

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NATIVIDAD “TONY” LOVEDORIAL,
ACCUSED-APPELLANT.**

G.R. No. 139340. January 17, 2001

Ponente: MELO, J.

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MELO, J.:

On March 30, 1999, accused-appellant Natividad "Tony" Lovedorial was found guilty of the crime of Murder by the Regional Trial Court of the Fifth Judicial Region (Branch 52, Sorsogon) per the Honorable Honesto A. Villamor, as follows:

WHEREFORE, premises considered, the Court finds the accused Natividad "Tony" Lovedorial Guilty of the crime charged of Murder and there being no mitigating circumstance to offset the aggravating circumstance of treachery, hereby sentences said accused to suffer the indeterminate penalty of Seventeen (17) years, Eight (8) months and one (1) day of reclusion temporal maximum as minimum to Twenty (20) years of reclusion temporal as maximum. The accused is ordered to pay the amount of TEN THOUSAND (P10,000.00) as actual damages, the amount of FIFTY THOUSAND (P50,000.00) as civil indemnity without subsidiary imprisonment in case of insolvency with cost de oficio.

The accused being a detention prisoner, the full period of his detention in the Sorsogon Provincial Jail shall be credited fully in the service of his sentence.

(Rollo, pp. 35-36.)

Thereafter, accused-appellant filed a motion for reconsideration, arguing that Oscar Manjares' killer was a person other than accused-appellant. The prosecution also filed a motion for reconsideration, contending that the penalty imposed upon accused-appellant was erroneous, the penalty for murder being reclusion perpetua to death. On May 31, 1999, the trial modified its judgment, thusly:

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION filed by the accused is hereby DENIED. The sentence imposed upon the accused is hereby modified, and the penalty of RECLUSION PERPETUA is hereby imposed upon him in accordance with Sec. 6 of R.A. 7659 and in consonance with Art. 63 of the Revised Penal Code.

(Rollo, p. 40.)

The Information filed on November 20, 1996 charged:

That on or about the 29[th] of September, 1996, at about 6:45 in the evening, at Barangay Milagrosa, Municipality of Castilla, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a hand gun, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously, attack, assault and shot one Oscar Manjares y Jebulan, thereby inflicting upon the latter mortal injury which caused his death, to the damage and prejudice of his legal heirs.

(Rollo, p. 14.)

Upon his arraignment on January 27, 1997, accused-appellant entered a plea of Not Guilty. Trial ensued on May 8, 1997, following which, the judgment of conviction was rendered, prompting the instant appeal.

The version of the prosecution, as culled from the testimony of its witnesses Emelita Manjares, the wife of the victim; Eduardo Arcos, the barangay captain of Milagrosa; and Dr. Melquiades Boque, Jr., the physician who performed the autopsy on the victim, may be synthesized as follows:

On September 28, 1996, while Oscar Manjares was at the basketball court of Barangay Milagrosa, a drunken accused-appellant arrived and quarrelled with Oscar. During the course of their quarrel, accused-appellant hit Oscar twice. To avoid trouble, Oscar left the place. However, accused-appellant pursued Oscar, prompting the latter to hit the former. The matter was reported to the barangay but when asked if he wanted the matter to be placed in the blotter, Oscar declined, saying that it would only make accused-appellant even more angry.

In the evening of the next day, September 29, while Oscar and his wife, Emelita, were repacking garlic near the window of their house, Emelita heard a gunshot from outside their window. She immediately stood up, looked out of the window and saw accused-appellant, about three meters away, holding a gun and about to flee. Emelita claimed that she recognized accused-appellant because she had known the latter ever since he was a child. Looking backwards, she noticed that Oscar had been shot and came to the latter's aid. As she approached her husband, Emelita saw blood oozing out of his mouth. She brought Oscar to the hospital, enlisting the aid of their barangay captain to drive her there, but her husband died en route. It was the barangay captain who proceeded to the police to report the killing of Oscar.

Dr. Melquiades Boque, Jr. testified that Oscar died of cardio-pulmonary arrest secondary to massive hemorrhage brought about by a gunshot wound to the chest. His findings, as formalized in the autopsy report, are as follows:

Gunshot wound, entrance, left anterior chest, mid clavicular line, 14 cms. above left nipple, directing medial ward, posterior ward, penetrating the left second intercostal space, penetrating the apex of left lung, through & through, perforating the middle third of trachea, through & through, penetrating the apex of right lung, fracturing the middle third of the third right rib at the level of the mid axillary line, penetrating the right axillary space, penetrating the medial portion of the right arm.

Cause of Death: Cardio pulmonary arrest secondary to massive hemorrhage secondary to gunshot wound of the chest.

(Record, p. 66.)

On the other hand, the defense presented Gemma Badera, a forensic chemist of the National Bureau of Investigation; Socorro Lovedorial, accused-appellant's mother; Dr. Caesar Romano, chief of the Vicente Peralta Memorial Hospital at Castilla; Dr. Melquiades Boque, Jr.; and accused-appellant himself.

Gemma Badera testified that her duties as NBI forensic chemist included examination of gunpowder. According to her, the results of the paraffin test conducted on accused-appellant to determine if he had fired a gun were negative. On cross-examination, however, it was brought to light that nitrates on a person's hands could remain for, at most, only three days from the time said person fired a gun. It was disclosed that accused-appellant was paraffin-tested only on October 4, 1996, or six (6) days after the commission of the crime.

Accused-appellant's mother, Socorro Lovedorial, testified that her son could not have killed Oscar at around 6:45 P.M. of September 29, 1996 since her son was lying injured in bed at that time. She stated that her son had been given an anti-tetanus shot because his cheek had a bleeding puncture wound. She further stated that her son had been boxed by a person the day before. Her son was able to come home only in the morning of September 29,

1996, having spent the night with his brother Gil because the former had fallen unconscious in the afternoon of the 28[th] of September after having been boxed by an unknown person.

Dr. Caesar Romano identified for the prosecution a document signed by Dr. Boque, Jr. According to said document, accused-appellant was treated for facial injuries at the Vicente Peralta Memorial Hospital in the morning of September 29, 1996. He had abrasions on the right eyebrow and right cheek bone and a puncture wound on the left side of the face penetrating the buccal mucosa. Accused-appellant was given an anti-tetanus shot, antibiotics, and mefenamic acid.

On the witness stand, Dr. Melquiades Boque, Jr. testified that he prescribed amoxicillin, anti-tetanus, a pain reliever and Betadine oral solution for accused-appellant. When asked by accused-appellant's counsel, upon further direct examination, whether or not a person with the kind of injuries suffered by accused-appellant would be disposed to rest rather than to move about, Dr. Boque answered "Not necessarily because that injury was here (pointing to the wounds) but he could use his hands." Upon further prodding, the doctor stated that it depended on the general physical condition of the person injured whether he would rest or move about.

For his part, accused-appellant denied killing Oscar Manjares, asserting that at the time and date of the incident, he was at home in Milagrosa, Castilla recuperating from his wounds. He testified that his house is 200 meters away from that of Oscar Manjares.

The trial court found no merit in accused-appellant's defense, finding his culpability well established by the testimony of Emelita Manjares, whom it adjudged a credible witness. The court found the denial and alibi proffered by accused-appellant to be self-serving and weak. Consequently, it declared accused-appellant guilty of murder, the crime having been committed with treachery. According to the trial court, the "attack on the unarmed victim was sudden, unprovoked and unexpected. It was done in a manner which directly and specially insured the execution of the act without any risk to him arising from the defense which the victim may have made. Treachery was thus present in the instant case, which qualified the crime to murder" (Rollo, p. 35).

Accused-appellant pleads for reversal, raising, in his assignment of errors, certain facts which, if considered, would allegedly lead to his acquittal. In particular, accused-appellant points to alleged contradictions between Emelita Manjares' testimony and the autopsy report conducted by Dr. Melquiades Boque, Jr.

The petition has no merit.

Capsulized, accused-appellant's argument boils down to and centers on the alleged implausibility of Emelita Manjares' testimony as to the position of the gunman at the time of the assault. Accused-appellant states that Emelita Manjares, the lone eyewitness to the shooting, testified that the victim was standing with the right side of his body to the window. He cites Emelita Manjares' testimony as follows:

Q: You said that your husband died on September 29, 1996, were where you then?

A: I was facing him during that time.

Q: By the way, what time was that?

A: 6:45 in the evening.

Q: What were you doing when you said you were in front of your husband?

A: I was repacking the garlic.

Q: What was your husband doing?

A: Because he was in front of me, we were conversing about the things he will be doing the following morning.

Q: Then, what happened?

A: While we were talking, I suddenly heard a gunshot.

Q: From where did that gunshot sound come from?

A: From outside the window.

Q:

When the incident happened, you and your husband were doing something, you were repacking some garlic or onions?

A: He was repacking and he was in front of me.

Q: And what was he doing?

A: He was peeling the garlic.

Q: Of course, the two of you were not standing when you were doing that?

A: My husband was standing.

Q: So (on) one side of the table was your husband and you were by the other side?

A:

I was at the side of the table and he was also at the other side of the table (witness demonstrating the right side of the table) if one is facing the table because the table was near the window.

Q: So the back of your husband was not towards the window?

A: His side was the one facing the window.

Q: Which side of your husband was facing the window, the left or the right?

A:

His right side was facing the window. When he turned towards the window facing it, there was already a gunshot.

Q: So when you heard the sound of the gunshot, your husband was already hit by the bullet?

A: Yes, sir.

Q: So, the right side of your husband was to the window whereas you were facing the window?

A: Yes, sir.

Accused-appellant juxtaposes the above testimony with the autopsy report conducted on Oscar Manjares showing that the victim sustained a gunshot wound 14 cms. above the left nipple, with the bullet travelling downward towards the right, passing through the victim's left and right lung and settling at the middle part of his upper right arm.

Accused-appellant claims that based on the autopsy report, the victim could not have been shot by an assailant standing outside the window, as testified to by Emelita Manjares. In his own words:

If the victim was facing the window (about a meter wide, p. 24 TSN, 5-21-97) he would then be facing accused-appellant and Dr. Boque agreed that in that situation the bullet would exit through the victim's back (p. 16, TSN, 10-3-97). The only scene imaginable for the victim to sustain his injuries from a shot that came outside the house and through the window would be that the left side of the victim was facing that window. In that situation, the victim would no longer be facing the window...Recessing back to the fundamental argument of the defense, we dare say that the FACT is the victim was facing NOT the window but the table and his right side NOT his left side was to the window when shot.

x x x

x x x

x x x

The defense has never suggested that the gunman was necessarily inside the house of the Manjareres (sic). The defense is contending that the assailant was to the left side of the victim and behind Emelita Manjares. The shot could have been fired through a wall opening and the assailant did not have to enter the dwelling. The fact is, Emelita Manjares did not look back when she heard the shot. The fact is, she reacted to the gun report by standing up and looking out of the window. The fact is, she could not have seen the assailant if he was anywhere but in front of her. The fact is, she did not see the assailant at all.

(Rollo, p. 62, 65.)

Accused-appellant likewise harps on the following circumstances to show that Emelita Manjares did not see accused-appellant shoot her husband:

- a) When Barangay Captain Eduardo Arcos reported the incident to the police, he stated that Oscar Manjares had been shot by an unidentified person. Accused-appellant claims that had Emelita really seen him at the scene, she would have immediately informed the barangay captain, as the latter drove the fatally wounded Oscar to the hospital, of the identity of the assailant.
- b) When Emelita heard the gun report, she immediately stood up and looked out the window. Accused-appellant claims that Emelita could not have seen the assailant since the latter, as per the autopsy report, was actually behind Emelita, not outside.
- c) Emelita Manjares testified that when she looked out the window, she saw and recognized accused-appellant as the latter turned his face towards her before running away. Accused-appellant finds it absurd for an assailant to have waited for Emelita to look out the window, turn around to be recognized, and thereafter flee.

Accused-appellant also points to the fact that no one else saw him within the vicinity before, during, or after the incident despite the fact that the Manjares house was in the middle of the barangay, surrounded by other houses. Likewise, he calls the Court's attention to the fact that Emelita Manjares did not immediately inform her children that accused-appellant was the assailant, nor did she inform any of her neighbors all throughout the wake that it was accused-appellant who shot her husband.

It is a well-settled rule that positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law (*People vs. Enriquez*, 292 SCRA 656 [1998]). In this case, Emelita positively and categorically identified accused-appellant as the person she saw outside the window of their house immediately after she heard the gunshot. She also testified that accused-appellant was toting a handgun at that time. Despite relentless cross-examination, she never wavered in the material details of her testimony.

Emelita's testimony as to accused-appellant's culpability is damning. It need not be emphasized that Emelita had no improper motive to testify against accused-appellant, it being unnatural for one interested in vindicating the crime to accuse somebody other than the real culprit (*People vs. Salvame*, 270 SCRA 766 [1997]). Emelita's identification of accused-appellant, likewise, draws strength from the rule that family members who have witnessed the killing of their loved one usually strive to remember the faces of the assailants (*People vs. Cawaling*, 293 SCRA 267 [1998]).

It also deserves mention that accused-appellant's alibi that he was at home recuperating from his wounds is inherently weak. The wounds he had suffered did not immobilized him, nor was he able to prove that it was physically impossible for him to have been at the locus criminis or its immediate vicinity when the crime was perpetrated, his place of alleged recuperation being only 200 meters from the scene of the crime.

In fact, to create doubt that he was the assailant, accused-appellant can only rely on the so-called variance between Emelita Manjares' testimony and the autopsy report as to the alleged position of the gunman at the time of the assault. He draws on "Exhibit 3," a sketch by Emelita Manjares depicting the relative positions of the victim and the alleged assailant, and the marked difference in the position where accused-appellant was according to Emelita, and the position where the assailant should have been, according to Dr. Boque, Jr., for the victim to have sustained the injuries he suffered.

Unfortunately for accused-appellant, sketches alone cannot prevail over Emelita's testimony that she saw accused-appellant about to flee with a gun in hand right after the incident. While it is true that Emelita did not witness the actual shooting, she categorically and repeatedly stated that it was accused-appellant whom she saw with a gun immediately after the gunshot. Moreover, it is incorrect for accused-appellant to claim that Oscar Manjares' right side was to the window when he was shot, since Emelita had testified that Oscar had turned to face the window when she heard a gunshot (TSN, May 21, 1997, p. 9).

Too, the line of fire of the assailant may not have followed a straight path. Caution must be observed where internal structures have been struck by the missile, distorting of the direction of the track of the bullet. The apparent direction within the body of a bullet track is naturally not necessarily the same as its orientation relative to ground level or other fixed structures at the scene of the incident. The direction of the track depends upon the posture of the body at the time of impact. Dogmatic statements about the position of a weapon must be tempered with caution, as it is unsafe to assume that the body was in the normal upright position (Tedeschi, Eckert, Tedeschi, *Forensic Medicine*, p. 525.)

In fact, Dr. Boque, Jr. admitted, under cross-examination by defense counsel, that the bullet did not take a straight path inside the victim's body.

Q: The slug before that, hit that portion of the breast?

A: Yes, sir.

Q: Pursued a line towards the sternum, is that true?

A: Yes, sir.

Q: Therefrom, from the verge to the entrance portion of the body, it passes through the tract?

A: Yes, sir.

Q: Then, a little upward then it bend down until it finally settled at that portion of the right arm?

A: Yes, sir.

(TSN, October 3, 1997, pp. 13-14.)

Moreover, granting that the trajectory of the bullet was in a straight line, it is possible that the assailant was to the left of and diagonal to Oscar when he shot the latter, thereby producing a bullet track from the left running to the right side of the victim. Note that when Emelita saw accused-appellant, the latter was already fleeing from the scene. He was recognized only when he paused to look back.

Accused-appellant cannot also claim that Oscar's assailant was to the left of and behind Emelita when he shot the victim, since Emelita would have heard the gunshot as coming from behind her rather than from outside the window. The fact is Emelita heard the gunshot come from outside the window, prompting her to stand up and to look for its source outside.

As to the other facts cited by accused-appellant, Barangay Captain Arcos told the police that the assailant was unidentified because, in his own words, he had had no opportunity to talk to Emelita as to who was her husband's assailant, the latter still being at the hospital when he reported the incident (TSN, September 15, 1997, p. 14).

Likewise, it is not surprising for Emelita to look out of the window immediately after hearing the gunshot. Different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response where one is confronted with a strange or startling or frightful experience (People vs. Sta. Ana, 291 SCRA 188 [1998]). Neither is Emelita's identification of accused-appellant as the person she saw outside the window unexpected, the most natural reaction of victims of violence being to strive to look at the appearance of the perpetrator of the crime and to observe the manner in which the crime is being committed (People vs. Ariel Pedroso, G.R. No. 125128, July 19, 2000).

Nor is it absurd for accused-appellant to have turned around to look back at the scene before fleeing, thereby exposing himself to identification; since it is not uncommon for criminals to be careless or to even intentionally reveal their identities to their victims. The failure by a criminal to conceal his identity would not make the commission of the crime any less credible. Braggadocio among criminals is not unexpected. Very often too, they feel secure in the thought that they have instilled sufficient fear in their victims that the latter will not give them away to the authorities (People vs. Yabut, 311 SCRA 590 [1999]).

Lastly, the failure of Emelita to inform her children or her neighbors that it was accused-appellant who killed her husband does not militate against his conviction. What matters is that, after attending to her dead husband, she reported to the police on October 1, 1996, or two days after the incident, that accused-appellant was her husband's killer. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained (People vs. Lusa, 288 SCRA 296 [1998]). It is quite understandable when the witnesses do not immediately report the identity of the offender after a startling occurrence, more specifically when they are related to the victim, as they had just had a traumatic experience (People v. Nang, 289 SCRA 16 [1998]).

From the foregoing, the Court declares accused-appellant guilty beyond reasonable doubt for the death of Oscar Manjares. We, likewise, declare that treachery was present in the commission of the crime.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime, without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim (People vs. Naguita, G.R. No. 130091, August 30, 1999).

We have no doubt that the act of accused-appellant in shooting the victim qualifies the crime with alevosia. Oscar Manjares was peeling garlic when he was shot. He had no suspicion that he was to be assaulted, and the sudden, swift attack gave him no opportunity to defend himself. Hence, we agree with the trial court that the crime committed was murder.

Again, evident premeditation cannot be considered in this case as no proof has been shown as to when accused-appellant planned the killing or even whether he planned the killing. Absent any showing on these vital points, there is no way of determining whether sufficient time had elapsed to allow accused-appellant to reflect on his plan and to persist in carrying it out.

As to the penalty imposable, the penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death. There being no aggravating or mitigating circumstance herein, the lesser penalty, or reclusion perpetua, was correctly imposed by the trial court.

WHEREFORE, the appealed decision of the Regional Trial Court of Sorsogon, Sorsogon, Branch 52, in Criminal Case No. 96-4298 dated May 31, 1999, is hereby AFFIRMED in toto. No special pronouncement is made as to costs.

SO ORDERED.

Vitug, Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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