

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINGO PATOC, ALIAS “DOMING” AND JOHN DOE,
ACCUSED-APPELLANT.**

G.R. No. 140217. February 21, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of Branch 60 of the Regional Trial Court of Barili, Cebu, convicting accused-appellant of murder and sentencing him to reclusion perpetua with the aggravating circumstances of use of an unlicensed firearm in the commission of the crime, treachery and evident premeditation.

The Charge

On September 16, 1998, Domingo Patoc and a certain John Doe were charged with murder before the Regional Trial Court of Barili, Cebu in an Information which reads:

That on or about the 24[th] day of August, 1996 at the Municipality of Moalboal, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, with intent to kill, armed with a firearm of unknown caliber, and by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack and shoot BASILIO MALABAGO, hitting the latter at the different parts of his body which caused his instantaneous death.

CONTRARY TO LAW.[2]

Upon his arraignment on October 13, 1998,[3] Domingo, assisted by counsel, entered a plea of not guilty to the charge. Trial of the case ensued following the termination of the pre-trial. The prosecution presented three witnesses, namely: (1) Dr. Urduja Espiritu, a medico-legal expert; (2) Rufina Malabago, the wife of the victim; and (3) Christopher Malabago, grandson of the victim.

The Antecedent Facts

Domingo, a resident of Barangay Batadbatad was not a stranger to the spouses Basilio Malabago and Rufina Malabago. In fact, they were residents of the same barangay. There were occasions that Domingo and Basilio went to the market together. At about noontime on August 24, 1996, Basilio went to the marketplace (tabo) of Canduhong, Bala, Moalboal, Cebu, to watch a cockfight.[4] He was followed shortly thereafter in the afternoon of that same day by his wife Rufina and their twelve year-old grandson Christopher Malabago.[5] Rufina fetched water from a well and at about 6:00 p.m., the three of them left the marketplace and proceeded to their home in Barangay Batadbatad.[6] They were already near the house of their daughter Bibiana, when Domingo and another male person who were positioned amidst the queue of banana plants beside the road, approached the couple and said, “We will just go ahead, Noy,” to which Basilio retorted, “Just go ahead.” However, Domingo and his companion suddenly shot Basilio in cold blood. The latter could only utter, “Lord,” and fell to the ground.[7]

Domingo pointed his gun at Rufina who shouted at Domingo and his cohort and then said: "That's enough!" She then scurried from the scene to the house of her children Bibiana and Arcadio and reported the incident. She also met Isabelo Barredo, a Barangay Tanod to whom she reported the incident. When asked by Isabelo who shot her husband, she told him that she will reveal the names of the perpetrators when the policemen arrived. Rufina rushed to the barangay authorities and reported the incident. Christopher ran towards the house of his Aunt Nida for refuge.[8]

On August 25, 1996, Dr. Urduja Espiritu, Municipal Health Officer of Badian, Cebu, conducted a post-mortem examination on Basilio Malabago and made the following findings:

Face :

- hematoma at supraorbital area, right.

- blood clots noted on both nostrils

- Wounds found on the following sites :

1.)

Chin – lacerated wound measuring about 0.5 X 0.5 inches piercing

2.)

Lacerated wound located about 1 inch from the angle of the mouth on the left side measuring about 0.5 inches in length piercing thru the buccal mucosa. The wound is surrounded with black skin discoloration.

Neck :

Semicircular wound measuring about 0.5 inches in diameter located 1 inch lateral to the suprasternal notch on the left side, surrounded with blackish skin discoloration.

Shoulder :

lacerated wound located 1 inch from the left shoulder joint measuring 1 inch in length and 1 inch in width, with black skin discoloration.

Abdomen :

Oval wounds 2 inches in number located 1 below each other lying obliquely about 0.5 inch in length, ¼ inch in width at a level 2 inches below the xiphoid process and 0.5 inches to the left of the midline. No blackish skin discoloration.

Back :

Right side – circular wound measuring about 1 inch in diameter located deep and lying 8 inches below and 6 inches medial to the level of the posterior axillary line.

Probable Cause of Death :

Hypovolemic Shock, Irreversible due to Hemorrhage, Internal & external due to Multiple gunshot wounds.[9]

Dr. Espiritu testified that Basilio sustained a total of seven wounds, five of which were entrance wounds. She concluded that the victim was shot at a distance of one foot considering the black skin discoloration found on the wounds located on the chin and angle of the mouth and at the neck and also in the shoulder of the victim.[10]

The Defense and Evidence of Domingo

Domingo denied the charge and claimed that at the time of the killing, he was at Opon, Cebu. He testified that at about 11:00 a.m. of August 24, 1996, he arrived at Lapu-Lapu City to apply for a job as laborer at TPI Homes in Opon, Cebu, where his friend Buenaventura Robo worked as a carpenter.[11] He proceeded to Robo's workplace and arrived thereat at around 1:00 p.m.[12] Domingo immediately approached the foreman who informed him that they were not in need of laborers but were hiring carpenters.[13] The foreman told him that he and Robo may stay at the bunk house.[14] After 5:00 p.m., Robo joined Domingo in the bunk house, where they played dama together with the foreman and other workers. Domingo and Robo retired by 10:00 in the evening. At about 7:00 a.m. the next day, August 25, 1996, Domingo and Robo boarded a Librando bus going to Moalboal, Cebu.[15] Domingo came to know for the first time of the charge against him when he was arrested on July 29, 1998.[16] The testimony of Domingo was corroborated by Robo.

Domingo's second witness, Isabelo Barredo, chief of the Barangay Tanods in Barangay Bala, Moalboal, Cebu, testified that at past 3:00 p.m. on August 24, 1996, he went to the tabo of Canduhong, Bala, Moalboal, Cebu to watch a basketball game. At past 6:00 p.m., while on his way home, Isabelo met Rufina who informed him, "Brod, your Brod Basilio was killed. He was shot." But when asked who the perpetrator was, Rufina replied that she did not know the identity of the killer. Upon seeing the body of Basilio, Isabelo forthwith went for the barangay captain who, upon arrival at the scene, asked Rufina anew if she knew who the perpetrator was, but Rufina again replied that, "I don't know who killed my husband because it was dark." Isabelo further testified that he did not know Domingo but was acquainted with Basilio and Rufina because they were his neighbors in Bala, Moalboal, Cebu.[17]

The Verdict of the Trial Court

On June 30, 1999, the trial court rendered its Decision[18] convicting Domingo of Murder, the decretal portion of which reads:

"JUDGMENT is hereby RENDERED, declaring the accused, Domingo Patoc, GUILTY of the crime of MURDER, appreciating the use of unlicensed firearm and the means of treachery and evident premeditation in committing the offense. He is therefore sentenced to serve the PENALTY OF RECLUSION PERPETUA and to pay the heirs of the victim, Basilio Malabago, the sum of Fifty Thousand Pesos (P50,000.00) as indemnity.

SO ORDERED.[19]

Hence, the appeal at bar.

The Assignment of Errors

Accused-appellant assails the decision of the trial court, contending that:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE AGGRAVATING CIRCUMSTANCES OF TREACHERY, EVIDENT PREMEDITATION, AND THE USE OF AN UNLICENSED FIREARM ARE PRESENT IN THE CASE AT BAR.

III

THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING THE DEFENSE OF ALIBI IN FAVOR OF THE ACCUSED-APPELLANT.

The Verdict of this Court

The lynchpin of accused-appellant's submission is essentially on the issue of credibility.

The cardinal rule is that where the issue is one of credibility of witnesses, reviewing courts generally will not disturb the findings of the trial court, unless it can be shown that the latter overlooked certain facts of substance and value that, if considered, might affect the result of the case. The matter of assigning values to declarations on the witness stand is best done by the trial judge who, unlike appellate magistrates, can weigh firsthand the testimony of a witness in the light of his demeanor, conduct and attitude, and is thereby placed in a more competent position to discriminate between the true and false.[20]

In the appeal at bar, accused-appellant avers that the trial court erred in giving full faith and credit to the testimonies of the prosecution witnesses which he insists are punctured with irreconcilable and unexplained inconsistencies thereby casting doubt on his guilt for the crime charged. He points out that while Rufina testified that the victim was hit in the mouth and the bullet exited at the back, the medico-legal expert testified that the victim was also shot at the back. For another thing, while Rufina claimed that the victim was watching a cockfight at the time she told him that they will be going home. Christopher, on the other hand, testified that the victim was having a drinking spree at that time.[21]

Accused-appellant is clutching at straws. Case law has it that variations in the declarations of witnesses respecting collateral, peripheral and incidental matters do not impair the verisimilitude of the testimonies of such witnesses and the probative weight thereof on the corpus delicti and the perpetrators thereof. Minor inconsistencies in the testimonies of said witnesses strengthen rather than weaken their credibility as such inconsistencies clearly show that the witnesses are neither rehearsed nor coached.[22] Moreover, the testimonies of witnesses should be calibrated and considered in their entirety and not in truncated parts.

In this case, this Court finds no inconsistencies on the testimonies of Rufina, Christopher and Dr. Espiritu. In point of fact, this Court finds the testimonies of the witnesses of the prosecution to be corroborative of and complimentary with each other. For instance, Rufina's declaration that Basilio was hit in the mouth is consistent with the post-mortem findings of Dr. Espiritu of the presence of a "lacerated wound located about 1 inch from the angle of the mouth on the left side measuring about 0.5 inches in length piercing thru the buccal mucosa." The wound was also found to be surrounded with black skin discoloration which indicates that it was an entrance

wound.[23] Rufina never testified that Basilio sustained only one gunshot wound. Moreover, Dr. Espiritu's testimony that the victim was also shot at the back is not inconsistent with Rufina's testimony that Basilio was hit in the mouth because, as the post-mortem examination showed, Basilio sustained a total of seven wounds, one of which was shown to have been inflicted at the back of the victim.[24] Christopher's testimony that his grandfather was having a drinking spree when he went to see the latter at the "tabo" is not incompatible with Rufina's testimony that Basilio was watching a cockfight at that time considering that engaging in both such activities at the same time is all too common a sight at the periphery and inside cockpits. Rufina's and Christopher's testimonies that Basilio was suddenly shot at close range by Domingo and his unidentified companion as they overtook Basilio is buttressed by Dr. Espiritu's testimony that the black skin discoloration found on the wounds located on the chin and angle of the mouth and at the neck and also in the shoulder of the victim shows that the wounds were inflicted at a distance of not more than twelve inches.

Besides, accused-appellant could only offer the defenses of denial and alibi. Denial is intrinsically a weak defense. To merit credibility, it must be supported by strong evidence of non-culpability. To be sure, it is negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of accused-appellant, the former indisputably deserve more credence and evidentiary weight.[25] Moreover, in the absence of proof that the prosecution witnesses are moved by improper motive, it is presumed that they were not so moved and, therefore, their testimony is entitled to full faith and credit.[26] That presumption has not been overcome in this case. Rufina and Christopher were related to the victim. Considering their close relationship, their natural instinct would be to help bring the real culprit to justice. To blame an innocent man for the killing of the victim would serve them no purpose.[27] Accordingly, the identification of accused-appellant as one of the killers of Basilio must, perforce, prevail over the bare denial of accused-appellant.

Likewise futile is accused-appellant's defense of alibi. Alibi is looked upon by courts with caution, for not only is it inherently unreliable, it is also rather easy to fabricate. For alibi to prosper, it is not enough that an accused prove that he was somewhere else when the crime was committed. He must demonstrate that it was physically impossible for him to be at the situs criminis when the crime was committed.[28]

In this case, accused-appellant failed to prove that it was physically impossible for him to be at the scene of the crime when it was committed. While he insists that he arrived in Opon, Cebu as early as 11:00 a.m. of August 24, 1996 and left for Moalboal early morning of the following day, he also confirmed on cross-examination that it takes only about 2½ hours for one to travel by bus from Opon to Moalboal.[29] Moreover, his alibi that, at the time of the shooting incident, he was in the bunk house of the TPI Homes in Opon, Cebu playing chess with Robo and the latter's foreman, while corroborated by Robo, who was his friend and neighbor in Barangay Batadbatad, Moalboal, Cebu,[30] was not corroborated by the foreman, who was the only other person mentioned by Robo who could attest to accused-appellant's presence at the bunk house on the night of the shooting incident and who could as well give a more unbiased testimony on behalf of accused-appellant.

Given the factual milieu of the case, this Court is in accord with the trial court's finding that the killing of Basilio was attended by alevosia. This Court has held that treachery is present when the offender commits any crime against persons employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to the offender arising from any defense which the offended party might make.[31] The qualifying circumstance of treachery attended the killing as the two conditions for the same are present, i.e., (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[32] As vividly narrated by Rufina and Christopher, the attack on Basilio was sudden. Basilio had no inkling of the impending

attack. He was just nonchalantly walking along the road when accused-appellant and his cohort appeared from nowhere and suddenly shot him. Basilio had no opportunity to anticipate the imminence of his attack, nor was he in a position to defend himself or repel the aggression because he was unarmed. Moreover, he was fatally shot on the region of the head, at close range, as evidenced by the powder burns found around the victim's gunshot wounds. To ensure the success of their criminal design, accused-appellant and his cohort fired at the victim five times as shown by the five entrance wounds sustained by the victim in different parts of his body. Undoubtedly, the felons deliberately and consciously adopted the means to ensure their criminal purpose without risk to themselves. That the victim may have been shot from the front, as contended by accused-appellant, does not negate alevosia. The settled rule is that treachery can exist even if the attack is frontal if it is sudden and unexpected, giving the victim no opportunity to repel it or defend himself. What is decisive is that the execution of the attack, without the slightest provocation from a victim who is unarmed, made it impossible for the victim to defend himself or to retaliate.[33]

This Court does not however agree with the ruling of the trial court that evident premeditation was attendant in the commission of the crime. Like treachery, the elements of evident premeditation must be established with equal certainty as the criminal act itself, in order for it to be appreciated as a qualifying circumstance.[34] The prosecution was burdened to prove beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that he clung to his determination to commit the crime; and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act.[35] The prosecution failed to adduce any evidence to prove these elements. What was established was that accused-appellant waylaid and suddenly shot Basilio in cold blood while the latter was on his way home from the "tabo." There is, however, no evidence adduced when and how he had planned the killing of the victim. Nor is there proof offered to show how much time had elapsed before the plan was executed. Suffice it to state that without such evidence, mere presumptions and inferences, no matter how logical and probable they might be, would not be enough to sustain a finding of this aggravating circumstance.[36] In other words, the evidence falls short of proving the aggravating circumstance of evident premeditation.

Anent the use of an unlicensed firearm as an aggravating circumstance in the case at bar, the third paragraph of Section 1 of Republic Act No. 8294 (otherwise known as "An Act Amending the Provisions of Presidential Decree No. 1866, as Amended) provides that "if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance." It bears to note, however, that the crime in this case was committed on August 24, 1996, or before the effectivity of Republic Act 8294 on July 6, 1997. Hence, the trial court erred in appreciating the use of an unlicensed firearm in the case under review as a special aggravating circumstance. Since the above-mentioned provision of Republic Act 8294 is not beneficial to the accused-appellant because it unduly aggravates the crime, it will not be given retroactive application, lest it might acquire the character of an ex-post facto law.[37]

Clearly, the accused-appellant is liable for murder as the killing was perpetrated with treachery. The penalty for the said crime under Article 248 of the Revised Penal Code, as amended, is reclusion perpetua to death. In the absence, however, of any mitigating or aggravating circumstance, the lesser penalty of reclusion perpetua should be applied.[38]

With regard to the civil liability of the accused-appellant, the Court finds that the trial court correctly awarded the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity to the heirs of the victim. In addition, however, the accused-appellant should pay them the amount of Fifty Thousand Pesos (P50,000.00) as moral damages for their sufferings which resulted from the violent death of the victim.[39]

WHEREFORE, the decision appealed from is AFFIRMED with MODIFICATION. Accused-appellant is found guilty beyond reasonable doubt of murder defined in Article 248 of the Revised Penal Code, as amended by Republic Act 7659, and there being no modifying circumstance in the commission of the crime, is hereby sentenced the penalty of reclusion perpetua. He is also ordered to pay to the heirs of the victim Basilio Malabago, the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

Costs de oficio.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Austria-Martinez, JJ., concur.

[1] Penned by Judge Ildefonso B. Suerte.

[2] Original Records, p. 1.

[3] Ibid, at 27-29.

[4] TSN, February 23, 1999, Rufina, pp. 3 & 7.

[5] Ibid., and TSN, February 24, 1999, Christopher, p. 3.

[6] TSN, December 14, 1998, Rufina, p. 3 & TSN, February 24, 1999, Christopher, p. 8.

[7] TSN, February 23, 1999, Rufina, p. 6; TSN, February 24, 1999, Christopher, pp. 4-5 & 9.

[8] Ibid., at 7; Ibid., at 5-6.

[9] Original Records, pp. 12-13.

[10] TSN, January 12, 1999, Dr. Espiritu, pp. 4-6.

[11] TSN, March 8, 1999, Patoc, p. 2.

[12] TSN, March 1, 1999, Robo, p. 3.

[13] Ibid., at 3-7.

[14] Id., at 5; TSN, March 8, 1999, Patoc, p. 3.

[15] TSN, March 1, 1999, Robo, pp. 3-4; TSN, March 8, 1999, Patoc, pp. 3-4.

[16] March 8, 1999, Patoc, p. 4.

[17] TSN, March 2, 1999, Isabelo, pp. 2-8.

[18] Records, pp. 74-81.

[19] Rollo, p. 23.

[20] People vs. Llanda, G.R. No. 133386, November 27, 2002.

[21] Appellant's Brief; Rollo, p. 47.

[22] People vs. Sesbreño, 314 SCRA 87 (1999).

[23] Original Records, p. 12.

- [24] TSN, January 12, 1999, Dr. Espiritu, p. 6.
- [25] People vs. Matore, G.R. No. 131874, August 22, 2002.
- [26] People vs. Gonzales, G.R. No. 142932, May 29, 2002.
- [27] People vs. Manio, G.R. No. 140384, July 4, 2002.
- [28] People vs. Llanda, G.R. No. 133386, November 27, 2002.
- [29] TSN, March 8, 1999, Patoc, p. 11.
- [30] TSN, March 1, 1999, Robo, p. 2.
- [31] People vs. Peralta, G.R. No. 133267, August 8, 2002.
- [32] People vs. Abadies, G.R. No. 135975, August 14, 2002.
- [33] People vs. Dadivo, G.R. No. 143765, July 30, 2002.
- [34] People vs. Moyong, 344 SCRA 730 (2000).
- [35] People vs. Calago, G.R. No. 141122, April 22, 2002.
- [36] People vs. Mariano, 347 SCRA 109 (2000).
- [37] People vs. Reyes, G.R. Nos. 137494-95, October 25, 2001.
- [38] Article 63, Revised Penal Code.
- [39] People vs. Manio, G.R. No. 140384, July 4, 2002.

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