

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORETO CANIZAR GOHOL, DOMINICO SIERVO Y COLTA, AND RUPERTO FERNAN Y ARIPAL, DEFENDANTS, DOMINICO SIERVO Y COLTA AND RUPERTO FE...**

*G.R. No. 55090. February 24, 1989*

Ponente: PADILLA, J.

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**PADILLA, J.:**

In the evening of 30 March 1978, Eriberto Gohol, a "balikbayan" septuagenarian, was attacked and killed in his house located in the Gochan Subdivision, Mambaling, Cebu City. Dr. Jesus P. Cerna, Medico-Legal officer of the Integrated National Police (INP), Metro Cebu, conducted an autopsy on the cadaver of the deceased and found that deceased had sustained ten (10) to thirteen (13) stab wounds in the head, body, and extremities, inflicted by more than one person, with the use of sharp-pointed, sharp-bladed instruments.[1] He attributed the cause of death to: "hemorrhage, acute, severe, secondary to multiple stab wounds, head body and extremities." [2]

Witnesses pointed to Dominico Siervo as the perpetrator of the crime so that an information for robbery with homicide was filed against said Dominico Siervo on the basis of the affidavits executed by said witnesses to the effect that he robbed and killed said Eriberto Gohol.[3] Siervo told the police, however, that he did not kill Eriberto Gohol in order to rob him, but that he was hired to kill the victim. In a handwritten statement,[4] he denounced Loreto Gohol, the victim's wife, as the master-mind, and Ruperto Fernan and Diosdado Badajos, as his companions, in the killing of Eriberto Gohol. He also filed a motion for the reinvestigation of the case.[5] The trial court granted the motion,[6] and after a reinvestigation, the case for robbery with homicide was dismissed,[7] and another information was filed in court, docketed therein as CCC-XIV-1951-Cebu, charging Loreto Gohol with parricide, and Ruperto Fernan and Dominico Siervo with murder.

When arraigned, the accused Loreto Gohol and Ruperto Fernan entered pleas of "Not Guilty." [8] The accused Dominico Siervo, upon the other hand, pleaded guilty to the charge of murder. The trial court, however, did not immediately pronounce judgment upon him. Instead, the court ordered the accused to take the witness stand and asked him whether or not he understood the charge against him and the implication of his plea of guilty. Although the accused Siervo answered in the affirmative, the court nonetheless suspended the pronouncement of judgment until after the prosecution had introduced evidence to determine the nature of his participation and degree of culpability.[9]

In the trial that ensued, Dominico Siervo testified for the prosecution and his testimony was made the basis of the judgment of conviction. He declared that he was from Surigao City and came to Cebu City on 5 February 1978, to join his girl friend, Evelyn Varona who was studying in the city. They stayed for sometime in the house of Evelyn's relative in Tabunok, Talisay, Cebu, but transferred to the house of Diosdado Badajos in Tanke, Talisay, Cebu, the following month, to have more privacy.[10]

Five (5) days after moving in Siervo was asked by his landlord to join in the plan of Ruperto Fernan to kill a

person for a consideration. He refused. Five (5) days later, Fernan came to him and invited him (Siervo) to join in a plan where they would be paid P4,000.00 for killing a person. He did not give it much thought.[11]

However, at about 9:00 o'clock in the morning of 30 March 1978, Siervo met Fernan and confided to the latter that he had quarrelled with his girl friend for having gambled away the money she had saved for their fare in going back to Surigao City. Fernan told him not to worry as he could have money if he (Siervo) would only agree to his proposition. Fernan told Siervo to meet him at 1:00 o'clock that afternoon in the house of Diosdado Badajos.[12]

At 1:00 o'clock that afternoon, Siervo and Fernan met, as agreed upon, and Fernan brought Siervo to the Gochan Subdivision at Mambaling. Upon reaching the subdivision, Fernan told Siervo to wait at the street corner while he proceeded to the house of Loreto Gohol. After about thirty (30) minutes, Fernan rejoined Siervo and Fernan showed Siervo a P50.00 bill which Fernan said came from Loreto Gohol to be used for their expenses in carrying out their plot to kill the husband of Loreto Gohol. Fernan told Siervo that they were to execute their plan at 9:00 o'clock that evening. Then, they proceeded to a store to buy some drinks.[13]

Along their way, Fernan made a telephone call, and told Siervo that he had contacted the mastermind who wanted to talk to Siervo. Siervo talked with a woman at the end of the line who gave him detailed instructions on the killing of her husband.

At about 7:00 o'clock in the evening, they stopped drinking and went to downtown Cebu City to buy a knife for the use of Siervo, after which, they separated and agreed to meet at a certain place near the house of Loreto Gohol at the Gochan Subdivision.[14]

When Siervo arrived, at the designated meeting place, Fernan was already there. Fernan told Siervo to wait a while as the maid and the mother of Loreto Gohol were still inside the house. After a wait of about thirty (30) minutes, they saw two (2) women leave the house. Siervo and Fernan then entered the premises, passing through the gate which was left open. They were met by Loreto Gohol who opened the door for them and led them to the room occupied by their intended victim. Loreto Gohol then left them.[15]

Upon opening the door, they found Eriberto Gohol sitting and reading a newspaper. Fernan pointed to Eriberto and told Siervo to stab him. When Siervo hesitated, Fernan poked a knife at Siervo, so that the latter stabbed Eriberto Gohol. After stabbing Eriberto Gohol three (3) or four (4) times, Siervo went out, leaving Fernan behind. On his way out, Siervo was met by Loreto Gohol who gave him some money which he counted, later on, to be P460.00.[16]

Three (3) days after the incident, or on 3 April 1978, Fernan went to the house of Siervo and the latter asked Fernan for the balance. Fernan promised to get it. However, he was not able to do so as they were arrested a few days later.[17]

The appellant, Ruperto Fernan, however, denied having participated in the killing of Eriberto Gohol. He claimed that on the night of 30 March 1978, he was in Kimba, Cansujong, Talisay, Cebu, attending to his father-in-law who was in his deathbed: and that he learned of the death of Eriberto Gohol only when he was arrested in the morning of 6 April 1978.[18]

Fernan's testimony is corroborated by Tranquilino Eglamo, Jr. who declared that he was with Ruperto Fernan in Kimba from 6:00 o'clock in the afternoon of 30 March 1978, until he went home at about 5:00 o'clock in the morning of the following day.[19]

The trial court, however, gave no credence to the uncorroborated testimony of Dominico Siervo implicating

Loreto Gohol in the killing of Eriberto Gohol, saying that said testimony is full of improbabilities, inconsistencies and fallacies and, consequently, acquitted her from the charge of parricide. But, the court found the testimony of Siervo with respect to the participation of Ruperto Fernan to be impeccable and ringing with truth. As a result, the court found him (Fernan) guilty of murder and sentenced him, as well as Dominico Siervo who had pleaded guilty to the charge of murder, to suffer the death penalty; to indemnify the heirs of the deceased in the sum of P45,000.00; and to pay proportionate costs.

In view of the penalty imposed, the record of the case was elevated to this Court for review. However, with the abolition of the death penalty under the 1987 Constitution, the accused Ruperto Fernan was asked whether or not he wished to continue with the case as an appealed case. He expressed his desire to prosecute his case as an appealed case. The accused Dominico Siervo, upon the other hand, escaped from custody and his whereabouts are unknown. Accordingly, his appeal must be deemed abandoned and dismissed.[20]

In this appeal, appellant Ruperto Fernan raises mainly the question of credibility of witnesses. He assails the trial court for giving weight and credence to the testimony of his co-accused Dominico Siervo despite the trial court's finding that there are improbabilities, inconsistencies and fallacies in the testimony of said Dominico Siervo. He also points to certain portions of the testimony of Siervo which he claims to be contradictory and inconsistent with each other, more particularly, the testimony of Siervo on direct examination that after he had stabbed Eriberto Gohol three (3) or four (4) times, he left the room and met Loreto Gohol who gave him the amount of P460.00, while on cross-examination, he declared that it was Ruperto Fernan who gave him the money; while on re-direct examination, he stated anew that it was Loreto Gohol who gave him the money.

The appeal is devoid of merit. While the testimony of accomplices or confederates in crime is always subject to the closest scrutiny, coming as it does from a polluted source, and should be received with great caution and doubtfully examined,[21] the inconsistency in the testimony of Dominico Siervo, pointed out by the appellant Fernan, refers to a minor detail and cannot overcome the clear and positive testimony of Dominico Siervo. It should be noted that Siervo was not actuated by improper motives when he testified against Fernan. In fact, Siervo had no personal motive to kill Eriberto Gohol. He was induced to do so only because of the money promised by Fernan which he needed at the time.

That Fernan had recruited Siervo to kill Eriberto Gohol is evident from the testimony of Rogelio Abay. Before the killing, Fernan had made a contract with Rogelio Abay to kill Eriberto Gohol in consideration of a reward of P4,000.00 to be paid by the victim's wife, but the projected killing did not materialize as Abay had no intention of killing but wanted only to mulct the victim's wife.[22]

Besides, a perusal of the letters written by Fernan to Diosdado Badajos and Loreto Gohol, after his arrest, would show that Fernan had indeed participated in the killing of Eriberto Gohol. Evelyn Varona, the girl friend of Dominico Siervo, testified that in one of her visits to Dominico Siervo at the Rehabilitation Center (in Cebu City), where Siervo, Fernan and Loreto Gohol were detained after their arrest, Fernan gave her letters to be delivered to Loreto Gohol and Diosdado Badajos, but she was unable to give the letter to Loreto Gohol as the gate (to the women's quarters) was already closed. So, she placed the letters, including the one, written by Fernan to Badajos, in her pocket and forgot all about them, until she was investigated by a CIS agent.[23] The letter of Fernan to Diosdado Badajos,[24] written in the Visayan (Cebu) dialect and translated into English, reads:

"Josing

I'm sending to you this letter the purpose of getting the wig and letter of the woman, because that is our only hope that we will be save for a difficult situation.

So Sing, if possible, tell where it is now.

This is only my purpose

to you, Ruper."

while Fernan's letter to Loreto Gohol,[25] also written in the Visayan (Cebu) dialect and translated into English reads, as follows:

"April 22/78

City Jail

"Day Lorie,

Here is a letter telling the truth about my case of Robbery w/ Homicide. If this is the case, I will just tell the truth about the true cause. If you will proceed with the case against us, you are the one who instructed me to kill your husband, you are the master of the case against me, Lorie? What is the purpose that you sent us to jail, we, Dominico Siervo @ Dodong. If possible I would like to talk to you in person before 10 May if possible we will just agree before the scheduled trial, try to visit me or either your maid because I have something to tell you, but if not now, the better will be on Wednesday at 12:00, it is important that you will be here because the City Jail will be opened only for one hour from 1:00 P.M. until 2:00 P.M., this is very important, this is the truth your life is hanging on a single piece of fiber and I will testify in favor of the government, I'm now in the midway there's nobody that will prevent me to tell the truth. Try your best to do these things, that this Quirina, will be given by you, so that she will be silenced, try to convince her and let your money move, and the better if we will have a conversation here.

"Ruper

City Jail."

Fernan, at first, denied that he had written these letters, but, he later admitted having written them because Siervo had allegedly mauled and forced him to write them.[26] This denial, however, appears to be an afterthought.

The fact that the trial court did not give credence to the testimony of Siervo, implicating Loreto Gohol in the killing of Eriberto Gohol, is not sufficient justification for rejecting the entire testimony of Siervo. The prevailing rule is that even where a witness is found to have deliberately falsified the truth in some particulars, it is not required that the whole of his testimony be rejected, but such portions thereof deemed worthy of belief may be credited. The testimony of a witness may be believed in part and disbelieved in part.[27]

In the instant case, the trial court was correct in not believing the testimony of Siervo, implicating Loreto Gohol, since Siervo's identification of Loreto Gohol as the woman who met them at the gate was uncertain as it was dark at the time, and Siervo had not met Loreto Gohol previous to the incident complained of. He met Loreto Gohol for the first time only during the preliminary investigation of the case for robbery with homicide in the fiscal's office.[28]

But, the same cannot be said with regard to the participation of Fernan. As previously pointed out, the testimony of Siervo implicating Fernan is corroborated by testimonial and documentary evidence.

The defense of alibi put up by Fernan to disprove his complicity in the killing of Eriberto Gohol is weak and cannot prevail over the clear and positive identification by the prosecution witness of Fernan as one of the perpetrators of the crime. Besides, while Fernan had stated that he was in Kimba, attending to his father-in-law

who was on the verge of death, Fernan did not show that it was physically impossible for him to be at the scene of the crime at the time of its commission. It is not at all improbable that Fernan, assuming *arguendo* that he was indeed in Kimba, could have left the bedside of his father-in-law without anybody knowing it and proceeded to the house of Eriberto Gohol in Gochan Subdivision in Cebu City to commit the crime charged in the manner testified to by the witness for the prosecution.

WHEREFORE, the guilt of the accused-appellant Ruperto Fernan for the crime of murder having been proved beyond reasonable doubt, his conviction is hereby **AFFIRMED**, with the modification that instead of the death penalty which is no longer imposable under the 1987 Constitution, the penalty imposed on said accused-appellant is reclusion perpetua (life imprisonment).[29] He is further ordered to indemnify the heirs of Eriberto Gohol the amount of P30,000.00 and to pay the proportionate costs. The appeal of accused-appellant Dominico Siervo y Colta is hereby **DISMISSED**.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

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[1] tsn of February 5, 1979, pp. 3-9

[2] Exhibit A

[3] Exhibit M

[4] Exhibits G, G-1 to G-9

[5] Exhibit O

[6] Exhibit P

[7] Exhibit Q

[8] Original Record, p. 31

[9] *Id.*, p. 21

[10] tsn of February 6, 1979, pp. 5, 6-8

[11] *Id.*, pp. 11-12, 17-18

[12] *Id.*, p. 24

[13] *Id.*, pp. 25-27, 30-32

[14] *Id.*, pp. 35-37, 40-42

[15] *Id.*, pp. 42-46

[16] *Id.*, pp. 71-79

[17] *Id.*, pp. 83-85

[18] tsn of April 11, 1979, pp. 29-30, 36, 45-46, 80

[19] tsn of May 31, 1979, pp. 51-53

[20] *People vs. Patajo*, G.R. No. 57718, Res. of November 10, 1988; see also Rule 124, Sec. 8, Rules of Court

[21] People vs. Serrano, 105 Phils. 531, 541, and other cases cited therein.

[22] tsn of April 2, 1979, pp. 7-9, 17-18

[23] tsn of February 5, 1979, pp. 30-35, 45-46

[24] Exhibit E

[25] Exhibit F

[26] tsn of April 11, 1979, pp. 43-46

[27] People vs. Li Bun Juan, L-11077, August 23, 1966, 17 SCRA 934, 945; People vs. Mabuyo, L-29129, May 8, 1975, 63 SCRA 532, 539; People vs. Pacabes, G.R. No. 55417, June 24, 1985, 137 SCRA 158

[28] tsn of February 22, 1979, pp. 45-50

[29] People vs. Millora, et al., G.R. Nos. L-38968-70, 9 February 1989

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