mitigating or aggravating circumstance that may have attended the commission of the crime.[12] In prescribing the penalty of reclusion perpetua, its duration in years, in fine, need not be specified.

WHEREFORE, the decision in Criminal Case No. 4247-0 of Branch 35 of the Regional Trial Court of Ormoc City finding accused Wally Ticalo guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code and sentencing him to reclusion perpetua, as well as to pay the heirs of the victim P50,000.00 by way of civil indemnity, is AFFIRMED.

SO ORDERED.

Melo, (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Rollo, p. 7.

[2] Rollo, p. 21.

[3] Exhibit A, Records, pp. 221-222.

[4] *People vs. Peleras and Calza*, G.R. No. 140512, 13 September 2001; *Adzuara vs. Court of Appeals*, 301 SCRA 657; *People vs. Sanchez*, 302 SCRA 21.

[5] *People vs. Ganenas*, G.R. No. 141400, 6 September 2001; *People vs. Tahop*, 315 SCRA 465; *People vs. Mahinay*, 302 SCRA 455.

[6] *People vs. Reduca*, 301 SCRA 516; *People vs. Dela Cruz*, 304 SCRA 702.

[7] *People vs. Sabado*, G.R. No. 135963, 20 November 2000; *People vs. Hillado*, 307 SCRA 535; *People vs. Bolatete*, 303 SCRA 709.

[8] People vs. Bituon, G.R. No. 142043, 13 September 2001.

[9] People vs. Ladrillo, 320 SCRA 61; People vs. Mercado, 304 SCRA 504; People vs. Enriquez, 292 SCRA 656.

[10] Section 21, Republic Act No. 7659, amending Article 27 of the Revised Penal Code.

[11] Id.

[12] People vs. Alvarado, 275 SCRA 727; People vs. Gatward, 267 SCRA 785; People vs. Fuensalida, 281 SCRA 452.

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