

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NAPOLEON M. PACABES, JOSE DURANO Y MALIGAD, AND OTIK
ECHAVARIA, DEFENDANTS, NAPOLEON M. PACABES,
DEFENDANT-APPELLANT.**

G.R. No. 55417. June 24, 1985

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Napoleon M. Pacabes, Jose Durano y Maligad, and Otik Echavaria were charged with Murder before the Circuit Criminal Court of Cebu City committed as follows:

"That on or about the 23rd day of August, 1979, at about 11:00 o'clock p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused armed with a sharp pointed bolo and a cane, conniving and confederating together and mutually helping one another, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly attack, assault and use personal violence upon one Rizalino Ermac by stabbing and striking said Rizalino Ermac, thereby inflicting upon him the following physical injuries, to wit:

'Hemorrhage Acute, Severe, Secondary to Multiple Stab Wounds.'

and as a consequence of which said Rizalino Ermac died a few hours later."

When arraigned, the said accused, except for Otik Echavaria whose whereabouts are still unknown, entered pleas of "not guilty", and after due trial, the accused Napoleon M. Pacabes was found guilty of the crime charged and sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law; to indemnify the heirs of the victim in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay proportionate costs. The accused Jose Durano y Maligad, upon the other hand, was acquitted on the ground of reasonable doubt. From this judgment, the accused Napoleon M. Pacabes has appealed to this Court.

The incriminatory facts of the case, as narrated in the People's Brief, are as follows:

"At about 11:00 o'clock on the evening of August 23, 1979, Rizalino (Sally) Ermac and Otik Echavaria were walking along Villagonzalo II, Cebu City, towards the place where appellant Napoleon (Boy) Pacabes, Jose Durano, Bobong Galuna, and a certain Bobot were drinking beer by the roadside about seven arms length from the bakery that was directly opposite Dipsy Dooble. The place where appellant's group was drinking beer was brightly illuminated by the light of a nearby mercury lamp. Otik Echavaria had his arm wrapped around Sally Ermac's shoulder as they walked. On reaching appellant's group, Otik Echavaria suddenly and without any warning pushed Sally Ermac toward appellant who was a yard away. Sally Ermac fell on his buttocks. He asked, 'Unsa man ni, Bay' (What is this, Bay) simultaneously starting to rise up. Appellant then pulled out a one-foot long stainless bladed 'sundang' and hacked Sally Ermac with it on the left front of the chest near the shoulder causing him to fall to the ground. As he was trying to stand up, Jose Durano got hold of a wooden club and hit Sally Ermac on the forehead just above the left eyebrow. Sally Ermac turned around. Appellant

repeatedly hacked and stabbed him on the upper arms and body. Sally Ermac slumped down dead face down on the ground. Bobong Galuna and Bobot, however, merely stood nearby watching the happening. Myrna Rosell and Victoriana Gorre, witnessed the incident (tsn, February 28, 1980, pp. 9-26, 38, 41-52, 56-74, 81-84, 104-107; March 28, 1980, pp. 4-23, 53-84).

"The body of the deceased Rizalino (Sally) Ermac was autopsied on August 24, 1979 at 2:30 p.m., at the police morgue at the Cosmopolitan Funeral Homes, Cebu City, by Dr.

Jesus P. Cerna, Medico Legal Officer of the Metro Cebu Police District, who found the following injuries on the body of the deceased:

"(a) a contusion on the right side of the chest;

"(b) abrasions on the left side of the chest, left clavicular region, and left arm;

"(c) lacerated wounds on the forehead above the left eyebrow and on the left side of the chest;

"(d) eight incised wounds, viz: three on the upper right arm; one on the arm, two on the chest, one on the back base of right thumb, and one on the base of the right little finger; and

"(e) five stab wounds, three of which were fatal, viz:

'(1) one at the right base of the neck above the clavicle 10 cms. deep and penetrating the right thoracic cavity and the ascending aorta;

'(2) one at the right side of the chest above the nipple 9 cms. deep and penetrating the right thoracic cavity and the lower lobe of the right lung;

'(3) one at the back of the right shoulder 3 cms deep;

'(4) one at the middle of the back of chest level 9 cms. deep and penetrating the left thoracic cavity and the lower lobe of the left lung; and

'(5) one at the back right lumbar region 4 cms. deep with an exit wound at the right side of the abdomen.'

"The cause of his death according to Dr. Cerna was acute and severe hemorrhage secondary to multiple stab and incised wounds on the body and the extremities (Exhibits 'A', 'A-1'; tsn, March 4, 1980, pp. 5-35)."

The accused-appellant denied the commission of the crime. He claimed that at the time the crime was committed, he was sleeping soundly in his house, some meters away from the place where the incident took place.

We have examined the record of the case with care and find no reason to disturb the trial court's findings as to the guilt of the said appellant. Two eyewitnesses categorically stated that they saw the appellant hack the deceased on the left chest near the shoulder and stab him on the upper arms and body, which statement is confirmed by the autopsy report showing that the deceased sustained eight (8) incised wounds and five (5) stab wounds in the body and upper extremities. The witnesses had no motive to testify falsely against the appellant and could not have been mistaken in their identification since the appellant is well known to them, all of them being long time residents of the vicinity and neighbors of the appellant. Besides, the scene of the incident was, at the time of the assault, brightly illuminated by mercury vapor lamps. While there may be some contradictions and inconsistencies in their statements, the discrepancies refer to minor or trivial details which cannot destroy the probative value of the entire testimony of the said witnesses.

Counsel for the appellant contends, however, that the testimonies of the prosecution witnesses are not worthy of credence in view of the failure of the said witnesses to immediately come forward and identify the appellant and his co-accused as the culprits.

The failure of a witness to report at once to the police authorities the crime they had witnessed should not be taken against them. It is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case. The natural reticence of most people to get involved in a criminal case is of judicial notice.

Counsel for the appellant makes capital of the following observations of the trial court with respect to the testimony of prosecution witness Victoriana Gorre:

"A surprise witness, Victoriana Gorre, came forward to testify for the prosecution and the tenor of her testimony corroborates that of Myrna Rosell. Serious doubt as to truth and veracity of her testimony, however, has been suggested by the circumstance that she volunteered to testify for the prosecution only on March 26, 1980. She appeared in no police investigation; she took no part in the preliminary investigation of this case; and gave no inkling beforehand to the Barangay Captain who was frantically looking for witnesses that she was an eyewitness. Definitely, she was not listed in the information as one of the witnesses of the prosecution. To top it all, she declared that the Barangay Captain and she conferred with Assistant District State Prosecutor Manuel Adlawan on March 25, 1980, respecting the testimony she was going to give in court, when the fact is that the Assistant District State Prosecutor was then in Tagaytay City attending a seminar conducted by the Ministry of Justice, he having arrived from Manila only in the eve of the trial of this case on March 28, 1980."

Suffice it to state in this connection that there is no law which requires that the testimony of a prospective witness be first reduced to writing in order that his declaration in court at a later time may be believed or accepted by the trial judge. The rules do not make it a condition precedent for a witness to execute an affidavit before taking the witness stand. We have also held in a long line of decisions that the prosecution is allowed to call witnesses other than those named in the complaint and information. While the accused in a criminal prosecution is entitled to know the nature and cause of accusation against him,[1] it does not mean that he is entitled to know in advance the names of all the witnesses for the prosecution. The success of the prosecution might be endangered if such right be granted to an accused for the known witnesses might be subjected to pressure or coerced not to testify. The time for the accused to know all the witnesses against him is when they take the witness stand.[2]

Counsel for the appellant also contends that the trial court had discriminated against the appellant when it convicted the appellant of the crime on the basis of the same evidence which served to acquit the accused Jose Durano. He argues that since the trial judge, in acquitting Jose Durano, had found that the prosecution witness Myrna Rosell had prevaricated or lied when she stated that she saw the accused Jose Durano and the herein appellant Napoleon Pacabes take turns in hitting the deceased, Rizalino Ermac, the trial judge should have also found that Myrna Rosell had lied in all other respects.

This contention is without merit. The rule is already well established that the testimony of witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case. The court may accept such of the witness' testimony as it may deem proper notwithstanding his false statements. If parts of a witness' testimony is found true, it cannot be disregarded entirely.

The crime committed is murder, qualified by treachery since the appellant and his co-accused Otik Echavaria, used means or methods in the execution of the crime which tended directly and specially to ensure its execution without risk to themselves arising from the defense which the deceased might make. Records show that when Otik Echavaria, who had an arm over the shoulder of the deceased Rizalino Ermac, reached the group of persons drinking near the "Dipsy Doodle", which included the appellant Napoleon Pacabes, he pushed the said deceased towards the appellant, causing the deceased to fall on his buttocks and while in such position, the appellant hacked and stabbed the said deceased with a bolo locally called a pinuti. There being no modifying circumstance, the penalty of reclusion perpetua imposed by the trial court is proper. However, the indemnity to be paid to the heirs

of the victim should be increased to P30,000.00 in line with the decisions of the Court.

WHEREFORE, with the modification that the indemnity to be paid to the heirs of the victim is increased to P30,000.00, the judgment appealed from should be, as it is hereby, **AFFIRMED**. With costs against the appellant.

SO ORDERED.

Makasiar, (Chairman), Aquino, Abad Santos, Escolin, and Cuevas, JJ., concur.

[1] Art. IV, Sec. 19, 1973 Constitution.

[2] People vs. Palacio, 108 Phil. 220.

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