

PEOPLE OF THE PHILIPPINES, APPELLEE VS. IGNACIO TONOG, JR., ALSO KNOWN AS ABDUL TONOG, JR., ALVIN ROLANDO SOLAMILLO, ALSO KNOWN AS ALLAN SOLAMILLO, “JOHN DOE,” AND “PETER DOE, A...

G.R. No. 144497. June 29, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Negros Oriental, Branch 34, Dumaguete City, finding the appellant, Alvin Rolando Solamillo alias Allan Solamillo, guilty of murder in Criminal Case No. 8123.

The appellant, along with accused Ignacio Tonog, Jr. and two others, was charged in an Amended Information[2] which reads, thus:

The undersigned Fiscals accuses [sic] IGNACIO TONOG, JR. alias ABDUL TONOG, ALVIN ROLANDO SALAMILLO alyas [sic] ALLAN SALAMILLO, “JOHN DOE” and “PETER DOE” of the crime of MURDER, committed as follows:

That on or about the 24th day of April, 1988, in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring and mutually aiding one another, with the use of a motorvehicle [sic] in which they brought said EFREN FLORES to an uninhabited place, and taking advantage of their superior strength and with intent to kill said EFREN FLORES, and armed with a deadly weapon, to wit: a Batangas knife, did then and there willfully, unlawfully and feloniously stab and wound therewith said EFREN FLORES during nighttime, inflicting upon said EFREN FLORES the following injuries to wit:

...

...which injuries directly caused the death of said EFREN FLORES.

That the crime was committed with the qualifying circumstances of use of a motorvehicle [sic], taking advantage of superior strength, nighttime, uninhabited place and cruelty.

Contrary to Article 248 of the Revised Penal Code.[3]

The accused Ignacio Tonog, Jr. moved for a separate trial, because his co-accused were still at large.[4] The court granted the motion. The case as against the appellant was archived. After trial, the court rendered judgment convicting Tonog, Jr. of murder and sentenced him to reclusion perpetua. The dispositive portion of the said decision reads:

WHEREFORE, the accused Ignacio Tonog, Jr. alias “Abdul Tonog” is hereby found guilty beyond reasonable doubt of the crime of Murder and the Court hereby imposes on him the penalty of Reclusion Perpetua.

Accused is likewise ordered to indemnify the heirs of the deceased victim the sum of THIRTY THOUSAND

PESOS (P30,000.00) and to pay the costs.

The case filed against his co-accused Allan Solamillo and two other unidentified individuals are hereby ordered archived, without prejudice to their further prosecution, considering that until this time they have not yet been apprehended and still remain at large.[5]

The ruling of the trial court was affirmed by this Court in G.R. No. 94533[6] on February 4, 1992, the dispositive portion of which reads:

WHEREFORE, the judgment appealed from is hereby AFFIRMED, except with respect to the indemnity, which is hereby increased to P50,000.00. Costs against accused-appellant, Ignacio Tonog, Jr.[7]

More than six years later, or on April 8, 1998, the appellant was arrested in Cabato Road, Tetuan, Zamboanga City.[8] Upon motion[9] of the Assistant City Prosecutor, Criminal Case No. 8123 was revived. The appellant, with the assistance of counsel, pleaded not guilty to the charge against him.[10] Trial commenced as to the appellant.

The Case for the Prosecution[11]

Thirty-eight-year-old Liberato Solamillo, Jr., the appellant's first cousin, was a fish vendor in Tinago, Dumaguete City. In the year 1988, he worked as a driver of his father's "motorcab." He was also a part-time driver of Jun Salabante, and drove the "motorcab" owned by the latter, bearing sidecar number 0164. The appellant was its regular driver.

On April 24, 1988, Liberato started plying his route at around 6:00 a.m. and was still driving until about 5:30 p.m. Liberato's uncle and the appellant's father, Teodoro Solamillo, arrived from Zamboanga and asked to be accompanied to look for his son. Liberato and Teodoro searched for the appellant using the "motorcab" with sidecar no. 0164, and found the appellant sleeping at the house of his grandmother, Felisa Solamillo. Teodoro awakened his son and the two of them conversed. Liberato was told to wait, so he stood by the "motorcab" and did as he was told. Thereafter, the appellant, Teodoro and Liberato boarded the "motorcab" and left. Teodoro alighted at the house of his father, Paulo Solamillo, in Lawisid, Sitio Bacong. The appellant was then wearing a plain white shirt and maong pants.[12]

At around 7:00 p.m., Liberato and the appellant then went to Nora's Store located at Sitio Bacong. Ignacio Tonog, Jr. was also at the store. Liberato drank soft drinks, while the appellant and Tonog, Jr. drank beer. At around 7:30 p.m., the appellant requested Liberato to bring a certain Emil to the cockpit in Dumaguete City. Liberato did as he was told, and no longer collected the fare because the passenger was a friend of the appellant's. The trip from Bacong to Dumaguete and back took about forty-five minutes.[13]

At around this time, Patrolman Remigio Biyok was watching a movie at the house of Charlie Yee with many others. The place was about one hundred fifty meters from Nora's Store.[14] At 8:00 pm., Julian Valencia approached Pat. Biyok and informed the latter that the appellant had fired a gun somewhere within the vicinity of the store. Pat. Biyok went to the police station which was about a hundred meters away from Nora's Store, before proceeding to the place.[15] His companions, Patrolman Mendoza, Patrolman Taño and Patrolman Tuballa had already gone ahead to investigate the matter. Pat. Biyok saw the appellant within the vicinity of the Nora's Store. He also saw Tonog, Jr., who asked to be conveyed to Tinago, Dumaguete City, to the house his brother was renting. Pat. Biyok obliged, since Tonog, Jr. also happened to be the brother of then Chief of Police Lt. Isaias Tonog.[16] Tonog, Jr. then left with Pat. Biyok on board the latter's Yamaha 80 motorcycle. It was about 9:30 p.m.[17]

When Liberato went back to Sitio Bacong, Dumaguete City, he saw the appellant and Tonog, Jr. standing outside

Nora's Store. Divina, the store owner's daughter, was also there. Three policemen were within the vicinity. Liberator heard that one of them, either Tonog, Jr. or the appellant, had caused a commotion by firing a gun.[18] He also saw Tonog, Jr. leave with Pat. Biyok.

At about 9:30 p.m., Liberator and the appellant went looking for Tonog, Jr. using the "motorcab" bearing sidecar no. 0164. They passed by Pat. Biyok's house in Banilad, Dumaguete City, which was about five kilometers from Sitio Bacong. Efren Flores, the son of former Philippine National Police Chief Nick Flores, was then at Pat. Biyok's house, drinking beer with friends.[19] Pat. Biyok arrived from the trip to Tinago, Dumaguete City, which was about five to six kilometers away[20] and saw Efren at his house. Liberator and the appellant arrived and inquired on the whereabouts of Tonog, Jr. The appellant asked Pat. Biyok where Tonog, Jr. had gone, and Pat. Biyok replied that he had already brought the latter to Sitio Tinago.[21]

In the meantime, Efren Flores came near Liberator and the appellant, and said, "I would like to ride with you to Dumaguete." The appellant told Liberator to stay at Pat. Biyok's residence as he (the appellant) would be the one to take Efren Flores to Dumaguete City. "Stay here," the appellant told Liberator.[22] The appellant promised that he would be back within five minutes.[23] Pat. Biyok saw Efren Flores on board the "motorcab" driven by the appellant.[24] The motorcab was about ten to fifteen meters away, and Pat. Biyok saw them as he was sitting on the porch of his house. The place was lit by a Meralco lamp post, about twenty to twenty-five meters away.[25]

Liberato waited in vain for the appellant to return. He watched an on-going amateur contest and decided to leave the place about thirty minutes later.[26]

Liberato then waited for a ride and saw his friend, Gorio, pass by in a "motorcab." He requested Gorio to accompany him to look for the appellant in Sitio Tinago. They went around Dumaguete City, but did not find the appellant. They then decided to go home. Along the way, they passed by the store owned by Liberator's aunt, Francisca Bueno, which was located along the national highway at Sitio Bacong, Banilad, Dumaguete City. They saw the "motorcab" bearing sidecar no. 0164 and approached the vehicle. Liberator saw Tonog, Jr. inside.

Liberato then went into his aunt's house. He saw the appellant buying sardines and one family-sized soft drink. He asked the appellant why he showed up only now, and the latter told him to keep quiet and to let Gorio go ahead.[27] Thereafter, he saw the appellant and his other cousin, Elvis Bueno, conversing. They were about one meter away from each other.[28] Liberator then overheard the appellant say "Nakuha na gyod, Bes" (Already taken Bes).[29] As the appellant uttered those words, Liberator noticed that the latter's fatigue shirt had plenty of red stains. He then remembered that the appellant was wearing a white shirt while they were still at the store. He did not ask the appellant about the red stains, because the latter seemed fearful at the time. Nothing was said of the incident. It was by then past 11:00 p.m.[30]

Later, the group went back to the house of Liberator's grandfather, Paulo Solamillo. Paulo was angry at Liberator for going home so late. Tonog, Jr. and the appellant ate and conversed, while Liberator slept. Liberator woke up at 6:00 a.m. and started plying his usual route, using the "motorcab" owned by Jun Salabante.

At about 6:00 a.m. on April 25, 1988, the Dumaguete Police Station received reports that a lifeless body had been found at the crossing of Cantil-e, Dumaguete City.[31] Upon receiving the report, SPO1 Walter R. Leguarda immediately went to the place where the body was reported found and conducted an investigation. He learned that the Flores family, who lived near the place where the body of the victim was found, spotted the "motorcab" bearing sidecar number 0164 within the vicinity. After learning that the vehicle belonged to Jun Salabante, SPO1 Leguarda proceeded to the latter's house where he was informed that the drivers of the vehicle were Liberator Solamillo and the appellant. SPO1 Leguarda then went to Liberator's place to investigate the matter further. Liberator told him that the appellant borrowed the "motorcab" that day. Thus, the police operatives went to Sitio

Bacong to arrest Tonog, Jr., but did not find the suspect there.

Afterwards, however, Tonog, Jr. voluntarily went with the police authorities to the police station for questioning. After the investigation, SPO1 Leguarda saw Tonog, Jr. seated on a bench, and appeared to be crying. SPO1 Leguarda approached him and asked why his pants had so many blood stains. Tonog, Jr. looked surprised and asked where the station commander was. He then politely confessed to Police Captain Pedro Centeno that he was one of the killers of Efren Flores and that he used a Batangas knife, which, however, he gave to the appellant.[32]

SPO1 Leguarda also testified that he saw the appellant talking with Captain Nick Flores, the father of the victim, near the kampanaryo at the Quezon Park, Dumaguete City, at the corner of Perdices and Colon Streets. According to Leguarda, he saw the two of them talking early in the morning, after their “formation” before reporting to their respective duties, on three or four occasions. He did not think much about it at the time.[33]

SPO1 Leguarda also recounted that he was able to talk to the late Captain Flores before the latter died. It was the first week of January, 1995. Captain Flores requested him to appear in court if ever the appellant would be arrested. He was told that the appellant was an informer or “asset,” and that in connection with a tire he helped to recover, the appellant was promised reward money in the amount of P5,000.00. However, Captain Flores was unable to give the money to the appellant. Captain Flores narrated that the appellant threatened to kill him because of the incident.[34]

SPO1 Leguarda also recounted that Tonog, Jr. had a grudge on the victim, and learned of the motive behind the killing from Tonog, Jr.’s girlfriend. Efren Flores and Tonog apparently had an argument while both were drunk, which led the victim to strangle the latter with his hands.

Liberato found out about the killing from some of his passengers, as he was plying his usual route. He was then invited for questioning by the police in the afternoon of April 25, 1988. When the police asked him where he was the night before, he replied that he and the appellant were together.

SPO3 Vilma Beltran testified she was on duty at the Police Station of Dumaguete City. At around 11:00 a.m. of April 25, 1988, Sgt. Patricio brought Tonog, Jr. to the station. The suspect was made to remove his pants, which Sgt. Patricio handed to her. Tonog, Jr. also turned over a stainless knife. Both items were placed in a transparent plastic pack and labeled. The bag containing the items was then forwarded to Forensic Chemist Myrna Areola.[35]

City Health Officer Urbano E. Diga examined the cadaver of the victim and documented the following findings in his medico-legal report:

- Wound at the pre-auricular area 2 cm. from the right ear measuring 0.2 cm x 1.5 cm. non-penetrating;
- Wound 3 cm. above wound no. 1 measuring 0.2 cm. x 1 cm. non-penetrating;
- Wound at the angle of the right mandible measuring 1 cm. x 2.8 cm. x 9 c.m.;
- Wound above wound no. 3 measuring 0.3 cm. x 1 cm. non-penetrating;
- Wound at the right lateral neck measuring 0.3 cm. x 1 cm. x 6.5 cm.;
- Wound below wound no. 5 (4 cm. distance) measuring 0.5 cm. x 1 cm. x 6 cm.;
- Wound 6 cm. below right middle portion of the clavicle measuring 1 cm. x 2 cm. x 13.5 cm.;
- Wound 4 cm. below medial 3rd of the right clavicle measuring 1 cm. x 2 cm. x 13.6 cm.;
- Wound 4 cm. above the right nipple measuring 0.5 cm. x 1.4 cm. non-penetrating;

- Wound 2 cm. from the level of the right nipple measuring 1 cm. x 1.5 cm. The direction of the wound is upward measuring 14 cm. deep.
- Wound at the third medial portion of the left clavicle measuring 1 cm. x 3 cm. x 13.7 cm.
- Wound 1 cm. below wound no. 11 measuring 0.3 cm. x 1 cm.
- Wound 2 cm. below wound no. 12 measuring 0.3 cm. x 1.5 cm. non-penetrating;
- Wound 1 cm. below wound no. 13 measuring 0.3 cm. x 7.5 cm.;
- Wound 7 cm. above the left nipple measuring 1 cm. x 1.5 cm x 14.5 cm.;
- Wound 1 cm. below wound no. 15 measuring 1 cm. x 1.5 cm. x 14.5 cm.;
- Wound 1.8 cm. above and to the right of the left nipple measuring 0.5 cm. x 0.2 cm. x 2 cm. x 13.5 cm.
- Wound just below the left nipple horizontally directed measuring 0.2 cm. x 2 cm. x 13.5 cm.;
- Wound 2 cm. to the right of wound no. 18 measuring 0.6 cm. x 1.5 cm. x 15 cm.;
- Wound just above the right subcostal region measuring 1.3 cm. x 4 cm. The wound is directed upward measuring 15 cm. deep;
- Wound 3 cm. below the right subcostal region among (sic) nipple line measuring 1 cm. x 2 cm. The wound is directed upward measuring 10.5 cm. deep;
- Wound along right midaxillary line (lumbar region) measuring 1 cm. x 2 cm. x 2 cm.;
- Wound at the right 11th posterior rib measuring 0.8 cm. x 7.9 cm. non[-]penetrating directed horizontally;
- Wound 1.5 cm. above wound no. 23 directed obliquely 0.8 cm. x 1.5 cm.;
- Wound right posterior lumbar measuring 0.5 cm. x 2 cm. directed horizontally. The wound is 15 cm. deep;
- Wound 7 cm. above wound no. 25 measuring 0.5 cm. x 1.5 cm. x 4.5 cm.;
- Hematoma and swelling of both lips.[36]

The doctor also testified that of the twenty-six (26) wounds inflicted on the victim, fourteen (14) were fatal,[37] and that the weapon used by the assailant could have been a long, sharp, bladed instrument.[38] The doctor also executed the victim's certificate of death.[39] He testified that the victim was his nephew by affinity, as his wife was the cousin of the victim's father. The victim also happened to be their neighbor in Banilad.[40]

Wilna Portugaleza, the custodian of the medical records at the Holy Child Hospital, testified that the records of the victim Efren Flores were no longer available as of 1996. The blood type of the victim as indicated in the certified true copy of the records of the hospital was Type "O." [41]

The Case for the Appellant

The appellant, for his part, filed a Manifestation[42] submitting the attached Demurrer to Evidence,[43] with a reservation that in the event an adverse decision would be rendered, such decision would be appealed to this Court. The appellant, through counsel, prayed that judgment be rendered acquitting him for insufficiency of the evidence for the prosecution.

The Trial Court's Ruling

The court thereafter rendered judgment convicting the appellant of murder in its decision dated May 17, 2000, thus:

WHEREFORE, accused ALVIN ROLANDO SOLAMILLO, alias “ALLAN SOLAMILLO,” 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 is likewise ordered to indemnify the heirs of the deceased victim the sum of FIFTY THOUSAND PESOS (P50,000.00), and to pay the costs.

There is no more need to pronounce judgment against co-accused Ignacio Tonog, Jr. alias “Abdul”, considering the fact that in this case, he was earlier convicted by this Court of the crime of Murder and meted the penalty of Reclusion Perpetua, which conviction was affirmed by the Supreme Court.

In line with Section 5, Rule 114 of the 1985 Rules on Criminal Procedure, as amended, the City Warden of the Bureau of Jail Management and Penology, Dumaguete City, is hereby directed to immediately transmit the living body of accused Alvin Rolando Solamillo, alias “Allan Solamillo”, to the New Bilibid Prison at Muntinlupa City, Metro Manila, where he may remain to be detained.

SO ORDERED.[44]

The Present Appeal

The appellant now appeals the decision of the trial court, contending as follows:

- A) THAT THE HONORABLE TRIAL COURT HAS ERRED IN ITS APPRECIATION OF THE EVIDENCE OF THE PROSECUTION CONVICTING THE ACCUSED/APPELLANT OF THE CRIME CHARGED BEYOND REASONABLE DOUBT;
- B) THAT THE HONORABLE TRIAL COURT WAS MANIFESTLY BIASED AGAINST AND/OR HAS PREJUDGED THE GUILT OF THE ACCUSED EVEN BEFORE [THE] PROSECUTION PRESENTED ITS EVIDENCE WHICH IS VIOLATIVE OF DUE PROCESS;
- C) THAT THE CONDUCT OF THE HONORABLE PRESIDING JUDGE DURING THE HEARING APPEARS TO BE UNETHICAL, UNPLEASANT AND UNCALLED FOR.[45]

According to the appellant, the prosecution miserably failed to prove the existence of circumstantial evidence to establish his participation in the crime. He avers that no bloodstain was found in the “motorcab” bearing sidecar no. 0164, precisely because it was never inspected, verified, nor examined by the police authorities. Furthermore, prosecution witness SPO1 Walter Leguarda testified that a certain Flores, the owner of the house near the place where the victim was found, told him that the said “motorcab” was seen that evening within the vicinity of the crime scene. However, the said Flores was not presented as a witness.

The appellant also points out that there are inconsistencies in the testimony of prosecution witness Police Inspector Orlando Patricio, who testified that he found the knife in the morning of April 25, 1988, but admitted that the knife presented in open court was not the Batangas knife recovered at the crime scene. He also testified that he merely placed the said knife inside the tools compartment of the jeep, and never confronted the appellant with such knife.

The appellant also questions the trial court’s reliance on the testimony of Medical Record Custodian Wilna Portugaleza, as she candidly admitted in open court that she could not remember the blood type of the victim as his medical records in the Holy Child Hospital in Dumaguete City were already destroyed as of 1996. The appellant also points out that there is serious doubt as to whether the witness Liberato Solamillo, Jr. actually heard the appellant utter the words “Nakuha na gyod bes” to Elvis Bueno, considering that his testimony remained uncorroborated.

According to the appellant, the fact that he left Dumaguete City for Zamboanga City after the commission of the

crime is not evidence of his flight. He was never in hiding in Zamboanga City. As a matter of fact, the appellant's father, Teodoro Solamillo, arrived in Dumaguete City in the afternoon of April 24, 1988 for the purpose of fetching his son (the appellant) to help in the management and operation of their motorized tricycle transportation business in Zamboanga City. Liberato further testified that he even accompanied his uncle, Teodoro Solamillo, to look for the appellant that afternoon of April 24, 1988, and found the latter sleeping in their grandmother's house.

The appellant also posits that he had no motive to kill Efren Flores, which, in this case, is relevant, considering that the identity of the assailant is in serious doubt. The motive presented by the prosecution, that the appellant killed the victim because he was not given his share of the reward money of P5,000, is incredible and farfetched. The prosecution witnesses' failure to testify that the appellant was in fact an "asset" of the late Capt. Nick Flores (the victim's father) when they testified in 1989 raises doubts as to their veracity. Thus, such testimony was a mere afterthought on the part of the prosecution witnesses.

In fine, the appellant questions the veracity of the testimonies of the witnesses for the prosecution. As such, the appellant asserts that the prosecution failed to prove conspiracy and the guilt of the appellant beyond reasonable doubt.

The Office of the Solicitor General (OSG), for its part, contends that the appellant's guilt was proven beyond reasonable doubt by interlocking circumstantial evidence. Furthermore, the flight of the appellant from Negros Oriental immediately after the incident, until he was finally arrested ten years later in Mindanao, is an indication of his guilt. The OSG concludes that the obtaining circumstantial evidence against the appellant serves as sufficient basis to convict the appellant of the crime charged, as his participation in the crime charged had already been established in Ignacio Tonog, Jr.'s conviction.

The Ruling of the Court

The appellant's contentions are without merit.

It is a well-entrenched rule that the trial court's findings of facts, its calibration of the collective testimonies of witnesses, its assessment of the probative weight of the evidence of the parties, as well as its conclusions anchored on the said findings, are accorded great weight, and even conclusive effect, unless the trial court ignored, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case. This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and the deportment of the witnesses as they testify.[46] Upon a careful review of the records of the instant case, the Court finds no cogent reason to overrule the trial court's finding that the appellant stabbed the victim in cold blood.

The Circumstantial Evidence

Against the Appellant is
Sufficient to Sustain a
Conviction

The counsel for the appellant filed a demurrer to evidence without leave of court, which, under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, constitutes a waiver of the right to present evidence. The case is then considered submitted for judgment on the basis of the evidence for the prosecution. In fact, in his demurrer before the trial court, the appellant specifically prayed that judgment be rendered in the case, and manifested that he was no longer presenting evidence on his behalf, on the ground that the evidence for the prosecution was insufficient to convict him.

Contrary to the appellant's contention, the prosecution was able to prove his motive to commit the crime, albeit

belatedly. SPO1 Leguarda testified as follows:

Q

Will you please tell this Honorable Court, when did you learn from the late Captain Flores that accused Allan Solamillo was his informer or asset?

A Before [the] first week of January sir. Before he died, January 1995.

Q Now, Captain Nick Flores is the father of Efren Flores, isn't it?

A Yes, Sir.

Q And, Efren Flores was murdered sometime in the evening of April 24, 1998, is it not?

A Yes, Sir.

Q And per your investigation, Allan Solamillo has something to do in (sic) the killing of Efren Flores, isn't it?

A Yes, Sir.

COURT:

Let's clarify this.

Q In your investigation, was Allan Solamillo involved in the killing of the victim Efren Flores?

A Yes, Sir.

Q Are you sure of that?

A

Yes sir, because that was [what] Liberato Solamillo told me that he saw Allan Solamillo bought some sardines and pepsi cola at the store of Francisca Buena with some blood stains on his T-shirt Sir.

ATTY. EDDING:

Q

But did you not reduce in writing about (sic) this important informations (sic) that you learned from Liberato Solamillo?

A I did not.

Q

So, to your best knowledge, the late Captain Flores also knew that Allan Solamillo has involvement (sic) in the killing of his son Efren Flores as early as April 25, 1988?

A After his son was murdered Sir.

Q So he has knowledge already?

A After his son was murdered Sir, he has knowledge already Sir.

Q About the alleged involvement of Allan Solamillo?

A Yes, Sir.

Q And of course, even if you were not so closed (sic) with the late Captain Flores, you were always seeing

each other because you were at the same station?

A Yes, Sir.

Q

So, you would like to tell us that from 1988, 89, 90, 91, 92, 93, 94 up to sometime January 1995 or for the period of eight (8) years, only [a] few days before Captain Flores died, that they revealed to you that Allan Solamillo was his former asset or informer?

A Because I was relieved in the Dumaguete Police Station Sir and was assigned in Canlaon Sir.

Q The late Captain Flores told you that Allan Solamillo was his asset or informer, isn't it?

A Yes, Sir.

Q

And that, he also told you at one time [that] the police was able to recover lost article[s] like [a] tire, and it was recovered because of the assistance provided by Allan Solamillo?

A Yes, Sir.

Q

And, he also told you that Allan Solamillo was supposed to be entitled to Five Thousand Pesos (P5,000.00), a (sic) reward money, isn't it?

A Yes, Sir.

Q

And also Captain Flores told you that he failed to give the Five Thousand Pesos (P5,000.00) to Allan Solamillo?

A Yes, Sir.

Q And he also told you that he was able to make use of the Five Thousand Pesos (P5,000.00)?

A Yes, Sir.[47]

SPO1 Leguarda could not be faulted for not having disclosed the matter earlier. The victim's father, Captain Nick Flores, revealed that the appellant was an "asset," and threatened to kill him upon his failure to pay the reward money of five thousand pesos (P5,000) only after eight years. Captain Flores was probably unsure whether he would reveal such information, as it would incriminate him, having himself used the reward money intended for the appellant.

Furthermore, SPO1 Leguarda's account of the investigation corroborates that of Liberato Solamillo's version of the incident. Even during the trial of the case for Tonog, Jr., SPO1 Leguarda testified, thus:

Q And where did you gather information that Abdul Tonog was one of the suspected killers? From whom?

A

When I asked Jun Salabante who the driver of the pedicab was, he told me that the driver of that motorcab on that day, April 24, was Liberato Solamillo but the regular driver was Allan Solamillo. So I went to the house of Liberato Solamillo and asked him if he was the driver of that motorcab that day; and this Liberato Solamillo told me that in the early day of April 24, 1988, this Allan Solamillo borrowed his motorcab. On the same date,

April 24, about twelve o'clock in the evening, Liberato Solamillo told me that he saw his motorcab parked in front of the store of Francisca Bueno and he saw this Abdul Tonog sitting inside his motorcab while Allan Solamillo bought some sardines and Pepsi-cola at the store of Francisca Bueno, with some blood stains in (sic) his t-shirt.

Q

So it was Liberato Solamillo that you questioned[,] and [you] identified one suspect as one Mr. Ignacio Tonog, is that correct?

A Yes.

Q And by information you identified Allan Solamillo as one of the suspects?

A Yes.

Q

Inasmuch as Allan Solamillo was supposed to be identified as one of the suspects, did you effect an arrest against Allan Solamillo?

A We were not able to locate Allan Solamillo.

Q How about Liberato Solamillo, did you not effect an arrest against him?

A We invited him for investigation.

Q You invited him?

A Yes.[48]

A comparison of the testimonies of SPO1 Leguarda taken during the trial for Tonog, Jr., and for the appellant, reveals that there was no substantial variance between both accounts. Such consistency lends veracity to the testimony of SPO1 Leguarda, considering the ten-year interval of time between the testimonies.

Liberato's account of the events on that fateful night seemed, likewise, to have been etched in his mind. His unwavering testimony, in both trials, was that the appellant took "motorcab" bearing sidecar no. 0164, and volunteered to convey the victim to Dumaguete City. The appellant told Liberato that he would be back shortly, and instructed the latter to stay put and wait for him at the house of Pat. Biyok. His testimony during the trial of Tonog, Jr. was almost identical to his account during the trial for the appellant.

ESCOREAL:

Q

Upon arrival at the house of Patrolman Remegio Biyok at Banilad, Dumaguete City, Allan Solamillo asked Patrolman Biyok where Abdul was; can you remember what was your answer?

A Patrolman Biyok answered that he conveyed Abdul Tonog to Tinago.

Q Then after that, what transpired next?

A Efren Flores went near Allan, and Efren Flores requested that he be conveyed here in Dumaguete City.

Q Did Allan heed the request of Efren Flores?

A Allan said "You stay behind Jun because I will first convey Efren Flores.["]

Q Who is this June (sic) whom Allan is referring to?

A Myself.

...

Q Where was this Patrolman Biyok when Allan told you to stay behind?

A He was at the gate of their (Biyok's) fence.

Q How far was this fence of Patrolman Biyok from where you were situated?

A Less than one meter.

Q

And after the request made by Efren Flores that he be conveyed to Dumaguete City proper, what transpired next?

A

When Allan conveyed Efren Flores here in Dumaguete City, Efren remained in conversation with Patrolman Biyok at their place. It was already about 11:45 in the evening, Allan Solamillo had not returned yet. And so, Patrolman Biyok told me to go home.

Q Did you heed the advice of Patrolman Remegio Biyok?

A Yes, Sir.

Q And what did you do next upon hearing the advice of Patrolman Biyok?

A

We waited for a pedicab and fortunately Gorio happened to pass by, and so, I road (sic) on his pedicab and made a search for Allan Solamillo.

Q And where did you search for Allan Solamillo?

A Here in Tinago and at the pier.

Q And were you able to locate Allan?

A No, Sir.

...

Q Then after you went inside the house of your aunt Francisca Bueno, what did you observe inside?

A I heard Allan said (sic): "Kuha na gyod 'Vis.'" (He is already taken, 'vis.)

Q To whom was he addressing that statement?

A Elvis Bueno.

Q And who is this Elvis Bueno?

A My cousin, the son of Francisca Bueno.

Q Was Elvis Bueno around when Allan Solamillo uttered that statement addressed to Elvis Bueno?

A Yes, Sir.

Q What about this Francisca Bueno, was she also around?

A She was upstairs.

Q When Allan Solamillo uttered these words, did you see Allan Solamillo?

A Yes.

Q Who were around when Allan Solamillo uttered these words “Kuha na gyod ‘vis’”?

A The three of us, Elvis, Allan and myself.

Q What did you notice in Allan Solamillo?

A I noticed or observed that the t-shirt he was wearing before was no longer the same.

Q Why, what was the t-shirt that was worn by Allan Solamillo on that early evening?

A It was a white t-shirt.

Q Was it a printed t-shirt?

A Plain white.

Q

And on that particular place and time, what did you observe? What was the t-shirt or what was Allan wearing during that time?

SEDILLO:

Which particular time and place?

ESCOREAL:

At the time when Allan was already, when Allan and you were inside the house of Francisca Bueno?

A It was a fatigue t-shirt.

Q What did you observe on the fatigue t-shirt of Allan Solamillo?

A I noticed that there were many blood stains.

...

ESCOREAL:

Q Why did you notice that the fatigue t-shirt that was used by Allan Solamillo has plenty of blood stains?

SEDILLO:

We will object to that, there was still no basis of (sic) the word plenty. The witness did not testify yet that there was plenty of blood stains.

ESCOREAL:

I will omit that word plenty, your Honor, and let the witness answer.

WITNESS:

A Because it seemed that there were many red spots.

Q And after that, what happened next?

A Allan bought a family size coke and sardines and then we went home to Banilad, Bacong.

Q And what happened to Abdul Tonog?

A The three of us including Abdul went home together.

Q And did it not occur to your mind the whereabouts of your motorcab?

A No, Sir.

Q Did you not inquire from Allan or Abdul?

A I asked Allan but he got angry with me.

Q Why did you say that Allan got angry with you?

A Because I asked him why there seemed to be red spots on his t-shirt.

Q How are you related to Francisca Bueno when you said she is your aunt?

A

My father and Francisca Bueno are brothers (sic) and sisters (sic).[49]

Thus, the appellant failed to discredit the testimony of prosecution witness Liberato Solamillo who saw him wearing blood-stained clothes. Neither did he succeed in discrediting the testimony of SPO1 Leguarda, who saw him drive off with the victim in the “motorcab” bearing sidecar number 0164 owned by Jun Salabante. In fact, even the late Elvis Bueno testified, during the hearing of the case for Tonog, Jr., that the appellant told him thus:

Q Aside from that, were there other statements uttered by Allan Solamillo when you were conversing with each other?

A Only that he said, “KUHA NA VIS”, meaning “it was already taken, VIS.”

Q Do you know what he mean[t] by those words. “Kuha na Vis”?

A I do not know.[50]

Doubtless, it is not only by direct evidence that an accused may be convicted of the crime for which he is charged. There is, in fact, consensus that resort to the circumstantial evidence is essential since to insist on direct evidence would, in many cases, result in setting felons free and deny proper protection to the community.[51] However, for the accused to be convicted based on circumstantial evidence, the following requisites must concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. For circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.[52]

In the case at bar, the circumstantial evidence presented by the prosecution is sufficient to sustain a conviction: the victim was last seen in the company of the appellant; not long thereafter, the victim was found dead; and, the appellant was nowhere to be found within the vicinity of the killing.[53]

The Appellant’s Flight From Dumaguete
To Zamboanga, Where He Was Arrested

Ten (10) Years Later, Is Evidence Of His Guilt For The Crime Charged

Indeed, flight per se is not synonymous with guilt and must not always be attributed to one's consciousness of guilt.[54] However, the flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established, for a truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence.[55] Although the appellant's silence and refusal to testify, let alone refusal to present evidence, cannot be construed as evidence of guilt, this Court has consistently held that the fact that an accused never testified in his defense even in the face of accusations against him goes against the principle that "the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time." [56] In this case, the appellant has not even attempted to explain his absence, nor presented evidence to corroborate his claim that he went with his father to help in the latter's tricycle business in Zamboanga. His bare claim, as against the evidence supporting his conviction, cannot be given credence by this Court.

The Appellant was Correctly Convicted Of Murder, Qualified By Abuse Of Superior Strength

We agree with the trial court that the appellant is guilty of murder under Article 248 of the Revised Penal Code, qualified by abuse of superior strength.[57] In this case, the appellant and Tonog, Jr., armed with a knife, attacked the victim, and took advantage of their combined strength in order to consummate the offense, considering that the victim sustained no less than twenty-seven (27) stab wounds, fourteen (14) of which were fatal.

Conspiracy must be shown to exist by direct or circumstantial evidence, as clearly and convincingly as the commission of the offense itself.[58] The prosecution in this case, was able to show that the appellant conspired with Ignacio Tonog, Jr. to kill the victim.

Although alleged in the Information, the aggravating circumstance of nighttime cannot be considered against the appellant, since there is no proof that the appellant purposely sought the period to facilitate the commission of the crime, or to prevent its discovery, or to evade capture.[59] Neither can the aggravating circumstance of use of a motor vehicle be appreciated, as there is, likewise, no evidence that it facilitated the killing of the victim, whether directly or indirectly.[60] Furthermore, the fact that the victim sustained numerous stab wounds does not necessarily mean that cruelty attended the killing. The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission and inhumanely caused the victim's suffering or outraged or scoffed at the victim's corpse.[61]

The crime was committed in 1988, when murder under Article 248 of the Revised Penal Code was punishable by reclusion temporal in its maximum period to death. There being no mitigating nor aggravating circumstances attendant to the crime, the appellant was correctly sentenced to reclusion perpetua, conformably to paragraph 1, Article 64 of the Revised Penal Code.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED**. The appellant Alvin Rolando Solamillo alias Allan Solamillo is found **GUILTY** of murder under Article 248 of the Revised Penal Code, as amended. There being no modifying circumstances attendant to the crime, the appellant is sentenced to suffer the penalty of reclusion perpetua. In line with current jurisprudence,[62] the appellant is **ORDERED** to pay to the heirs of the victim, Efren Flores, the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity.

SO ORDERED.

Puno, (Chairman), Quisumbing, and Tinga, JJ., concur.
Austria-Martinez, J., on leave.

[1] Penned by Judge Rosendo B. Bandal, Jr.

[2] In the hearing of February 23, 1999, the appellant disclosed that his real name was not Allan Solamillo, but ALVIN ROLANDO SOLAMILLO. Hence, upon motion of the prosecuting fiscal, the prosecution was allowed to amend the Information by inserting “Alvin Rolando Solamillo, alias Allan Solamillo” in the amended Information dated October 27, 1988.

[3] Records, pp. 65-67.

[4] Id. at 76.

[5] Id. at 180-181.

[6] Entitled *People v. Tonog, Jr.*, 205 SCRA 772.

[7] Records, p. 200.

[8] Id. at 206.

[9] Id. at 210.

[10] Id. at 214.

[11] The following persons who testified during the separate trial of Ignacio Tonog, Jr. were already deceased at the time of the appellant’s trial, and thus were no longer able to testify: Ramon Dicen Flores who died on August 7, 1995; Godofredo Diaz Flores, who died on August 7, 1995; and Elvis Solamillo Bueno who died on April 30, 1996 (TSN, 25 February 1999, p. 18).

[12] TSN, 21 June 1999, p. 30.

[13] Id. at 31-33.

[14] TSN, 23 February 1999, p. 18.

[15] Id. at 19.

[16] Id. at 6-7.

[17] Id. at 8.

[18] Exhibit “A,” Records, p. 10.

[19] TSN, 23 February 1999, p. 9-10.

[20] Id. at 21.

[21] Id. at 15.

[22] TSN, 21 June 1999, p. 60.

[23] Exhibit “A,” Records p. 10.

- [24] TSN, 23 February 1999, p. 15.
- [25] Id. at 24.
- [26] Id. at 26.
- [27] Exhibit “A,” Records, p. 10.
- [28] TSN, 21 June 1999, p. 45.
- [29] Id. at 18, 46; Annex “A.”
- [30] Id. at 19-20.
- [31] TSN, 24 February 1999, p. 5.
- [32] Id. at 6-13.
- [33] Id. at 14-15.
- [34] Id. at 16.
- [35] TSN, 25 February 1999, pp. 1-9.
- [36] Exhibit “B,” Records, pp. 16-17.
- [37] TSN, 22 February 1999, pp. 26-30.
- [38] Id. at 31.
- [39] Exhibit “C.” Records, p. 18.
- [40] TSN, 22 February 1999, p. 34.
- [41] Exhibit “A.”
- [42] Records, pp. 303-305.
- [43] Id. at 306-370.
- [44] Id. at 430.
- [45] Rollo, p. 60.
- [46] *People v. Sibonga*, 404 SCRA 10, (2003).
- [47] TSN, 24 February 1999, pp. 33-35.
- [48] Exhibit “S.”
- [49] Exhibits “T,” “U,” “V,” “W,” TSN, March 3, 1989; Folder of Exhibits, pp. 29-32.
- [50] Exhibit “Z,” Id. at 59.
- [51] *People v. Dela Cruz*, 343 SCRA 374 (2000).
- [52] *People v. Esponilla*, 404 SCRA 421 (2003).
- [53] See *People v. Salvame*, 270 SCRA (1997).
- [54] *People v. Lopez*, 313 SCRA 114 (1999).

- [55] *People v. Diaz*, 395 SCRA 52 (2003).
- [56] *People v. Castillo*, 333 SCRA 506 (2000)
- [57] *People v. Tonog, Jr.*, *supra*.
- [58] *People v. Corbes*, 270 SCRA 465 (1997).
- [59] *People v. Garcia*, 258 SCRA 411 (1996).
- [60] See *People v. Amion*, 353 SCRA 410 (2001).
- [61] *People of the Philippines v. Juanito Ibañez*, G.R. No. 133923-24, July 30, 2003.
- [62] *People v. Biong*, 402 SCRA 366 (2003).

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