

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CORNELIO CAJUMOCAN, APPELLANT.*G.R. No. 155023. May 28, 2004*

Ponente: YNARES-SATIAGO, J.

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On appeal is a Decision of the Regional Trial Court (RTC) of Morong, Rizal, Branch 79 in Criminal Case No. 99-3576-M[1] finding appellant Cornelio Cajumocan y Birdin guilty beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code, sentencing him to suffer the penalty of *reclusión perpetua*, and ordering him to pay the heirs of the victim, Apolinario Mirabueno y Morao, the amount of P50,000.00 as civil indemnity, P50,000.00 as actual damages, and costs of the suit.

At 11:30 p.m. of September 30, 1999, while the deceased, Apolinario Mirabueno, was asleep beside his fourteen year old brother Leo inside their house in Sitio Waray, Barangay Plaza Aldea, Tanay, Rizal, the latter was roused from his slumber by the rustling of dried leaves outside the house. He saw a solitary figure walk toward their house, paused outside their room, and removed the fish net covering the window and looked inside the house. From the light of the fluorescent lamp inside the house, Leo recognized the man as appellant Cornelio Cajumocan, who drew a gun and shot Apolinario in the head, and thereafter ran away. Leo cried out to his older sister, Margarita and they brought Apolinario to a hospital in Morong, but he was declared dead on arrival.[2]

Appellant was charged with Murder before the RTC of Morong, Rizal, Branch 79, in the following Information dated October 4, 1999 which reads:[3]

That on or about 30th day of September 1999, in the Municipality of Tanay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, treachery and evident premeditation, and taking advantage of nighttime did, then and there willfully, unlawfully and feloniously shot (sic) with said gun, one Apolinario Mirabueno y Morao hitting him on his head, thereby inflicting upon the latter intracranial hemorrhage, which directly caused his immediate death.

CONTRARY TO LAW.

During the arraignment, appellant, assisted by counsel de parte pleaded “not guilty” to the charge.

Dr. Emmanuel Reyes, Medico-Legal of the PNPC Crime Laboratory in Camp Crame, Quezon City, conducted the physical examination of the victim’s cadaver. He found an open gunshot wound, located at the front part of the head, measuring 2.5 c.m., 3.5 c.m. left of the anterior midline with an abraded collar measuring 0.1 c.m., 158 c.m., from the heel, making a point of exit at the right parietal region, measuring 2.5 x 3 c.m., 6 c.m. from the midsagittal line.[4] The point of entry of the bullet was 3 to 4 c.m. above the left eyebrow, and the point of exit was at the back of the head. The gunshot wound was fatal, damaging both cerebral hemispheres of the brain.[5] According to his report, the victim’s death resulted instantaneously.[6] The cause of death was intracranial hemorrhage secondary to gunshot wound of the head.[7]

Virginia Mirabueno, the victim's mother, testified that she incurred the following expenses due to the death of her son: funeral service, P15,000.00; expenses for the wake, P5,000.00; and burial lot, P2,500.00. She further testified that she mortgaged her house and lot in order to pay for the funeral expenses. However, she could not present receipts since some of the expenses for the wake came from the neighbors and relatives in the form of "abuloy." She also alleged that her son was engaged in the business of buying and selling goods, earning P150.00 per day.[8]

Ernesto Carpo, an inspector/investigator of AFSLAI Security Service where appellant was employed as a security guard was presented by the defense as its first witness. Carpo testified that as inspector, he was assigned the task of overseeing security detachments. As investigator, his responsibility was to check unusual incidents and report them directly to the AFSLAI President. He further testified that appellant was one of the agency's security guards. According to Carpo, appellant was assigned at the Monterey Farm in 1999, then he transferred to Tanay, Rizal to the property of Gen. Rene Cruz, and was assigned a long firearm, specifically a 12-gauge shotgun. In the evening of September 30, 1999, he made a roving inspection of the detachment in Sitio Bathala, Barangay Plaza Aldea, Tanay, Rizal, located inside the compound of Gen. Rene Cruz where appellant was one of the security guards detailed. The head of the security guards stationed in the Cruz property informed Carpo that appellant was picked up by Tanay police authorities because he was a suspect in a killing incident. Carpo made inquiries and found out that appellant's tour of duty was from 7 p.m. to 7 a.m., and concluded that he never left the place as shown by a photocopy of the Detail Order signed by the head of the security guards stationed in the Cruz property. They told him that the place where the shooting incident took place was about one kilometer. Carpo inspected the logbook and saw the signature of the appellant.[9]

For his part, appellant testified that prior to 7 p.m. on September 30, 1999, he arrived at his assignment in the Cruz property, located in Sitio Bathala, Plaza Aldea, Tanay, Rizal. He went to their outpost, signed the logbook and stayed up to 8:30 p.m. He then went to the bodega where construction equipment and materials were kept and, upon seeing that they were secure, he returned to the outpost and watched television. He asked permission from the head of the security guards to sleep. At 7 a.m., he signed the logbook to end his tour of duty.[10] While still at the compound, police officers from Tanay, Rizal came and invited him to the police station. During the investigation, he denied any participation in the killing of Apolinario. The following day, on October 1, 1999, he was brought to Camp Crame to undergo paraffin testing.[11] The paraffin test showed him negative for powder burns.[12]

On January 7, 2002, the trial court rendered a decision finding appellant guilty of Murder, the dispositive portion of which reads:[13]

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of MURDER, as defined and penalized by the Revised Penal Code, he is hereby sentenced to suffer the penalty prescribed by Art. 248, in its medium period, that is RECLUSION PERPETUA. Accused is hereby ordered to pay the heirs of the victim in the amount of P50,000.00 in accordance with recent jurisprudence, and the further amount of P50,000.00 as actual damages. With costs.

SO ORDERED.

Hence, this appeal, based on the following assignment of errors:

I

THE TRIAL COURT ERRED IN EXTENDING FULL RELIANCE AND CREDENCE TO THE PROSECUTION'S PURPORTED EYEWITNESS LEO MIRABUENO, OBVIOUSLY A BIASED AND PREDISPOSED WITNESS BY REASON OF RELATIONSHIP, BEING A BROTHER OF THE DECEASED VICTIM.

II

THE COURT A QUO LIKEWISE ERRED IN DISBELIEVING AND EXTENDING SCANT CONSIDERATION TO THE OFFICIAL NEGATIVE FINDINGS ON THE PARAFFIN GUNPOWDER EXAMINATION ON THE PERSON OF THE ACCUSED-APPELLANT.

III

THE LOWER COURT COMMITTED A GRIEVOUS ERROR IN APPRECIATING THE CIRCUMSTANCE OF TREACHERY AND CONSIDERING THE SAME AS A QUALIFYING CIRCUMSTANCE.

IV

THE HONORABLE TRIAL COURT GRAVELY ERRED IN REFUSING TO EXTEND CREDENCE TO APPELLANT'S CLAIM OF DENIAL AND ALIBI.

V

THE COURT A QUO AGAIN ERRED GRIEVOUSLY IN FINDING THE APPELLANT GUILTY FOR MURDER AND IN IMPOSING THE PENALTY OF RECLUSIÓN PERPETUA AND AWARDING THE TOTAL AMOUNT OF P100,000.00 AS AND BY WAY OF ACTUAL DAMAGES.[14]

The foregoing issues need to be resolved: (1) Whether the negative findings of the paraffin test conducted on the appellant is conclusive proof of his innocence; (2) Whether treachery can be appreciated in the instant case to qualify the crime to Murder; and (3) Whether the appellant is guilty beyond reasonable doubt of Murder under Art. 248 of the Revised Penal Code.

As to the first issue, appellant alleges that the trial court failed to give consideration to the results of the chemical test indicating that appellant was negative of gunpowder nitrates consequent to the paraffin test conducted.

Paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test has proved extremely unreliable in use. It can only establish the presence or absence of nitrates or nitrites on the hand; still, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder.[15]

Appellant's argument that the negative result of gunpowder nitrates from the paraffin test conducted on him the day after the crime was committed, thereby showing an absence of physical evidence that he fired a gun, is untenable. In the case of *People v. Manalo*,[16] we stressed:

x x x even if he were subjected to a paraffin test and the same yields a negative finding, it cannot be definitely concluded that he had not fired a gun as it is possible for one to fire a gun and yet be negative for the presence of nitrates as when the hands are washed before the test. The Court has even recognized the great possibility that there will be no paraffin traces on the hand if, as in the instant case, the bullet was fired from a .45 Caliber pistol.

In *People v. Abriol, et al.*,[17] we reiterated the rule on the admissibility of this kind of evidence:

A paraffin test could establish the presence or absence of nitrates on the hand. However, it cannot establish that the source of the nitrate was the discharge of firearms. Nitrates are also found in substances other than gunpowder. A person who tests positive may have handled one or more substances with the same positive reaction for nitrates such as explosives, fireworks, fertilizers, pharmaceuticals, tobacco, and leguminous plants. Hence, the presence of nitrates should only be taken as an indication of a possibility that a person has fired a gun. However, it must be borne in mind that appellants were not convicted on the sole basis of the paraffin test.

Paraffin tests, it must be emphasized, merely corroborate direct evidence that may be presented by the

prosecution.

In the case at bar, the positive, clear and categorical testimony of the lone eyewitness to the crime deserves full merit in both probative weight and credibility over the negative results of the paraffin test conducted on the appellant. Verily, establishing the identity of the malefactor through the testimony of the witness is the heart and cause of the prosecution.[18] All other matters, such as the paraffin test, are of lesser consequence where there is positive identification by the lone eyewitness, Leo Mirabueno, of appellant as the perpetrator of the crime. Hence, a paraffin test cannot be considered as conclusive proof of appellant's innocence.

As to the second issue, appellant avers that there is no treachery in the case at bar since there is no direct and positive evidence to prove the same.

We do not agree.

The court a quo correctly found the presence of the qualifying circumstance of treachery in the instant case. Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. [19] The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on his part.[20]

Two conditions must concur for treachery to be present: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and; (2) the deliberate or conscious adoption of the means of execution.[21]

In the case at bar, appellant took advantage that Apolinario Mirabueno was asleep when he shot the unsuspecting victim. The unexpected attack on the victim rendered him unable and unprepared to defend himself by reason of the suddenness and severity of the attack. The nature of the wounds and the testimony of the eyewitness sufficiently established that, first, at the time of the attack, the victim was not in a position to defend himself, as he was asleep; and second, appellant consciously adopted the particular means, method or form of attack, armed and stealthily performed the criminal act at an unexpected time while the victim was asleep in his dwelling.

As to the third issue, appellant contends that the court a quo gravely erred in giving probative weight and credibility to the lone eyewitness, Leo Mirabueno, whom he claims to be a biased and predisposed witness by reason of relationship, being the brother of the deceased victim. He likewise argues that the trial court erred in refusing to lend credence to appellant's claim of denial and alibi and finding him guilty of Murder, imposing the penalty of *reclusión perpetua* and awarding actual damages in the amount of P100,000.00.

We find no reversible error in the case at bar.

The positive identification of the appellant at the scene of the crime by Leo Mirabueno should be given due weight and credence. Relationship by consanguinity between the witness and the victim does not per se impair the credibility of the former. In certain cases relationship may even strengthen credibility for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual perpetrator. We held in *People v. Realin*[22] that the earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence and blame one who is innocent of the crime. As further elaborated in *People v. Javier*,[23] there is absolutely nothing in this jurisdiction which disqualifies a person from testifying in a criminal case in which a relative is involved, if the former was really at the scene of the crime and witnessed the execution of the criminal act.

Appellant's bare denial and alibi cannot prevail over the positive and categorical testimony of Leo Mirabueno

concerning appellant's identification and presence at the crime scene. Well-settled is the rule that for alibi to prosper, appellant must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime.[24] Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[25]

Appellant failed to show that it was physically impossible for him to be at the locus criminis. Sitio Bathala, the place where appellant was on duty at the time of the commission of the crime, and Sitio Waray, the place where the crime was actually committed, were within walking distance. Since Sitio Bathala was approximately one kilometer from Sitio Waray, appellant could have easily accessed the scene of the crime in a matter of minutes, leading to the conclusion that it was not physically impossible for appellant to be in the house of Apolinario Mirabueno in Sitio Waray. Clearly, appellant had access to the locus criminis from his place of work.

This Court has consistently ruled that findings of fact and assessment of credibility of witnesses are matters best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' behavior on the stand while testifying, which opportunity is denied to the appellate courts. The trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[26] We find none of the circumstances that give rise to the exceptions in the case at bar.

The court a quo gave credence and full probative value to the testimony of Leo Mirabueno, the victim's brother. Having observed at close range the deportment, conduct and demeanor of the sole eyewitness and the appellant when they testified, the findings of the trial court, its calibration of the testimonial evidence of the parties and its assessment and probative weight of the said evidence were all accorded by the appellate court high respect, if not conclusive effect.[27]

Thus, there is moral certainty that appellant is guilty beyond reasonable doubt of the crime of Murder. As defined under Art. 248 of the Revised Penal Code, Murder is the unlawful killing of any person which is not parricide or infanticide, and committed with any of the qualifying circumstances under the same article.[28]

Murder was evidently perpetrated when the appellant killed the victim, Apolinario Mirabueno, which was attended by the qualifying circumstance of treachery. The elements of Murder have been proven in this case, viz.: (1) A person is killed; (2) The appellant killed him; (3) The killing was attended by treachery; and (4) The killing is not parricide or infanticide. The killing was qualified to Murder by alevosia since the treacherous means employed to kill the victim was duly proven.

The penalty for Murder is reclusion perpetua to death. There being no mitigating or aggravating circumstance, the lesser of the two indivisible penalties shall be imposed.[29] Hence, the trial court correctly sentenced appellant to suffer the penalty of reclusion perpetua.

Civil indemnity in the amount of P50,000.00 given by the court a quo to the heirs of the victim should be upheld as being consistent with current jurisprudence.[30] Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of murder or homicide.[31] However, the P50,000.00 awarded as actual damages for the hospitalization, medical and funeral expenses incurred by the family of the victim cannot be sustained for being unsubstantiated by receipts.

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Morong, Rizal, Branch 79 in Criminal Case No. 99-3576-M finding appellant Cornelio Cajumocan y Birdin guilty beyond reasonable doubt of

Murder under Art. 248 of the Revised Penal Code, sentencing him to suffer the penalty of *reclusión perpetua*, and ordering him to pay the heirs of the victim Apolinario Mirabuena civil indemnity in the amount of P50,000.00, is **AFFIRMED** with the **MODIFICATION** that the award of actual damages is **DELETED** for lack of factual basis.

Costs de oficio.

SO ORDERED.

Panganiban, Carpio, and Azcuna, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.

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- [1] Decision penned by Judge Candido O. delos Santos. See Rollo, p. 18.
- [2] TSN, 14 December 1999, pp. 2-6.
- [3] Original Records, p. 1; Rollo, p. 8.
- [4] TSN, 31 May 2000, p. 5.
- [5] Id. at 6.
- [6] Id. at 5.
- [7] Id. at 6. See Exhibit “H”.
- [8] TSN, 3 May 2000, pp. 2-5.
- [9] TSN, 10 October 2000, pp. 2-8.
- [10] TSN, 7 March 2001, pp. 3-9.
- [11] Id. at 5-6.
- [12] Physical Science Report No. C-89-99E. See Exhibit “1”.
- [13] Rollo, p. 27.
- [14] Id., pp. 50-51.
- [15] *People v. de Guzman*, G.R. No. 116730, 16 November 1995, 250 SCRA 118, 128.
- [16] G.R. Nos. 96123-24, 8 March 1993, 219 SCRA 656, 663.
- [17] G.R. No. 123137, 17 October 2001, 367 SCRA 327, 342.
- [18] *People v. Manalo*, *supra* note 15 at 662-663.
- [19] Art. 14, par. 16, Revised Penal Code.
- [20] *People v. Paulino*, G.R. No. 148810, 18 November 2003; *People v. Aguilos*, G.R. No. 121828, 27 June 2003.
- [21] *People v. Pabillo*, G.R. No. 122103, 4 November 2003, citing *People v. Caisip*, G.R. No. 119757, 21 May 1998, 290 SCRA 451, 461.
- [22] G.R. No. 126051, 21 January 1999, 301 SCRA 495, 510.
- [23] G.R. No. 130489, 19 February 2002, 377 SCRA 300, 307-308.

[24] *People v. Ignas*, G.R. Nos. 140514-15, 30 September 2003.

[25] *Id.*

[26] *Id.*, citing *People v. Federico*, G.R. No. 146956, 25 July 2003.

[27] See *People v. Dala*, G.R. No. 134563, 28 October 2003, citing *People v. Galam*, 325 SCRA 489, 496-497.

[28] L.B. Reyes, *The Revised Penal Code, Book Two* (15th Ed., 2001), p. 462.

[29] Revised Penal Code, Art. 63(2).

[30] *People v. Pinuela*, G.R. Nos. 140727-28, 31 January 2003; *People v. Dela Cruz*, G.R. No. 139970, 6 June 2002.

[31] *People v. Roxas*, G.R. No. 140762, 10 September 2003.

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