

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO CAWALING, ACCUSED-APPELLANT.

G.R. No. 157147. April 17, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

We are confronted with conflicting accounts of the commission of a crime, a reverse whodunit[1] rivaling the murder mysteries of Agatha Christie, in this review of the Court of Appeals' (CA's) conviction of accused Wilfredo Cawaling for murder and imposing on him the penalty of reclusion perpetua.[2] However, unlike Agatha Christie, we are guided by the test of moral certainty in ascertaining the guilt of the accused.

This legal poser arose because, after the prosecution presented an eyewitness to the crime pointing to Cawaling as the perpetrator thereof, the defense offered the testimony of a person, initially charged with Cawaling in the same Information and who previously pled not guilty to the crime, confessing that it was he, and not Cawaling, who murdered the victim.

Even the two courts below us parleyed and rendered conflicting decisions. The Regional Trial Court (RTC) partially upheld the defense's version of the events, rejected the prosecution's eyewitness account of the murder and convicted Cawaling only as an accomplice to the offense of homicide. In stark contrast, the CA found the eyewitness' testimony credible and convicted Cawaling of murder.

The following are the long and arduous facts, seen and appreciated from two different perspectives by the lower courts.

Cawaling was charged with Murder in an Information which reads:

That on or about the 19[th] day of April, 1987, in sitio Hinulugan, barangay Agcogon, municipality of San Jose, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspired and confederated with Palti Umambong whose case was already dismissed after arraignment, did then and there by means of treachery, willfully, unlawfully and feloniously attack, assault and shot with a firearm the late ex-vice mayor Leodegario Capispisan, inflicting upon the latter serious and mortal gunshot wounds in different parts of his body which were the direct and immediately (sic) cause of his instantaneous death, thus causing damage and prejudice to his family.

Contrary to law.[3]

The RTC laid out the facts based on the testimonies of the witnesses, to wit:

The forerunner of the case at bench was OD-275, for murder. It was filed on June 24, 1987.

The respondents were Palti Umambong and Wilfredo Cawaling.

The case against Umambong was dismissed on January 25, 1991 on the basis of an affidavit of desistance.

On February 4, 1991, this Court likewise dismissed the case against Cawaling upon the initiative of the

prosecution.

Four (4) years thereafter, specifically on August 17, 1995, Cawaling was arrested, the case against him for murder having been revived and accordingly docketed as OD-852.

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EVIDENCE FOR THE PROSECUTION

The Prosecution presented three (3) witnesses.

Rommel Brigido, 29 years old, married and a resident of Busay, San Jose, Romblon, testified as follows:

That witness was with the accused Wilfredo and Palti in coming from the town of San Jose to barangay Busay.

That they passed by the house of Porferio Bina where they drank the locally fermented "tuba."

Later, he saw accused Wilfredo sitting on a bench under the "talisay" tree on the other side of the road.

Thereafter, he saw Leodegario, Gloria, Roberto and Leon passing by the road. When Leodegario got near the bench where Wilfredo was seated, the latter suddenly stood up and pointed his gun to Leodegario saying "who is brave," and two shots rang out and that there was a handkerchief covering the gun (t.s.n., p. 4, 8/23/95).

That the distance between Wilfredo and Leodegario was six (6) meters.

Witness, on direct examination, declared that although he was the companion of Wilfredo in coming from the town, he ran away and that he did not anymore know what happened to Leodegario (t.s.n., p. 5, supra).

On cross-examination, witness Rommel admitted that he executed and affixed his signature on an affidavit (Exh. "1" and "1-A") and that the same was executed only on July 27, 1995 narrating therein the incident that happened [in] April 1987.

Asked as to why witness took a long time before executing the affidavit, he commented that the case then was dismissed, and that Wilfredo is a dangerous man having recently killed his uncle Rexinol Brigido.

Rommel elaborated further that he was ten (10) meters away from Wilfredo and also of the same distance to Leodegario.

Rommel declared that Palti was on a stump of a chainsawed coconut tree and about six (6) meters away from Wilfredo (t.s.n., p. 13, August 23, 1995).

Palti did not [run] away (t.s.n., p. 15, supra).

When asked what was Wilfredo doing after the shooting of Leodegario, Rommel said that Wilfredo was going around, "pointing his gun and firing out, causing people to scamper away (t.s.n., p. 5, August 25, 1995).

On clarificatory questions of the Court, Rommel admitted that "it was only Wilfredo who pointed a gun towards Leodegario, although Palti was also holding a gun but pointed downward."

Gloria Valentin Capispisan, 34 years old, married and a resident of Busay, San Jose, Romblon, the second witness for the Prosecution testified thus -

She know(s) Wilfredo since childhood and that the victim Leodegario is her father-in-law.

At about six o'clock in the evening of April 19, 1987 she was near the house of Porferio after coming from the political caucus at the house of Romy Roldan who was then the OIC Mayor of San Jose, and a supporter of Natalio Beltran, Jr.

She was in the company of Themestocles Sulat, Jojo Sulat, Noe Antonio, Leon Barrientos, Roberto Capispisan, Leodegario Capispisan and two others, and that she is the wife of Roberto Capispisan.

While negotiating the way home she saw Wilfredo seated on a bench along the road about ten (10) meters away from her and demonstrated that Wilfredo's hands were on his lap, the left covered by a handkerchief and the right over the handkerchief.

Wilfredo, according to witness, suddenly stood up and pointed his gun towards Leodegario and "I heard two shots" with Leodegario falling to the ground on his back (t.s.n. p. 6, 8/24/95).

She attempted to approach Leodegario, her father-in-law but "she saw Palti with a gun" so she ran away (t.s.n. p. 8, supra).

On question of the private prosecutor whether she saw the gun while Wilfredo was sitting, she replied that she could not see it because it was covered by a handkerchief.

Asked as to the possible reasons why Wilfredo shot Leodegario, Gloria hinted that her father-in-law left the SAKADA and secondly, because of politics, the victim being the supporter of Natalio Beltran, Jr., while Wilfredo was for Manuel Martinez, candidates then for Congressmen.

Likewise, she testified that the case against Wilfredo relative to the incident of 1987 where Leodegario was the victim was dismissed because of settlement, the accused and Lilia Capispisan, the wife of the victim, are first cousins.

Queried as to whether the agreed settlement came about, Gloria said that the accused was able to produce only one-half of the monetary consideration, and that the condition that Wilfredo will not stay in San Jose, Romblon was not complied with because the latter even ran as barangay captain and that accused shot and killed the nephew of her father-in-law, Rexinol Brigido and even pointed the gun to her husband for two (2) times (t.s.n. p. 11, 8/24/95).

In the course of the cross-examination of Gloria she admitted having seen the affidavit of waiver and desistance (Exh. "2" for the defense).

Gloria testified that before the shooting, she "saw Palti Umambong having a gun" (t.s.n. p. 14, Ibid).

In the hearing of August 25, 1995, Gloria admitted that she saw Palti when Leodegario was already dead and that "he chased us."

After the shooting, Gloria testified that she saw Wilfredo [run] after her companions, firing a gun (t.s.n. p. 7, supra)

Elaborating further, Gloria testified that she "saw Palti who had a gun" and Palti chased her with a gun on his hand (t.s.n. p. 17, supra) and that Palti was near Leodegario lying on the ground, about three (3) meters.

On additional cross-examination of Gloria, she admitted that she executed an affidavit, regarding the incident on May 5, 1987 (Exh. "2" and "2-A" for the defense), while the signatures of the witnesses on the first and second pages were marked as Exhibit "2-B" and "2-C".

Relative to her affidavit, Gloria narrated in her sworn affidavit that "without any reason he just shot my father-in-law."

As to why she did not include the name Rommel in her affidavit, she said it was because Rommel was the companion of Wilfredo (t.s.n. p. 10, 1/12/98)

To establish the presence of Rommel during the incident, Gloria categorically stated that Rommel was at the side of Wilfredo.

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EVIDENCE FOR THE DEFENSE

Palti Umambong, 53 years old, married, farmer, and resident of Hinulogan, San Jose, Romblon narrated thus -

That it was him who shot and killed Leodegario.

On April 19, 1987, he was in the cockpit of San Jose, and that his fighting cock was pitted against that being handled by Leodegario.

He bet P100.00 and referee Pedro Venus declared his cock as the winner. He demanded his winning from the one listing the bets but was told that the bettor on the losing side did not pay, and when he demanded from Leodegario his winning bet, he was told by the latter that he will not pay because the decision of the referee was unfair (t.s.n., p. 6, 7/17/98).

Leodegario stood up and swung his right arm forward with a clenched fist and because of this Palti got angry prompting him to go home, but passed by the house of Porferio.

Near the house of Porferio he shot Leodegario because the latter did not pay him.

When he reached the road fronting that of Porferio, he stopped because he was called by Wilfredo who was seated on a bench beside the road and asked as to what happened in the cockpit and told the latter that he won except that he was not paid by Leodegario (t.s.n., pp. 11 and 12, supra).

Later on, as witness testified, Leodegario passed by near the house of Porferio and Palti accosted him and demanded payment, but Leodegario retreated two steps backward and was getting something from his waist as if drawing a gun and then he shot the victim twice resulting to Leodegario falling down on his back (t.s.n., pp. 3-4, supra).

After the shooting he walked towards his house, and told his wife that he'd done something wrong, that is, that he killed a person - a certain Leodegario and that he (witness) will go away. He looked for a sailboat and found one at Pinamihagan. He hired the sailboat and reached Aklan (t.s.n., pp. 16, 17, supra).

He stayed in Aklan for three years.

Palti, on redirect and recross examination, testified that he hid his gun before proceeding to the cockpit and retrieved the same on his way from the cockpit and before he met Wilfredo (t.s.n., p. 34, 8/24/98).

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Wilfredo Cawaling, 56 years old, married, a resident of Nabas, Aklan, and the accused in this case testified as follows:

He testified that noontime of April 19, 1987 he was at Poblacion, San Jose, Romblon at the residence of his sister, Heide Casimero where he took his lunch.

Thereafter, accused went to his parents['] house at Hinulugan, Busay, San Jose, in the company of Rommel and Rudy de Villa, and that while walking towards Hinulugan they passed by the house of Porferio where he bought "tuba." All the time, he was with Rommel except for Rudy de Villa who proceeded to Busay.

While waiting for the "tuba," Rommel went to the back of the house of Porferio where he played volleyball together with Ricky and the latters['] brothers.

At the time he was waiting for the "tuba" he saw Palti walking along the road towards the house of Porferio. Thereafter, he beckoned Palti to come to him and asked him about the cockfight. Palti informed him that the latter's fighting cock won but that he was not paid his wining bet (t.s.n., p. 8, 10/24/98).

That while he was conversing with Palti, he saw Leodegario on the road walking towards them in the company of Leon. Immediately, Palti turned his back and faced Leodegario and demanded again his winnings (t.s.n., p. 18, 10/14/98). Thereafter, he heard, Leodegario shouting "bakit ka makulit" and Palti retort[ed] by saying, "manloloko ka." At this point in time, with Palti pointing his three fingers to Leodegario, the latter retreated two steps backward and acted as if to draw something from his right waist which prompted Palti to raise his t-shirt and draw a revolver and fired at the victim. (t.s.n., p. 19, supra). As a result of which the victim fell down on his back. Leon who was in the company of the victim ran away after the shooting incident.

And that Rommel who was at the back of the house of Porferio also ran away (t.s.n., p. 22, 10/14/98).

After the incident he stayed in his parents['] residence at sitio Hinulugan and the following day the 23[rd] of May, he returned to Nabas, Aklan where he resides.

Failing to get his visa for Saudi Arabia, accused looked for a job in Manila, and finally worked at a logging company in Baler, Quezon where he was the operations manager. He worked in that logging company for almost two years, and after his work was terminated he went back to Nabas, Aklan.

In 1998 he returned again to Manila. While in the city he received a letter from his father informing him that he together with Palti were charged of murder before this Court and that there will be a hearing of their case and so he attended the same.

The case against him was dismissed [in] February 1991 (Exhibit "2") because the complainant, the wife of the victim, executed an affidavit of waiver (Exhibit "1").

After the dismissal of the case, accused went to Papua, New Guinea and upon his return in 1992 he ran and was elected as barangay captain of Busay, San Jose, Romblon.

In 1995 he ran for mayor but lost the election to Mayor Filipino Tandog. He then filed an election protest in this Court. On the scheduled hearing of his protest, he was arrested and upon inquiry with the arresting officer he was told that the dismissed case was refiled, by the same prosecutor who dismissed the original case.

Accused denied the assertion of Rommel that he shot the victim contending this witness was at the back portion of the house of Porferio at the time of the incident (t.s.n., p. 30, 10/14/98).

That when Palti confronted Leodegario about the former's winning bet in the cockfight he was five (5) meters distant from them and that he not only heard Palti saying "manloloko ka" but pointed his fingers to the victim.

At that instant, witness continued, the victim withdrew by about two (2) steps and appeared to be pulling out something.

Thereafter, Palti raised his t-shirt, drew his gun and shot the victim (t.s.n., p. 6, 11/4/98).

Accused could determine the distance of Palti from where he was but Palti's back was facing towards him and Leodegario was in front of Palti.

Thereafter, he saw Palti [run] towards Busay and found himself running too in the direction of his father's house, also in Busay.[4]

On the other hand, the findings of fact of the CA are set forth, as follows:

The version of the prosecution is narrated in good detail in the People's Brief submitted by the Office of the Solicitor General:

At about six o'clock in the evening of April 19, 1987, at Hinulugan, San Jose, Romblon while on their way home from the town proper, Wilfredo Cawaling, Palti Umambong and Rommel Brigido passed-by (sic) the house of Porferia Vina to have a drink of tuba. While drinking tuba, Leodegario Capispisan, Gloria Capispisan,

Roberto Capispisan, Leon Barrientos, Themosticles Sulat, Jojo Sulat, Noe Antonio and two others came heading toward their direction (pp. 2-4, tsn, August 23, 1995). When Leodegario Capispisan was about two meters near appellant, who was seated on the bench by the road, appellant stood up, pointed his gun to (sic) Leodegario and taunted the latter for his bravery. Thereafter, two (2) gun shots were heard (p. 4, tsn, August 23, 1995). All the while, Brigido was seated on the table fronting the road drinking tuba with the others. He was about ten (10) meters from the talisay tree where appellant was seated. Palti Umambong, on the other hand, was standing on the stump of the coconut tree at about six (6) meters distance from appellant (pp. 7-8, tsn, August 23, 1995). From said distance, he saw Leodegario step back by about one (1) meter, raising his hand in surrender. Brigido then heard two (2) gunshots. Brigido also saw Palti Umambong holding a gun but the same was pointed downward (p. 4, Records; pp. 23-24, tsn, August 23, 1995).

Upon hearing the shots, the people scampered away, including Brigido and Gloria, who also panicked and ran, leaving appellant and Umambong behind. Leodegario Capispisan sprawled on the ground dead (p. 25, tsn, August 23, 1995; see also pp. 3-8, tsn, August 24, 1995).

The defendant, for his part, understandably presented a different version.

Accused claimed that about four o'clock in the afternoon of April 19, 1987, he left his sister's house to go to Barangay Busay together with Rommel Brigido and Rudy de Villa who happened to pass by his sister's house on their way to Hinulugan where they also reside; that on their way to Hinulugan he and Brigido stopped to buy tuba at the house of Porfiria Bina while Rudy de Villa continued on his way home; that while he was sitting in front of the house of Porfirio Bina, Palti Umambong came walking along the road and he asked Palti about the cockfight that afternoon; that Palti told him that he was not paid his winning bet of P100.00 by Leodegario when his (Palti's) cock won; that Leodegario refused to pay him alleging that the decision of the referee was unfair; that when he insisted to collect from Leodegario the amount he won, Leodegario got angry at him and wanted to punch him.

Appellant at this time saw Leodegario and Lean Barrientos walking along the road towards their direction. When the two came upon them, Palti stopped Leodegario and asked him again to pay him what he won; that Leodegario remarked "bakit ka makulit?"; that Palti reacted by shouting "manloloko ka" at the same time pointing a finger at Leodegario.

At this point, Leodegario moved two steps backward and acted as if to draw something from his waist which prompted Palti to fire his revolver at the victim.

Leodegario then fell down on his back.

The widow and the children of Leodegario Capispisan executed an Affidavit of Waiver and Desistance dated January 24, 1991 signed by Lilia M. Capispisan and her eight (8) children praying the authorities concerned "to consider the investigation of the criminal case against Wilfredo Cawaling, et al., terminated or caused to be terminated."

Accordingly, Judge Cezar R. Maravilla issued the Order dated February 4, 1991 dismissing the case against Wilfredo Cawaling without cost.

Four (4) years later, an Information charging Cawaling with murder was refiled.

On December 15, 1999, following the submission of the case for decision, the Regional Trial Court, Branch 82, Odiongan, Romblon, rendered judgment.

WHEREFORE, premises considered, WILFREDO CAWALING is hereby found guilty beyond reasonable doubt as an accomplice to the offense of homicide and is hereby sentenced to an indeterminate penalty of prision correccional as minimum to prision mayor medium as maximum there being no mitigating nor

aggravating circumstances, or, from 4 years and 2 months to 8 years and 1 day with all its accessory penalties.

The accused shall be entitled to the benefits of Art. 29 of the Revised Penal Code on preventive imprisonment.

Accused, in case of appeal of the Decision, may apply for bail pursuant to Sec. 5, Rule 114 of the Revised Rules on Criminal Procedure, as amended.

With costs.

SO ORDERED.[5]

Consistent with paragraph 2,[6] Section 13 of Rule 124, the CA certified the case and elevated the records to us for review.

Cawaling, in his Appellant's Brief, posits the following assignment of errors:

- The Court of Appeals seriously erred when it convicted the herein accused-appellant of Murder without sufficient and credible evidence.
- The Court of Appeals seriously erred when it disregarded the findings of the trial court on the aspect of the credibility of the prosecution's witnesses and their testimonies, despite well-established jurisprudence on the matter.[7]

As the assigned errors are intertwined, we shall discuss and resolve both simultaneously.

Cawaling maintains that the prosecution failed to discharge the requisite burden of proof in criminal cases because the eyewitness testimony of Rommel Brigido, as corroborated by Gloria Capispisan, is not credible. He asserts that the RTC's findings on the credibility of the witnesses should not have been disregarded by the CA. Specifically, Cawaling points out that, as held by the RTC, the testimony of Palti Umambong, the self-confessed killer of the victim, was more worthy of credence. As such, Cawaling prays that the decision of the CA be reversed and set aside, and a new one issued, acquitting and exonerating him of the crime charged.

Conversely, the Office of the Solicitor General (OSG) argues that the RTC overlooked facts and circumstances when it found Cawaling liable merely as an accomplice to the crime of homicide. The OSG avers that the delay in the execution of Rommel Brigido's affidavit and the failure of the witnesses to identify the gun used by Cawaling do not diminish their credibility. In all, the OSG insists that the CA's reversal of the RTC decision was warranted.

Consequently, we juxtapose the conflicting findings of the two lower courts.

The RTC's findings zero in on Rommel Brigido's belated execution of an affidavit which, for the lower court, completely diminished his credibility, to wit:

FINDINGS OF THE COURT

On the third issue, the Court painstakingly perused the record of the case with objectivity and an open mind, probing and analyzing the pros and cons so as to arrive at a definitive conclusion thus eliminating the possibility of error and misjudgment.

In the testimony of Rommel in 1995 during the hearing of the petition for bail, the following incidents came into light.

Rommel asseverated that he was the companion of Wilfredo and Palti when they came from the town of San Jose, Romblon.

When Leodegario got near the bench where Wilfredo was seated, the latter "pointed his gun towards

Leodegario and two shots rang out" and that there was a handkerchief covering the gun (t.s.n., p. 4, 9/28).

When he saw Wilfredo pointing his gun towards Leodegario, he also "saw Palti holding a gun pointing downward."

By a simple process of mathematical computation Rommel who initially testified in 1995 at age 29 was only 20 or 21 at the time of the incident in 1987. For one to remember the minutest details of events that happened eight years ago, merits the Court's attention why it is so.

When the witness testified that the gun which Wilfredo was holding was covered with a handkerchief, it is crystal clear that he did not see the gun itself but probably the likeness of a gun, or, after the death of Leodegario his mind had been conditioned to conclude that what was covered by the handkerchief was a gun.

By testifying that he saw "Palti holding a gun" at the time that Wilfredo was pointing his gun towards Leodegario, a disquieting poser comes up: Why was Palti holding a gun? Did he fire his gun? Or did he not?

Although Rommel said Palti did not fire his gun, it cannot be the gospel truth. It does not mean that Palti did not fire his gun, those critical moments of April 19, 1987.

Remember that Rommel categorically stated that he was ten (10) meters distant from Wilfredo when the incident happened. Six o'clock in the afternoon, the beginning of nighttime and the end of daytime, is "nag-aagaw ang liwanag at dilim." And with the distance mentioned by Rommel it is hard to say with definiteness as to whose gun the shot came from, unless there is only one person in the vicinity. It could be from the gun of Palti who was visibly seen by Gloria and Rommel as holding a gun and not Wilfredo because his hand allegedly with a gun was covered by a handkerchief thus impairing their vision of the firearm.

The squeezing of a trigger requires only a fraction of a second, without unnecessary movement of body. For one to say he saw someone pulling the trigger of a gun at a distance of ten (10) meters and at a semi-darkness of the day is stretching the mind too far. One may hear the report of a gun but not the pulling of the trigger at the distance aforestated.

A presumption thus arises that a person allegedly holding a gun covered by a handkerchief, if said person is the only one in the premises, the report of a gun could be attributed to him.

But what if there were two persons? As in this case?

As to the credibility of Rommel, it may be stated that when the case originally filed against Wilfredo and Palti on June 24, 1987 and docketed as OD-275, Rommel was not listed as a witness for the prosecution. It was only in 1995 when the case was revived that he gave his testimony for the prosecution. So, it took him eight (8) years after 1987 to air his side of the incident. Like in the case filed in 1987 Rommel was also not listed in the information filed in 1995 as a witness for the prosecution. This creates a [sic] serious doubts in the mind of the Court.

A surprise witness.

The explanation for the delay was because the case was dismissed. Yes, the explanation seems plausible but one cannot disregard the fact that Rommel never did execute an affidavit or sworn statement inculcating Wilfredo as the assailant of Leodegario from 1987 to the early part of 1995.

He only surfaced in 1995.

Whatever is in the mind of Rommel, is beyond this Court's comprehension, although such state of mind and the forces at work can be reasonably inferred from the acts and submission of the witness.

What, therefore, prompted Rommel to come out of his self-imposed silence for eight years and [give] his testimony in this case?

First of all, as the record would show Rommel was more or less, an "alalay" or friend of Wilfredo. For short, they are in good terms with one another. In 1987 and prior to that.

This harmonious relationship may have ended when Rommel was not taken in as a candidate for vice mayor by Wilfredo when the latter ran for mayor.

As things go by, Rommel instead ran for vice mayor as an independent, but lost. With this, it means a break-up in their personal relationship.

Politics had taken a toll.

Finally, Rommel emerged as a winner in the last political exercise where he was elected to the Sangguniang Bayan of San Jose, under another political patronage.

The testimony of Rommel, therefore, remains suspect considering that he testified that (a) Wilfredo is a dangerous man and had killed his uncle Rexinel Brigido, (b) he saw a gun in the hand of Wilfredo "but covered by handkerchief, (c) he saw Palti at that critical moment holding a gun, (d) the long delay in giving his testimony, and (e) the supervening events after 1987.

These circumstances have created doubts in the mind of the Court.

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The undisputed assertion of Gloria and Rommel that Palti was holding a gun pointed downward (Rommel) and that she saw before the shooting Palti holding a gun (Gloria) are proof enough that Palti was holding a gun before, during and after the killing of Leodegario. Coupled by the admission in open Court by Palti that it was him who shot the victim, these pieces of evidence bear the earmarks of truth, no evidence to the contrary having been proved and established by the prosecution.

Why was Palti holding a gun at the crucial minutes of the incident? Did he or did not fire his gun?

What had motivated Palti to shoot Leodegario as alleged by him? What possible reason would it be?

Remember that he was not paid his winning bet of P100.00 by Leodegario despite his repeated demands. The words "manloloko" (Palti) and "makulit ka" (Leodegario) are expletives bordering on violence.

What did the prosecution witnesses say about Palti? As pointed out by this court Palti's participation was downgraded to the point that Palti was merely "holding a gun." The heat was on Wilfredo not Palti. It is understandable because it would be an exercise in futility to pin down Palti in the killing because he cannot anymore be proceeded against in view of the double jeopardy rule.

These circumstances amply suffice [to support] the Court's findings that Palti committed the offense.

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Be that as it may, circumstances are aplenty - by Palti's admission and the testimony of Rommel and Gloria that he (Palti) was holding a gun - that if put on the dock Palti would have been found culpable for homicide and not murder. The lesser offense of homicide because the prosecution failed to establish and prove that the qualifying circumstance of evident premeditation existed in the commission of the offense. Three requisites must be duly proved before evident premeditation may be appreciated as a qualifying circumstance, namely: (a) the time when the accused determined to commit the crime, (b) an act manifestly indicating that the accused clung to his determination, and (c) a sufficient lapse of time between such a determination and execution to allow him to reflect upon the consequences of his act.

The killing of Leodegario was at the spur of the moment. An unpremeditated killing.

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The question to be asked: Could an accomplice be convicted even if the principal has not been tried and convicted? The answer is yes. If principal is at large, still an accomplice can be convicted so long as the crime is fully established and the requisites for conviction as an accomplice are present.

Again, reliance on the autopsy report of Dr. Edmundo Reloj (Exh. "A") is necessary if only to determine the number of bullet wounds the victim sustained. The doctor mentioned of two (2) wounds, entrance and exit. In other words, only one bullet entered the body of the victim, resulting however to two (2) wounds, the entrance and the exit. Therefore, there as only one assailant, contrary to the allegation in the information that the victim suffered "serious and mortal gunshot wounds in different part[s] of his body" and the testimony of Rommel and Gloria that "two shots rang out."

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Wilfredo, on the other hand, cannot be faulted for the killing of Leodegario, but is found, on the basis of the evidence, as an accomplice in that Wilfredo according to Rommel was "going around pointing his gun to different directions," and Gloria testifying that "Wilfredo ran after her companions, firing a gun."

The case of *People v. Crisostomo*, 46 Phil. 775 where the accused prevented others in helping the victim by scaring them away is deemed an accomplice only.

In case of doubt the Court must lean to the milder form of penalty, that of an accomplice. (*People v. Manlangit*, 73 SCRA 49).[8]

Cawaling took exception to the portion of the RTC decision that convicted him as accomplice to homicide, and appealed to the CA. But as previously mentioned, the CA reversed the RTC decision, convicted Cawaling of murder, and sentenced him to reclusion perpetua. The CA found that:

Scrutinizing the evidence on record, this Court is convinced that the prosecution has successfully overthrown the constitutional presumption of innocence of the accused.

Primarily, the appellant questions the credibility of Gloria Capispisan and prosecution rebuttal witness Rommel Brigido who were present at the time of the commission of the offense. We find no reason, however, why they would lie to implicate the accused. We find their testimonies straightforward, unhesitating and sincere. Between the self-serving testimonies of the accused and the positive identification of the assailant made by prosecution witnesses, the latter deserves greater credence.

As correctly pointed out by the appellee, herein appellant was positively identified by the prosecution witnesses as the one who shot the victim, as follows:

Testimony of Rommel Brigido

Q:

When Leodegario Capispisan came near Wilfredo Cawaling, who was seated on the bench by the road, what happen? (sic)

A:

Wilfredo Cawaling suddenly stood up and pointed his gun to Leodegario Capispisan saying: "Who is brave", and two shots rung out.

Q:

You have demonstrated that the gun came from the lap of Wilfredo Cawaling, what if any covers that gun?

A:

There was a handkerchief covering that gun.

Q:

How far was Leodegario Capispisan when Wilfredo Cawaling stood up and fired against Leodegario Capispisan?

A:

Witness pointing at the door with a distance of six (6) meters.

Q:

What happen (sic) to Leodegario Capispisan when two shots rung out?

A:

He fall (sic) down.

Q:

Under this set up, was there an opportunity for Leodegario Capispisan to be avoiding (sic) the hit?

A:

No, sir, because he has no chance to avoid that incident, he raised his two hands, (witness demonstrating by raising his right and left hands) and moreover the other side of the road is a cliff.

x x x x

Q:

What did the accused Cawaling do, the first time that you saw Capispisan approaching on April 19, 1987?

A:

Wilfredo Cawaling suddenly stood up and pointed his gun and two shots rung out.

x x x x

Testimony of Gloria Capispisan

Q:

Mrs. Capispisan, do you know the accused, Wilfredo Cawaling in this case?

A:

Yes, sir, I know.

Q:

Since when have you known him?

A:

I know him since I was a child, since childhood because he was engage (sic) in buying fish.

Q:

Where were you residing at the time when you knew Wilfredo Cawaling?

A:

Sta. Fe, Romblon.

Q:

And where was he buying fish during your younger days?

A:

He is buying fish from the fishermen at Cabalian, Sta. Fe, Romblon.

Q:

Now, since you have known Wilfredo Cawaling for long, please look around and point to him if he is in the courtroom this morning?

A:

I can see him (witness pointing to somebody in the courtroom who when asked his name, replied that he is Wilfredo Cawaling).

Q:

Do you know Leodegario Capispisan?

A:

Yes, sir.

Q:

How are you related to the late Leodegario Capispisan?

A:

Leodegario Capispisan is my father-in-law.

Q:

And where is Leodegario Capispisan now?

A:

He is already dead, he was shot by Wilfredo Cawaling.

Q:

On April 19, 1987, about six o'clock in the evening, where were you?

A:

We were near Porferio Vina.

Q:

Where did you come from?

A:

We came from the caucus of Romy Roldan.

x x x x

Q:

According to you, you attended a caucus in the house of Romy Roldan, who were your companions in going home from there?

A:

My companions were: Themosticles Sulat, Jojo Sulat, Noe Antonio, Leon Barrientos, Roberto Capispisan, Leodegario Capispisan and two other tagalogs and myself.

x x x x

Q:

Now, who was ahead while you were on your way home?

A:

We were ahead.

Q:

When you reached near the place of Porferio Vina, do you know where was Wilfredo Cawaling?

A:

I saw him sir.

Q:

Where was he?

A:

He is sitting in the bench near the street.

Q:

Why were you passing the street?

A:

That is the only road that we will be passing to Busay.

Q:

You claimed that you saw Wilfredo Cawaling seated on a bench, how was he seated, will you demonstrate that to this Honorable Court?

A:

(Witness demonstrating by putting her two hands over her lap with her hand covered by her handkerchief and the right hand over the handkerchief).

Q:

About how far were you from Wilfredo Cawaling when you noticed his sitting in a manner you have

portrayed?

A:

About ten (10) meters, sir.

Q:

Now, when you were near the place already where he was sitting, what happened?

A:

Wilfredo Cawaling suddenly stood up and he pointed his gun and saying who is brave, by dropping the handkerchief.

Q:

Now, when Wilfredo Cawaling pointed his gun, to whom was it pointed?

A:

To Leodegario Capispisan, sir.

Q:

When Wilfredo said who is brave, what did he do with his gun which he was pointing to Leodegario Capispisan?

A:

It was pointed to Leodegario Capispisan and simultaneously I heard two shots.

Q:

Did he fell (sic) down with his back or his stomach?

A:

He fell down on his back with blood oozing from his breast.

x x x x

Q:

What did Wilfredo Cawaling do after firing his gun and after Leodegario Capispisan fell?

A:

He pointed his gun towards me.

Q:

What else?

A:

After telling him that I did not know this man, referring to my father-in-law, he ran after my companions firing his gun.[9]

From the foregoing contradictory findings, it is obvious that the resolution of this case hinges on which version of the case is more worthy of credence. In other words, we must rule on whether the prosecution's belatedly

proffered eyewitness testimony of Rommel Brigido trumps the similarly belated testimony of Palti Umambong who now claims authorship of the crime.

It is well-settled that the credibility of witnesses is best determined by the trial judge, who has the direct opportunity and unique advantage to observe at close range their conduct and deportment on the witness stand.[10] The general rule is that findings of fact of the trial court, its assessment of the credibility of witnesses and their testimonies, and the probative weight thereof, as well as its conclusions based on said finding, are accorded by the appellate court utmost respect, if not conclusive effect, and can only be set aside upon a clear showing that it overlooked, ignored, misconstrued and misinterpreted cogent facts and circumstances which, if considered, would alter the outcome of the case.[11]

This principle notwithstanding, we hold that the appellate court did not err in reversing the trial court and convicting Cawaling of murder, as we fully agree with the argument of the OSG that -

In this case, the judge who rendered the appealed decision, Judge Francisco F. Fanlo Jr., is not the same judge who heard the prosecution witnesses, namely, Rommel Brigido, who testified on August 23, 1995 and Gloria Capispisan, who testified on August 24, and 25, 1995. When these two witnesses testified in 1995 the presiding Judge was Judge Cesar Maravilla. It was only on January 12, 1998 or three years later when Judge Fanlo, Jr. took over the case and heard these witnesses for additional cross-examination. The additional cross-examination centered on the affidavits executed by these witnesses after the incident and not on the incident itself. The rule on the weight to be given to the findings of the trial court does not unqualifiedly apply, when the judge who rendered the decision did not hear the principal evidence of the prosecution. For in such, case, his evaluation of the evidence is based on the transcript of stenographic notes, which also forms the basis for the Court of Appeals to review the trial court's decision and render its own decision.[12]

Moreover, Rommel Brigido's belated execution of an affidavit does not detract from or diminish the weight of his direct and positive testimony that Cawaling shot Leodegario, viz:

Q:

Do you know Wilfredo Cawaling?

A:

Yes, sir.

Q:

Since when have you known him?

A:

Since I was born because we were neighbor[s].

x x x x

Q:

In the afternoon of April 19, 1987, did you see Wilfredo Cawaling?

A:

Yes, sir.

Q:

Where for the first time did you see him that afternoon of April 19, 1987?

A:

In sitio Hinulugan, Brgy. Busay.

Q:

Where did you come from that afternoon?

A:

We came from the town.

Q:

The town of what?

A:

San Jose.

Q:

Aside from Wilfredo Cawaling, do you have any companion in going to the town of San Jose, Romblon?

A:

Yes, sir.

Q:

Who were your companion (sic)?

A:

Palti Umambong.

x x x x

Q:

Now, on your way home, where did you go?

A:

We passed by Porferia Vina coming from the town.

Q:

What did you do in the place of Porferia Vina?

A:

We were together in drinking two (2) balls of tuba.

x x x x

Q:

Now, while drinking tube, what happen[ed]?

A:

While our drinking is not yet finished, I saw Wilfredo Cawaling sitting along the other side of the road.

x x x x

Q:

How far was Wilfredo Cawaling sitting on the bench from the road where Leodegario Capispisan and his group were passing?

A:

It was near, because the bench was just along the side of the road.

Q:

When Leodegario Capispisan came near Wilfredo Cawaling, who was [seated] on the bench by the road, what happen[ed]?

A:

Wilfredo Cawaling suddenly stood up and pointed his gun to Leodegario Capispisan saying: "Who is brave," and two shots [rang] out.

x x x x

Q:

How far was Leodegario Capispisan when Wilfredo Cawaling stood up and fired against Leodegario Capispisan?

A:

Witness pointing at the door, with a distance of six (6) meters.[13]

We have had occasion to hold that delay in making a criminal accusation will not necessarily impair the credibility of a witness if such delay is satisfactorily explained.[14] In this case, Rommel Brigido, on cross examination, explained, thus:

Q:

Why did it take you so long to execute this affidavit where the incident took place way back on April 19, 1987 and you only executed your affidavit in support of this information on July 27, 1995?

A:

Because that case was dismissed and [Wilfredo] Cawaling was at large at that time and I was asked to execute an affidavit.

x x x x

Q:

Why did you say that [Cawaling] is a dangerous man?

A:

He killed so many people and recently also shot my uncle, Rexinol Brigido.[15]

Gloria Capispisan likewise satisfactorily explained her failure to include the name of Rommel Brigido in her earlier account of the killing in April 1987, as the latter was the companion of Cawaling. Subsequent thereto, Gloria categorically testified that Rommel was at the side of Cawaling during the incident.

The RTC erred in convicting Cawaling merely as an accomplice to homicide, and in giving full faith and credence to Palti Umambong's testimony that he was the one who shot the victim.

We have gone through the trial court's lengthy disquisition and tried to find a rational explanation why Palti, who previously pled not guilty to the crime, will now accept responsibility for the murder of Leodegario. Obviously, it is because the case against him had already been dismissed, and he can no longer be successfully prosecuted for the offense without breaching the rule on double jeopardy. Thus, with Palti securely shielded from punishment by the principle of double jeopardy, he was at liberty to own authorship of the crime. Accordingly, Palti's credibility as a witness directly debunking Rommel's testimony is tainted by a serious cloud of doubt.

Justice Ricardo J. Francisco, in his treatise on Evidence, writes: "the credibility of a witness depends as much upon himself as upon his testimony, upon his interest as upon his mental cultivation, his conduct before and at the trial, the consistency of his behavior from the time he became aware of the fact to the time he relates it." [16] Not surprisingly, Palti is now motivated to confess to a crime for which he can no longer be held liable because of our rule on double jeopardy. [17]

We note that it was only Palti who was arraigned and who pled not guilty to the initial Information for murder. At that time, Cawaling was at large. After the case against Palti was dismissed, and now no longer in peril of punishment, he acknowledges commission of the crime and conveniently absolves Cawaling who had remained at large. We perceive a brazen conspiracy to escape criminal liability for murder.

Justice Francisco, in the same book, states that when there is conflicting evidence, the court is compelled to examine closely the motives of the witnesses for telling the truth or for falsely testifying. [18] As between Rommel and Palti, there is, in the former, an absence of proof, except for the defense's bare allegations of political motivations, of an improper motive that would have impelled him to testify for the prosecution and accuse his former friend and companion, Cawaling, of murder. [19] As no improper motive can be imputed to Rommel, his testimony is entitled to full faith and credence.

One other thing has sealed the conviction of Cawaling. We note that he jumped bail and fled. On this score, jurisprudence has consistently held that flight of an accused is indicative of his guilt. [20]

As to the propriety of Cawaling's conviction for murder, the CA correctly appreciated the circumstance of treachery. [21] We quote with favor the appellate court's ruling thereon:

The Solicitor General submits that the commission of the crime in the present case was attended by treachery as clearly established by Rommel Brigido and Gloria Capispisan, who testified that they saw appellant stand up from where he was seated and without warning, pointed his gun at Leodegario and instantaneously fired the same, thus killing Leodegario on the spot.

It is contended that "the attack being sudden and unexpected, Leodegario was not given any chance to retaliate or defend himself from such attack."

We agree.

Treachery may be appreciated even if the attack was frontal but no less unexpected and sudden, giving the victim no opportunity, to repel it or offer any defense of his person. Frontal attack can be treachery when it is sudden and unexpected and the victim was unarmed. [22]

We likewise agree with the OSG that the heirs of the victim must be awarded moral damages in the amount of P50,000.00 consistent with prevailing jurisprudence.[23]

Lastly, we dispose of a corollary incident - the Manifestation with Motion to withdraw property bond and post cash bond in lieu thereof - filed by bondsperson Margarita Cruz. In this connection, Section 22 of Rule 114 of the Rules of Court is explicit:

SEC. 22. Cancellation of bail.-- Upon application of the bondsmen with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.

In all instances, the cancellation shall be without prejudice to any liability on the bail.

With the conviction of Cawaling for murder, and the Court's consequent failure to execute the judgment of conviction because of Cawaling's flight, the motion must be denied. The posted property bond cannot be cancelled, much less withdrawn and replaced with a cash bond by movant Cruz, unless Cawaling is surrendered to the Court, or adequate proof of his death is presented.

We are not unmindful that Cruz posted the property bond simply to accommodate Cawaling, a relative, obtain provisional liberty. However, under Section 1[24] of Rule 114, Cruz, as a bondsman, guarantees the appearance of the accused before any court as required under specified conditions.

It is beyond cavil that, with the property bond posted by Cruz, Cawaling was allowed temporary liberty, which made it possible, quite easily, to flee and evade punishment. As it stands now, Cawaling, a convicted felon, is beyond reach of the law, and the property bond cannot be released.

IN LIGHT OF ALL THE FOREGOING, the decision of the Court of Appeals is AFFIRMED. Accused-appellant Wilfredo Cawaling is found GUILTY of Murder and ordered to pay, P50,000.00 as indemnity and another P50,000.00 as moral damages, to the heirs of the victim. The Manifestation with Motion of Movant Cruz is DENIED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Peralta, JJ., concur.

[1] Who had done it?

[2] Penned by Associate Justice Eubulo G. Verzola with Associate Justices Bernardo P. Abesamis and Josefina Guevara-Salonga, concurring; CA rollo, pp. 167-176.

[3] CA rollo, pp. 27-28.

[4] Id. at 28-43.

[5] CA Rollo, pp. 168-170.

[6] Whenever the Court of Appeals finds that the penalty of death, reclusion perpetua, or life imprisonment should be imposed in a case, the court, after discussion of the evidence and the law involved, shall render judgment imposing the penalty of death, reclusion perpetua, or life imprisonment as the circumstances warrant. However, it shall refrain from entering the judgment and forthwith certify the case and elevate the entire record thereof to the

Supreme Court for review.

[7] Rollo, p. 32.

[8] CA rollo, pp. 44-53.

[9] Id. at 171-175.

[10] *People v. Vasquez*, G.R. No. 123939, May 28, 2004, 430 SCRA 52; *People v. Pacuancuan*, G.R. No. 144589, June 16, 2003, 404 SCRA 58; 452 Phil. 72, (2003).

[11] *Supra*.

[12] Rollo, pp. 74-75.

[13] TSN, August 23, 1995, Records pp. 2-4.

[14] *People v. Abendan*, 412 Phil. 531, 549 (2001); *People v. Cabebe*, 352 Phil. 1155, 1168 (1998).

[15] TSN, August 28, 1995, pp. 7-9.

[16] *EVIDENCE* by Ricardo J. Francisco, Third Edition, p. 563.

[17] See: Section 21, Article III, Philippine Constitution, and Section 7 Rule 117 of the Rules of Court.

[18] Id. at 573.

[19] See: *United States v. Pajarillo*, 19 Phil. 288 (1911).

[20] *People v. Ambrocio*, G.R. No. 140267, June 29, 2004, 433 SCRA 67, 82; *People v. Del Mundo*, 418 Phil. 740, 753 (2001)

[21] See: Article 248 of the Revised Penal Code.

[22] CA rollo, p. 175.

[23] *People v. De Castro*, 451 Phil. 664, 682 (2003); *People v. Valdez*, 403 Phil. 62 (2001)

[24] Sec. 1. Bail defined. "Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance.

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