

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE GACHO, DEFENDANT-APPELLANT.

G.R. No. 60990. September 23, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Court of First Instance of Camarines Norte, Branch I finding the accused Jose Gacho guilty of the crime of MURDER for the death of Magno Quijan and sentencing him to suffer the penalty of reclusion perpetua, to suffer the accessory penalties provided by law, to indemnify the heirs of the deceased Magno Quijan in the sum of P12,000.00 and to pay one-third (1/3) of the costs.

The information dated July 16, 1980 charged the accused-appellant and others as follows:

"That on January 15, 1980, at about 6:00 o'clock in the morning, at sitio Putot, barangay Malangcao-Basud, municipality of Labo, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, members of the New People's Army, armed with armalite rifles and sidearms, with evident premeditation and treachery, and conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously attack, assault, fire and shoot one MAGNO QUIJAN, a barangay captain, thereby inflicting upon the latter gunshot wounds on the different parts of his body which caused the instantaneous death of said Magno Quijan."

When arraigned, defendant-appellant entered a plea of not guilty. Peter Doe and John Doe have evaded arrest.

The evidence for the prosecution is summarized in the People's brief as follows:

"On January 13, 1980 at about 6:00 o'clock in the morning, the Quijan family were eating breakfast at their house in Potot, Malangcao Basud, Labo, Camarines Norte, when three (3) armed men suddenly barged into their house brusquely asking the elderly man if he was Magno Quijan, who answered in the affirmative. Whereupon, the three (3) armed men ordered Quijan's wife and his two children to go downstairs (about 2 meters away from the dining table) which they heeded. Immediately thereafter, the man with a long gun fired several times upon Magno Quijan, followed by the other two (2) men with short guns – after which they fled. Magno Quijan died as a result of the multiple gunshot wounds he sustained (pp. 3-7, tsn, Feb. 13, 1981).

"The foregoing incident prompted Wilnor Quijan, fourteen-year old son of the victim to go to Jose Panganiban, where his uncle resided, and report the matter to the latter. From there he proceeded to the municipal building (pp. 7-8, tsn, Feb. 13, 1981).

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"Upon investigation surround-ing the circumstances of his father's death, Ronadin Quijan, thirteen-year old son of the victim, could not specifically identify the assailants. However, he informed the investigating authorities that one of the culprits had a scar on his right cheek and sported long hair. The armed men wore no masks nor any device to conceal their faces. (tsn, pp. 8 & 12, June 23, 1981).

"On April 10, 1981, Ronadin Quijan was brought to the PC Headquarters in Dogonan, Daet, Camarines Norte,

where the appellant was detained, a suspected NPA member. Thereafter, the PC authorities brought him before the appellant, together with six (6) other detainees and asked him if any of the said detainees was his father's assassin. Seeing the scar on the appellant's right cheek, Ronadin Quijan immediately pointed to him as one of the malefactors. Consequently, Quijan executed an affidavit to the effect that appellant was one of his father's aggressor. (pp. 10-11, tsn, June 23, 1981).

"Thus, the indictment of the appellant for the crime of murder for which he was thereafter convicted." (People's Brief, pp. 3-5).

On January 13, 1980, the body of the deceased was autopsied by Dr. Marcelito B. Abas, Municipal Health Officer of Labo, Camarines Norte. Dr. Abas issued a death certificate (Exhibit "A") declaring the cause of the victim's death, as –

"Shock and hemorrhage due to multiple gunshot wounds at the right shoulder, neck, and forearm left."

Gacho, on the other hand, denied knowing or participating in the killing of Magno Quijan, and interposed the defense of alibi. The defense evidence is summarized as follows:

"That on January 15, 1980, at about 6:00 o'clock a.m., at sitio Putot, Bgy. Malangcao-Basud, Labo, C. Norte, a certain Magno Quijan was allegedly gunned down by three men while he was inside his house taking breakfast with his two sons – Wilnor Quijan and Ronadin Quijan – all minors – and wife. (testimony of Wilnor Quijan). That when Magno Quijan was allegedly shot they (Wilnor, Ronadin and their mother) were ordered to go down. Their father was shot upstairs of their house. Autopsy was conducted by Dr. Marcelito Abas, MHO, Labo, Camarines Norte, and testified that the injuries he found on the person of Magno Quijan are those which the prosecution marked as Exhibits 'B-2', 'B-3', 'B-4' and 'B-5'. As a result of these injuries Magno Quijan died.

"The alleged crime was committed on January 15, 1980. Yet, the affidavits of the alleged two witnesses (Wilnor Quijan and Ronadin Quijan, both children of deceased) were only taken down by the Police Department of Jose Panganiban, Camarines Norte, (not Labo, Camarines Norte, where crime was committed) on April 10, 1980, so much so that it was only on April 11, 1980, that a complaint for Murder was filed against accused Jose Gacho. The Information was filed by the Fiscal's office on July 16, 1980.

"Accused-appellant Jose Gacho, on January 15, 1980, at about 6:00 o'clock in the morning was in his house in Barangay Naboongan, Labo, Camarines Norte, far from the place where the crime was committed. He was sick, as he contracted his sickness as early as January 11, 1980. He was suffering from Flu and was coughing. In fact because of his sickness he instructed her to hire someone who could plow and plant their riceland. His wife succeeded in hiring the services of Jaime Melgar. That Jaime Melgar was the one that plowed and planted the riceland of accused Jose Gacho. That during all the time that Jaime Melgar was doing the farm work Jose Gacho was inside his house. In fact Bernabe Sanchez testified that before 6:00 a.m. of January 15, 1980, he went to the house of Jose Gacho at Naboongan, Labo, Camarines Norte, to retrieve the scythe which was borrowed from him by accused Jose Gacho. That he saw Jose Gacho lying down inside his house, covered with blanket, and sick. Bernabe Sanchez left the house of Gacho after 7:00 o'clock that morning of January 15, 1980. (Sanchez testimony).

"Jaime Melgar likewise testified that in the early morning of January 15, 1980 (before 6:00 a.m.) he was already in the riceland of Jose Gacho because his services was hired by the wife of Jose Gacho to plow and plant their riceland because Jose Gacho was then sick. He started to work on the riceland of Jose Gacho on January 14, 1980. On January 15, 1980, while working on the riceland, Jaime Melgar always saw Jose Gacho inside his house because the riceland he was cultivating is only adjacent to the house of Jose Gacho. Accused did not have a chance to leave his house that day of January 15, 1980, because he was sick. In fact, the first time that Jaime Melgar saw Jose Gacho in the early morning of January 15, 1980, was when Jose Gacho opened his window. That after his day's work on January 15, 1980, he went home. It was then that he received the news that someone was killed somewhere in Barangay Putot, Labo, Camarines Norte, a distance of four (4)

kilometers from the house of Jose Gacho. That, on January 16, 1980, he again returned to the farm of Jose Gacho to continue working on the said riceland. (Direct testimony of Melgar).

Mely Gacho, wife of accused Jose Gacho, testified that at about 6:00 o'clock in the morning of January 15, 1980, her husband (accused) was inside their house at Barangay Naboongan, Labo, because he was sick. He has been suffering from said ill-ness since January 11, 1980, and it lasted till January 17, 1980. During these intervening period her husband (Jose Gacho) never left their conjugal abode because he was suffering from Flu and cough. He was merely treated by a 'herbolario', who massaged him. He was not attended by a physician because in Barangays 'herbolario' is the only accessible medicine man.

"Jose Gacho, the accused, testified that he did not even know the victim because while the latter is from Barangay Malangcao-Basud the former is from Barangay Putot, distant barangays. That on January 15, 1980, he was sick. He was suffering from Flu and cough. He could not leave his house much more could he even do his farm work on his riceland. So, he instructed his wife to look for someone who could plow and plant his riceland. His wife succeeded in hiring Jaime Melgar. He contracted his sickness as early as January 11, 1980 and it lasted till January 17, 1980. This is so because it is a Flu and cough. An illness which usually takes number of days. In short, he never left his house from January 11 to 17, 1980.

"It was only while detained at the PC headquarters, Dogongan, Daet, Camarines Norte, he noticed near the Chapel of the PC camp, a man carrying a gun (brother of victim who is a CHDF and uncle of witnesses Wilnor Quijan and Ronadin Quijan). The CHDF (brother of victim) asked for his (Jose Gacho) name and after he gave his name the three left. It was only then that accused was summoned to the PC investigating room where he was allegedly identified by witnesses Wilson and Ronadin Quijan — after he (Jose Gacho) had been asked by the CHDF (brother of victim) what his name is. It was a 'tailored' manipulation purposely done to point out accused as the culprit."

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In its decision dated January 22, 1982, the trial court found the qualifying circumstance of treachery to be present and convicted the accused for murder as follows:

"WHEREFORE, the Court finds the accused Jose Gacho guilty beyond reasonable doubt of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, without any modifying circumstance, and he is hereby sentenced to Reclusion Perpetua, to suffer the accessory penalties provided for by law, to indemnify the heirs of the deceased Magno Quijan in the amount of P12,000.00 and to pay one-third (1/3) of the costs."

The accused-appellant raised the following assignments of errors in his brief:

1. THE LOWER COURT ERRED WHEN IT MISCONSTRUED THE EVIDENCE AND THE LAW AND MISINTERPRETED FACTS OF SUBSTANCE WHEN IT RENDERED A JUDGMENT OF CONVICTION AGAINST THE ACCUSED, JOSE GACHO, ON ITS BARE CONCLUSION THAT THE ONLY TWO WITNESSES FOR THE PROSECUTION, WHO ARE THE MINOR CHILDREN OF VICTIM, ARE COMPETENT EYEWITNESSES, AND THE LOWER COURT SOLELY RELIED ON THEIR TESTIMONIES RESULTING IN A JUDGMENT OF CONVICTION.
2. THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF ACCUSED JOSE GACHO, AS CORROBORATED BY THREE CREDIBLE WITNESSES.
3. THE LOWER COURT ERRED IN CON-SIDERING THE DEFENSE OF ACCUSED AS A MERE ALIBI AND THEREFORE IS ACCORDING TO THE LOWER COURT A WEAK DEFENSE.
4. AND, FINALLY, THE LOWER COURT ERRED GRAVELY IN CONVICTING THE ACCUSED ON THE MERE TESTIMONY OF TWO INTERESTED AND BIASED WITNESSES WHO ARE THE

CHILDREN OF THE VICTIM.

The appellant discussed the above assigned errors together in his brief.

The defendant-appellant questions the credibility of eyewitnesses Ronadin Quijan and Wilnor Quijan by pointing out that they are the children of the deceased and that it is but natural that in their desire to avenge the death of their father, they could easily fall prey to their uncle's desire to concoct evidence if only to point to someone as responsible for the death of their father. The uncle is a member of the Civilian Home Defense Force (CHDF).

The defendant-appellant's contention is untenable. It is an established doctrine that mere relationship of prosecution witnesses to the victim does not make their testimony biased nor render it utterly devoid of belief in the absence of an improper motive actuating the witnesses to testify falsely against the accused. (*People v. Puesca*, 87 SCRA 130; *People v. Abujuela*, 92 SCRA 503; see also *People v. Narciso Santos y Marcilang*, G.R. No. L-60055, April 28, 1983).

In *People v. Ciria* (106 SCRA 381), we ruled that:

"As to the alleged suspicious character of Elizabeth's testimony because she is the daughter of the victim, it is to be noted that appellant does not specifically point to any portion of her testimony which may render it doubtful. Besides, We find no reason at all to reject the finding and conclusion of the trial court regarding her credibility. In any event, suffice it to say that relationship to the victim, standing by itself, does not prove that the said witness is prejudiced and biased when, as in this case, said testimony is not only clear and natural, but corroborated circumstantially by medical findings. (*People v. Estocada*, 75 SCRA 295; *People v. Roxas*, 73 SCRA 583; *People v. Pajenado*, 69 SCRA 172; *People v. Reyes*, 69 SCRA 474; *People v. Padiernos*, 69 SCRA 484; See also *People v. Puesca*, 87 SCRA 130, 144, citing *People v. Miranda*, 10 SCRA 385; *People v. Asmamil*, 13 SCRA 497 and *People v. Libed*, 14 SCRA 410.)"

We have carefully examined the records and we find no reason either from the facts or from the appellant's arguments why the prevailing jurisprudence should not apply that mere relationship of the prosecution witnesses to the victim does not necessarily vitiate or impair their otherwise credible, clear, and positive statements.

The record is bereft of any circumstance from which we can infer that the testimonies of the Quijan children are mere concoctions. There are sufficient facts on which they based their positive identification of the defendant-appellant as one of the killers of their father. Appellant Gacho lives in a neighboring area and used to pass by their house. The Quijan house is along the way when Jose Gacho goes to the poblacion from his own house. The murderous attack was perpetrated in their very presence, thus enabling them to look at the faces of the culprits. As correctly observed by the Solicitor-General, the appellant left deep impressions on their memories because of the following circumstances:

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"x x x First, it was the appellant who inquired from their father whether he was Magno Quijan; Second, the appellant was holding a long gun while the two other attackers were holding shotguns; Third, the appellant fired the first shot at their father; Fourth, the appellant had a distinguishing mark on his face - a scar on the right temple, and he sported long hair."

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Appellant Gacho argues that there was undue delay on Ronadin's part to reveal the appellant's identity to the authorities despite his testimony that he knew him even before the killing took place. This argument has no merit. Ronadin did not state that he knew the name of the defendant-appellant before or at the time of the killing. All that he said was he knew the appellant because the latter usually passed by their house and had a distinguishing scar

on his right cheek. As observed by the People's counsel "what Ronadin must have meant by his statement was that he knew the appellant by face but not by name."

The record shows that the identification was positive. Wilnor testified that he saw the appellant fire several times at the victim followed by the other two men with short guns who did likewise after which all three fled. Wilnor Quijan stated:

"FISCAL PANOTES:

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"Q What happened, if any, while you, your parents and your brothers were eating that morning?

"A Three (3) armed persons arrived.

"Q Do you know the names of those persons?

"A No, Sir.

"Q About the faces of these persons, could you recall if shown to you?

"A Yes, Sir."

(TSN, February 13, 1981, pp. 4-5)

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"Q If any of these three persons with arms are here in Court, please point at them?

"A That man. (Witness pointing to accused Jose Gacho.)

"COURT:

About the two persons?

"A It is only he (referring to accused Jose Gacho) whom I recognized. I can recognize the other two if shown to me."

(TSN, February 13, 1981, p. 5)

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"Q At present, do you know now the name of the person whom you identified here in Court?

"A I came to know his name when he was brought to Dogongan, Sir.

"Q What is his name?

"A Jose Gacho.

"Q How long have you known Jose Gacho?

"A I know him even before because he used to pass-by our place.

"Q What did these three persons do upon reaching your place?

"A They shot my father."

(TSN, February 13, 1981, pp. 5-6)

"Q Who shot your father among the three?

"A All of them, Sir.

"Q Who shot your father first?

"A The one with long gun, Sir."

(TSN, February 13, 1981, p. 6)

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"FISCAL PANOTES:

"Q While this person with arm, which you described as Armalite, was shooting your father, what did the other companions doing?

"A All of them were standing at the door of our house and shooting my father.

"Q How many times, more or less, did the three (3) persons shoot your father?

"A Many times, Sir."

(TSN, February 13, 1981, p. 7)

"COURT:

"Q Are you sure that the accused Jose Gacho is one of the three armed men who shot your father?

"A Yes, Sir.

"Q Tell us why are you so sure about it?

"A Because he has a scar here. (Witness pointing to his left temple.)

"Q Aside from that what else made you to remember him?

"A No other."

(TSN, February 13, 1981, p. 20)

Ronadin Quijan also positively identified Jose Gacho as one of the three men that barged into their house on January 15, 1980 and shot his father. He testified:

"FISCAL PANOTES:

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"Q Did you come to know who were these three men who shot your father?

"A The only thing that I could remember is that man with a scar on the right cheek.

"Q If that man with the scar on the right cheek is here in Court, will you point to him?

"A He is here. (Witness pointing to the accused Jose Gacho.)

"Q At present, do you know the name of this person you pointed before this Court?

"A I know.

"Q What is his name?

"A Jose Gacho."

(TSN, June 23, 1981, p. 3)

"FISCAL PANOTES:

"Q You said you identified the accused Jose Gacho at Dogongan. Will you please narrate before this Court the procedure taken by the PC when you were required to identify the accused?

"A I was asked to identify the men there who shot my father and after seeing the man with a scar on his right cheek, I was told that he was Jose Gacho.

"Q How many men were there in the place where you identified Jose Gacho?

"A I could not exactly recall because of the time that passed, but it seems to be about 7.

Q In other words, from among the seven you identified Jose Gacho as one of the killers of your father?

"A Yes, sir."

(TSN, June 23, 1981, pp. 10-11)

"COURT:

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"Q About the face of Jose Gacho was it covered?

"A When my father was shot, the face of Jose Gacho was not covered.?

(TSN, June 23, 1981, p. 12)

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"COURT:

"Q Are you very sure that the man with a scar on his right cheek who shot your father to death is the same person who is now the accused before this Court?

"A Yes, sir.

"Q Why are you now very sure?

"A Because when my father was shot, I could recall his scar.

"Q You cannot be mistaken?

"A No, sir.

"Q During that occasion, how many times did you see the face of Jose Gacho?

"A Only once.

"Q And how long did you look at his face?

"A While my father was being shot, I was looking at him."

(TSN, June 23, 1981, p. 13)

Defendant-appellant also invokes the maxim of falsus in uno falsus in omnibus. He points out alleged contradictions in the testimonies of Ronadin and Wilnor Quijan, such as (1) the location of the scar of Jose Gacho

(Is it on the left cheek or on the right cheek), and (2) the kind of gun used by Jose Gacho (Is it an armalite or a shotgun?)

The alleged contradictions refer only to minor and collateral matters that do not impair the credibility of eyewitnesses Ronadin and Wilnor Quijan. More important than these inconsistencies, Ronadin and Wilnor affirmatively testified to the unlawful killing of their father and positively identified the defendant-appellant as one of the culprits that perpetrated the dastardly act. Furthermore, possessed with different capacities for observation, the witnesses cannot be expected to recall with accuracy or uniformity matters connected to the main overt act. (*People v. Cabiling*, 74 SCRA 285).

We apply the rule laid down in *People v. Reyes* (69 SCRA 476) and reiterated in *People v. Balane* (G.R. Nos. L-48319-20, July 25, 1983), that—

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"x x x inconsistencies in minor and collateral matters with respect to testimonies of two witnesses may signify that the two witnesses did not deliberately pervert the truth in their narrations. The discordance in their testimonies on collateral matters heightens their credibility and shows that their testimonies were not coached nor rehearsed. Far from being evidence of falsehood, they could justifiably be regarded as indices of telling the truth."

Furthermore, the questioned testimonies clearly show that the Quijan children, despite their minority, are capable of perceiving and making known their perception. The record is also bereft of any improper motive that would impel them to falsely testify or implicate the defendant-appellant in such a serious crime as the cold-blooded killing of their father. Wilnor Quijan testified to a possible motive for the killing —

"COURT:

"Q Do you know the reason why your father was shot, if you know?

"A Yes, Sir.

"Q Why?

"A Because they are mad to his brothers who are members of the CHDF.

"Q Why are those three persons mad at the brothers of your father?

"A I do not know, Your Honor why they are mad at the brothers of my father.

"Q How about your father, was he also a CHDF during his lifetime?

"A I could not recall, but what I know is that they are mad with the brother of CHDF (sic)."

(TSN, February 13, 1981, p. 19)

Against the positive and categorical testimonies of the Quijan children, the defendant-appellant interposed a flat denial of any participation in the commission of the crime. He introduced the defense of alibi. Appellant Gacho claims that he was sick at the time the killing took place. To corroborate this defense, the defendant-appellant presented his wife and two other persons testifying to the same effect.

Alibi, being easily susceptible of concoction, is a very common defense in criminal cases. We reiterate the rule that to be accorded credence, it does not suffice for the appellant to merely prove that he was at some other place, but also, that the distance was such as to preclude the possibility for him to be at the scene of the crime at the time it was committed (*People v. Romero*, 119 SCRA 234). In the case at bar, the place where the accused claimed to

be at the time of the commission of the crime was only five (5) kilometers from the place where the crime was committed.

Furthermore, alibi is a weak defense in the presence of a positive identification. For the defense of alibi to prosper, the evidence to support it must be clear and convincing (*People v. Chavez*, 117 SCRA 221). The trial court also found some contradictions in the testimonies of defense witnesses. In addition to the manner in which the witnesses testified, these inconsistencies helped lead the court to a rejection of the defense alibi:

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"Thirdly, the flimsiness of alibi as a defense may be shown by the significant contradiction in the testimony of Jose Gacho (Cross Examination t.s.n. page 13, September 2, 1981) who claims that Jaime Melgar started working on their ricefield on January 13, 1980 against the claim of Jaime Melgar that he started working only on January 14, 1980 (Direct Examination - t.s.n. page 3, August 17, 1981); the claim of Jose Gacho that he got sick from January 11, 1980 contrary to the claim of Bernabe Sanchez that Jose Gacho told him, he got sick only 'Yesterday', meaning January 14, 1980 (Direct Examination - t.s.n. page 3, July 14, 1980)." x x x

There is no question that the crime committed by the defendant-appellant was murder, qualified with treachery. The fatal injuries were inflicted suddenly and unexpectedly with no opportunity on the part of the victim to defend himself. There was no risk on the part of defendant-appellant. All the malefactors were armed.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

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