

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EX-MAYOR RENATO REYES (DECEASED), PEPITO FAMILIARA, JR. (DECEASED), ABELARDO DE CASTRO, PORFERIO ESGUERRA AND NICASIO LUSAYA (ACQUITTED)...

G.R. No. 142467. June 10, 2003

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is murder. PRUDENCIO LINESES, while reading a bible at home in the evening of 1 October 1995, was mercilessly gunned down. The assassins were initially unknown and remained scot-free until a person arrested four (4) months later in connection with another murder case executed an extrajudicial confession admitting responsibility for the murder of Prudencio Lineses and disclosing his co-participants in the killing. Witnesses surfaced soon after and several persons were eventually apprehended and charged with murder with the use of an illegally possessed firearm.

Of the five (5) accused mentioned in the Information, namely, Ex-Mayor Renato Reyes, Pepito Familiara, Jr., Abelardo de Castro, Porferio Esguerra and Nicasio Lusaya, only Abelardo de Castro and Porferio Esguerra were convicted of murder with the aggravating circumstance of dwelling. Both were sentenced to death.[1] Their case is now on automatic review with this Court.

The factual details: At about 7 o'clock in the evening of 1 October 1995, Gerardo Lineses, son of Prudencio Lineses and barangay captain of San Isidro, was reading some comic magazines in his room when he heard someone say "magandang gabi, kapitan." [2] He peered out the window and through the light cast by a Coleman lamp [3] from their sala and the improvised lamps (gasera) [4] in their kitchen, Gerardo saw Abelardo de Castro, a known bodyguard of their mayor, about two (2) meters from their door and about five (5) meters from him. The door was open. Abelardo was facing the door and a foot-long firearm was slung on his shoulder.

Soon after, Gerardo heard successive gunshots from inside the house. He peered out the window again and saw Abelardo running away with another person. Gerardo then rushed to the sala and saw the bloodied and lifeless body of his father. Thinking that he was the assailants' real target and that they might soon return for him, Gerardo fled through the back door and hid in the house of a friend.

Laila Grabi Lineses, Prudencio's daughter-in-law, who was in her house some five (5) meters away at about 7 o'clock that evening, also heard the footsteps of a man (yabag ng tao). [5] She looked out of the window and saw Abelardo de Castro and a companion walking along the side of her father-in-law's house heading towards the main door. She moved to another window and saw Abelardo's companion enter Prudencio's house while Abelardo stood outside about three (3) meters from the door [6] and about four (4) meters from her house. [7] Abelardo was armed with a firearm about a foot-long slung by a strap on his shoulder.

When they were already near the entrance of the house, Abelardo's companion shot several times her

father-in-law who was seated in the sala. As the sala was well-lighted, she saw her father-in-law collapse and soon enough he was covered with blood. After shooting Prudencio, the two (2) assailants hurriedly left the crime scene.

Laila proceeded to her father-in-law's house but immediately returned to her own after ascertaining that Prudencio was no longer breathing and that Gerardo was not in the house. Laila then took her children to the house of a neighbor for safety and proceeded to look for help.

On 2 October 1995, Dr. Edgardo Hernandez, then the Municipal Health Officer of Bongabong, autopsied the remains of Prudencio Lineses. In his Report,[8] Dr. Hernandez stated that the victim died of hemorrhage due to multiple gunshot wounds three (3) of which were fatal. He found no contusions, abrasions or slugs on the body. Dr. Hernandez opined that the assailant was near his victim when he shot him because of the presence of tattooing on all the wounds.[9]

Neither Gerardo nor Laila revealed to the police what they had witnessed as they feared for their lives. The day after Prudencio's funeral, or on 12 October 1995, Gerardo left for San Jose, Occidental Mindoro, where his paternal aunts lived. He later left for Manila but returned to Bongabong on 21 January 1996. In the meantime, Laila and family sold their house in Bongabong and moved to Batangas City.

On 30 January 1996, Pepito Familiaria, Jr., who was arrested for the murder of Manuel Bataycan in Crim. Case No. 5468, executed an extrajudicial confession[10] implicating Mayor Renato U. Reyes, Abelardo de Castro, Nicasio Lusaya and Porferio (Gil) Esguerra in the killing. In the same confession, Familiaria said that they were also the same group that liquidated Prudencio Lineses on the night of 1 October 1995 upon instruction of Mayor Reyes. The following day, Familiaria executed another extrajudicial confession[11] narrating in detail the circumstances surrounding the killing of Prudencio Lineses.

On 2 February 1996 Laila Lineses, followed by Gerardo Lineses on 5 February 1996, executed sworn statements in the office of Prosecutor Cesar Enriquez in Pinamalayan, Oriental Mindoro, on what they knew about the killing of Prudencio Lineses.

On 20 May 1997 an Information[12] for Murder with Use of Illegally Possessed Firearm was filed against Mayor Renato U. Reyes, Pepito Familiaria, Jr., Abelardo de Castro, Nicasio Lusaya and Porferio (Gil) Esguerra. On 4 July 1997 a warrant for their arrest was issued. On 5 July 1997, Renato U. Reyes and Nicasio R. Lusaya voluntarily surrendered to the Criminal Investigation Division, NCR-CIO, Criminal Intelligence Group. By then, all the accused were accounted for as some of them were already detained in connection with Crim. Case No. 5468.

The case was raffled to the Regional Trial Court, Br. 42, with Judge Manuel C. Luna, Jr. presiding. Through a Manifestation dated 29 July 1997, the private prosecutor questioned the authority of Judge Luna to try the case in view of SC Circ. No. 104-96 designating Br. 41 to try and decide heinous crimes. Thus, the case was forwarded to Br. 41 presided by Judge Normelito J. Ballocanag, who in turn, recused himself as one of the accused, Renato U. Reyes, had filed an administrative case against him before the Office of the Ombudsman, although it was later dismissed. On 20 January 1998 the Court designated Judge Antonio M. Rosales of RTC-Br. 43, Roxas, Oriental Mindoro, to try and decide the case at the RTC-Br. 41 of Pinamalayan, Oriental Mindoro.

On 27 October 1997 the accused were arraigned. Before accused Esguerra was asked to enter his plea his name was corrected from "Gil" to "Porferio."

On 24 March 1998 the trial court allowed accused Renato U. Reyes and Nicasio Lusaya to post bail. But bail was denied their co-accused, appellants herein Abelardo de Castro and Porferio Esguerra.

On 2 January 1998 Pepito Familiara, Jr. died at the Provincial Jail in Calapan City, while Renato U. Reyes was killed in an ambush in Barangay Mabuhay, Socorro, Oriental Mindoro, on 17 April 1999.

The remaining accused interposed alibi. Nicasio Lusaya who had been working for Renato Reyes as a driver claimed he was at the beach house of his employer in Barangay Aplaya the whole day of 1 October 1995; at 7 o'clock in the evening he was watching television at the terrace with Abelardo de Castro, Dionisia "Doty" Rodriguez, a certain Christy and other persons in the neighborhood. Abelardo de Castro corroborated Lusaya's testimony. He further declared that he did not know Porferio (Gil) Esguerra and only met him during the trial of this case.

Porferio Esguerra claimed that on 1 October 1995 he was in Calatagan, Batangas, and went fishing in the sea between Batangas and Mindoro with three (3) Visayan companions. He denied knowing his co-accused. To support their alibi, the accused presented Romeo E. Lahermeonaga,[13] the municipal engineer of Bongabong; Major Oliver Capisanan, Chief of Police of Bongabong; Angelita Ganton, wife of Prudencio's grandson Felix; and Dionisia Rodriguez, a former househelp of Renato Reyes.

Engineer Lahermeonaga testified that from Barangay Aplaya to San Isidro is about eight (8) kilometers and would take thirty (30) to forty (40) minutes to travel through rough roads using a private vehicle. The gist of Major Capisanan's testimony was that he saw Abelardo de Castro and Nicasio Lusaya at Mayor Reyes' beach house about 7:10 in the evening of 1 October 1995. Major Capisanan claimed that when he investigated the crime scene that evening, Laila Lineses told him that she did not witness the shooting as she was already in bed and about to sleep.

Angelita Ganton who was in Prudencio's house when the crime occurred testified that she saw Pepito Familiara, Jr. shoot Prudencio. She also said that Pepito was the lover of Laila and that Pepito killed Prudencio after the latter revealed their illicit relationship to Laila's husband.

Dionisia Rodriguez confirmed the presence of Nicasio and Abelardo at the beach house at the time of the shooting and the affair between Pepito and Laila.

Relying on the eyewitness accounts of Gerardo and Laila, the trial court found Abelardo de Castro and Porferio Esguerra guilty of murder with the aggravating circumstance of dwelling, hence the death penalty. They were ordered to solidarily pay the heirs of the victim Prudencio Lineses P50,000.00 as compensatory damages for the loss of life of the victim; P59,500.00 in actual damages; P100,000.00 in moral damages; and P50,000.00 in exemplary damages in view of the presence of an aggravating circumstance. Their co-accused Nicasio Lusaya was acquitted for failure of the prosecution to prove his guilt beyond reasonable doubt.

In this automatic review, accused-appellants Abelardo de Castro and Porferio Esguerra claim that the prosecution failed to prove their guilt beyond reasonable doubt as their identities were not established with certainty. They argue that the trial court gravely erred in giving credit to the testimonies of the prosecution witnesses Gerardo Lineses and Laila Lineses. They asseverate that material inconsistencies scattered all over Gerardo's and Laila's testimonies indicate that neither of these witnesses actually saw the killing. They insist that Gerardo was out of the house at the time of the shooting and only came home the following morning. Laila, on the other hand, was preparing for bed and never saw the assailants.

We affirm the conviction of accused-appellants for murder.

This Court has held often enough that the findings of the trial court on the credibility of witnesses are entitled to full faith and credit since it had the distinct advantage of observing the conduct and demeanor of the witnesses while testifying on the stand. Such findings will not be disturbed on appeal in the absence of any clear showing

that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would otherwise affect the result of the case.[14] An evaluation of the records show that no such error can be attributed to the lower court in this case. At any rate, the inconsistencies appear to be minor or inconsequential which, rather than weaken the witness's credibility, strengthen it as they erase the suspicion of a rehearsed testimony.[15]

Accused-appellants assert that it was "highly uncertain" for anyone to see the culprits with such clarity that night with merely the light of a Coleman lamp coming from the victim's window as illumination. They proffer that the detailed description of Abelardo's clothes and gun and yet the inability of the witnesses to even remember the clothing of Abelardo's companion render their allegations doubtful.

The contention is unconvincing. This Court has repeatedly held that the illumination of wicklamps, flashlights, headlights from cars, lights from lamp posts, even moonlight or starlight is sufficient to allow identification of persons.[16] The light coming from Prudencio's house was sufficient to enable the witnesses to recognize accused-appellants especially since Gerardo testified that their house was lighted not only by a lamp in their sala but also by improvised lamps in their kitchen. The light cast by these lamps which passed through the windows and their door reached up to the gate of the fence surrounding Prudencio's house.[17] Accused-appellants stood only a few meters away from Prudencio's house and the witnesses.

Gerardo and Laila's recognition of Abelardo was unequivocal because of their familiarity with Abelardo who was a long time resident of their barangay and who also served as its barangay captain. This familiarity and the fact that Abelardo calmly waited outside thereby affording the witnesses more opportunity to observe him, accounted for the greater attention received by Abelardo and the consequent disparity between the witnesses' description of him and his companion. That the witnesses failed to notice his companion's garments however should not detract from the fact that Laila recognized that companion to be accused-appellant Porferio Esguerra and positively identified him in court.

Accused-appellants capitalize on the variance between the statement made by Gerardo during cross-examination and that made during the direct examination. They point out that Gerardo later testified that he heard the words "magandang gabi po, kapitan" instead of "magandang gabi, kapitan." They also disparage as "off tangent and beyond the dictates of human nature" his hasty flight from their house. They claim that Gerardo should have stayed awhile to rush his father to the hospital if he was still alive and not merely presumed him dead. Moreover, Gerardo supposedly testified that the door of their house was not visible from his window.

When confronted by the discrepancies in his statements, Gerardo corrected himself and reaffirmed that what he really heard was "magandang gabi, kapitan." [18] The mistake is conceivable since he testified to an event which had occurred years prior to the trial and witnesses cannot be expected to recall with precision every detail surrounding the crime.

As for Gerardo's immediate retreat, this Court has repeatedly observed that different people react differently to a given stimulus or type of situation and there is no standard form of behavioral response when one is confronted with a strange, startling or frightful experience.[19] The assailants addressed Prudencio as "kapitan" before ending the poor man's life. Considering Gerardo was the incumbent barangay captain at that time, he was justified in thinking that he was the real target and the assailants just mistook his father for him. It is completely understandable that Gerardo's reaction was to panic and hide himself after seeing his father bleeding and bullet-ridden. Craven and callous as it may seem to accused-appellants, we certainly cannot deny Gerardo the basic instinct of self-preservation.

Also manifest from the records and contrary to the allegations of accused-appellants, Gerardo clearly declared

upon inquiry by the judge that the door of Prudencio's house was visible from his window.[20]

Accused-appellants are also critical of Gerardo's failure to give a cartographic sketch of the suspects and of Laila's neglect to state in her sworn statement that she saw Porferio shoot Prudencio several times.

Cartographic sketches are resorted to in order to aid law enforcers in the culprit's apprehension when his identity is unknown. Circumstances show that there was no necessity for it. Gerardo was well-acquainted with accused-appellant Abelardo de Castro and categorically identified him as one of the persons he saw the night his father was shot. As for the gunman, Gerardo averred that he only saw him running away from the house and was unable to see his face. During the trial he could only give the build and approximate height of the gunman.

With regard to the supposed deficiency in Laila's sworn statement, we have frequently observed that a sworn statement or an affidavit does not purport to be a complete compendium of the details of the event narrated by the affiant.[21] Being taken ex parte, a sworn statement is almost always incomplete and often inaccurate, sometimes from partial suggestion or for want of suggestions and inquiries.[22] While her sworn statement may have been scanty on details, Laila testified sufficiently on relevant matters on the stand. She testified that she not only saw Abelardo and his companion, whom she later identified in court as the accused-appellant Porferio Esguerra, walking towards Prudencio's house; she also recounted seeing Porferio enter Prudencio's house and fire successive shots at Prudencio.[23]

Accused-appellants express disbelief at Laila's revelation that she heard footfalls for which reason she peeked through her window in the evening of 1 October 1995. Accused-appellants likewise question why, unlike Gerardo, Laila never heard the greeting made by the assailants or met Gerardo in the sala of the Prudencio's house when both claimed to have checked on the victim after the shooting.

Their skepticism is baseless. It is quite typical in barrios for the arrival of visitors to attract the attention of residents. Particularly if the visit is made in the evening when people are normally in their homes, such visit is guaranteed to stir the curiosity of the next-door-neighbor as it did in Laila's case.

The trial court accurately pointed out that the chances of Gerardo and Laila meeting were totally dependent on the exact time each of them went to Prudencio's sala after the shooting and how long he or she stayed there. Gerardo testified that he did not tarry as he promptly left through the backdoor after viewing his father's remains in the sala while Laila related that she stayed in her house for about five (5) minutes after she heard the gunshots before proceeding to Prudencio's sala. Taking into account the delay, it was not surprising that Laila never encountered Gerardo in the vicinity of Prudencio's house after the shooting.

In the same manner, Laila's chance of hearing the assailant's salutation is contingent on her proximity to the assailant and the volume of his voice. It is not unlikely that Gerardo was closer to the assailant who spoke and consequently was the one who overheard him.

Accused-appellants assail the four (4)-month delay of Gerardo and Laila in divulging their knowledge of the identities of the assailants. The argument is unavailing. It is an established rule that failure to reveal the identities of the perpetrators of a crime does not affect, much less impair, the credibility of witnesses, more so if such delay has been adequately explained.[24]

The silence from both Gerardo and Laila during the investigation and even long after is more than excused by their apprehension and distrust of the police. They knew of Abelardo's connection with the incumbent mayor who had supervision over the police in their town. Gerardo had reason to believe that the mayor had some involvement in the assault and that the gunmen were after him. Gerardo was one of eight (8) barangay captains in their municipality who filed a case against Mayor Renato U. Reyes before the Sangguniang Panlalawigan for the

mayor's refusal to release the Internal Revenue Allocation for their barangays. The complaint resulted in the mayor's suspension.

Fearing that they would suffer the same fate as Prudencio if they disclosed what they knew, Gerardo and Laila decided that it was wiser to remain silent about the incident and leave Barangay San Isidro. They only found the courage to reveal what they saw when they heard that the culprits were already behind bars.

In an attempt to show that Laila perjured, accused-appellants submitted a photograph showing her seated with Pepito Familiaria, Jr. behind her. They contend that this belies Laila's assertion that she did not know Pepito Familiaria, Jr. until she saw him in court.

We disagree. We observe that the photograph shows Laila seated on a chair and playing a guitar. A man, identified to be Pepito Familiaria, Jr., stood behind her. While the presence of both persons in the same picture may imply the possibility, it certainly does not prove that they were in fact acquainted. The picture was taken in the beach resort of Mayor Reyes where Laila frequently attended meetings when she was a member of the DSWD and also when she was a barangay treasurer on the invitation of Abelardo, then the incumbent barangay captain. The picture does not demonstrate any interaction among the persons in the picture. Laila appeared in the foreground of the picture and there is no hint that she was even aware of anyone behind her. Laila also admitted that she was the woman in the photograph but denied that she knew that a picture was being taken of her.

The trial court correctly found accused-appellants Abelardo de Castro and Porferio Esguerra guilty of murder. Treachery was proved to have attended the crime. The essence of treachery is the sudden and unexpected attack by an 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.[25] The attack came as the victim was spending a quiet evening in his home. He had no inkling of the coming onslaught nor any chance to protect himself or to retreat as in fact the aggressor even greeted him good evening before firing at him. The manner by which the killing was executed and the viciousness of the assault left no dispute that it was deliberately adopted to ensure the accomplishment of the crime.

We agree with the trial court that Abelardo and Porferio acted in concert. Both men, armed with guns, sought out Prudencio's house in the dead of night. While Abelardo stationed himself outside the door, Porferio discharged the task of killing Prudencio. When that was accomplished, both men left hastily together. These circumstances establish conspiracy and make them both equally liable for Prudencio's death.

We notice that accused-appellants were tried under an Information denominated as one for murder with the use of illegally possessed firearm but their conviction was for murder with the aggravating circumstance of dwelling.

Under PD 1866 as amended by RA 8294, if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm is considered as an aggravating circumstance which if appreciated warrants the imposition of the death penalty.[26] However the accusatory portion of the Information merely mentions that the crime was committed with the use of a firearm but neglected to state that the same was illegally possessed or unlicensed. Thus, the trial court's non-appreciation of said circumstance was proper.

But the trial court mistakenly appreciated the aggravating circumstance of dwelling against accused-appellants to raise the penalty to death because the same was also not alleged in the Information. The Revised Rules of Criminal Procedure which took effect on 1 December 2000 requires that aggravating circumstances must be alleged in the information or complaint, otherwise, they cannot be properly appreciated.[27] Being favorable to the accused, this procedural rule must be given retroactive application. Thus, for want of an aggravating circumstance, the penalty imposable for murder can only be reclusion perpetua.

With respect to their civil liability, the award of P50,000.00 in civil indemnity is proper and in conformity with current jurisprudence. The heirs of the victim are entitled to moral damages but the sum of P100,000.00 awarded by the trial court should be reduced to P50,000.00. The purpose for the grant of such an award is not to enrich the heirs of the victim but to compensate them for injuries to their feelings.[28]

Actual damages of P59,500.00 must be disallowed. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can only be given to those that are supported by receipts and appear to have been genuinely incurred in connection with the death, wake and burial of the victim. We note that the victim's daughter, Agnes Zalamea-Lineses, who testified to prove the civil liability of the accused-appellants, only gave a list of the expenses incurred by the heirs in connection with the wake and burial of the victim but no actual receipt was ever presented. In lieu of actual damages, temperate damages may be awarded since it cannot be denied that the victim's heirs suffered pecuniary loss the amount of which cannot be proved with certainty. An award of P20,000.00 should be adequate.

Exemplary damages may also be awarded in criminal cases where the crime was committed with one or more aggravating circumstances.[29] However, in view of our earlier finding that the circumstance of dwelling cannot be appreciated, the award by the trial court of P50,000.00 for exemplary damages must be removed.

WHEREFORE, the assailed Decision of the court a quo finding accused-appellants ABELARDO DE CASTRO and PORFERIO ESGUERRA Guilty of Murder is AFFIRMED with the MODIFICATION that the death sentence imposed by the court a quo is reduced to reclusion perpetua. Accused-appellants are further ordered jointly and severally to pay the heirs of Prudencio Lineses P50,000.00 as civil indemnity, P50,000.00 for moral damages and P20,000.00 for temperate damages. The awards for actual and exemplary damages are deleted for lack of factual and legal basis.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

[1] Decision penned by Judge Antonio M. Rosales, RTC-Br. 41, Pinamalayan, Oriental Mindoro, prom. 5 November 1999.

[2] TSN, 26 February 1998, p. 36.

[3] Also referred to as an "alladin lamp" in the tsn.

[4] Decision, p. 20.

[5] Id. at 5.

[6] TSN, 30 July 1998, p. 26.

[7] TSN, 20 June 1998, p. 14.

[8] Records, p. 336.

[9] TSN, 26 February 1998, p. 17.

[10] Records, p. 10.

[11] Id. at 11.

[12] Id. at 1.

[13] Also spelled "Romeo E. L. Meonada" in the Decision.

[14] People v. Albior, G.R. No. 115079, 19 February 2001, 352 SCRA 35.

[15] People v. Velasquez, G.R. Nos. 132635 and 143872-75, 21 February 2001, 352 SCRA 455.

[16] People v. Villaruel, G.R. No. 105006, 4 September 1996, 261 SCRA 386; People v. Sabalones, G.R. No. 123485, 31 August 1998, 294 SCRA 751; People v. Belo, G.R. No. 109148, 4 December 1998, 299 SCRA 654.

[17] TSN, 26 February 1998, p. 47.

[18] Id. at 58.

[19] People v. Espresso, G.R. No. 117749, 1 December 2000, 346 SCRA 617.

[20] TSN, 25 February 1998, p. 33.

[21] People v. Lising, G.R. Nos. 106210-11, 30 January 1998, 285 SCRA 595; People v. Jamboree, G.R. No. 117576, 18 September 1997, 279 SCRA 290.

[22] People v. Bumidang, G.R. No. 130630, 4 December 2000, 346 SCRA 807.

[23] TSN, 26 June 1998, p. 6.

[24] People v. Paraiso, G.R. No. 127840, 29 November 1999, 319 SCRA 422; People v. Arlalejo, G.R. No. 127841, 16 June 2000, 333 SCRA 604; People v. Preciados, G.R. No. 122934, 5 January 2001, 349 SCRA 1.

[25] People v. Vermudez, G.R. No. 119464, 28 January 1999, 302 SCRA 276.

[26] People v. Bergante, G.R. Nos. 120369-70, 27 February 1998, 286 SCRA 629.

[27] Section 9, Rule 110.

[28] People v. De la Cruz, G.R. No. 128362, 16 January 2001, 349 SCRA 124; People v. Valdez, G.R. No. 128105, 24 January 2001, 350 SCRA 189; People v. Ronas, G.R. Nos. 128088 and 146639, 31 January 2001, 350 SCRA 663.

[29] People v. Reyes, G.R. No. 118649, 9 March 1998, 287 SCRA 229.

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