

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEJO CUYO Y MORTERO AND FELIX BUEN Y PAREDES, ACCUSED-APPELLANTS.*G.R. No. 76211. April 30, 1991*

Ponente: NARVASA, J.

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One of the more established axioms in the appreciation and appraisal of proofs in criminal actions is that the defense of alibi set up by an accused cannot prevail over his positive identification by otherwise competent witnesses,[1] and is unavailing in the absence of an acceptable showing of the physical impossibility of said defendant's being at the scene of the crime at the time of its commission.[2] The correctness of the Trial Court's application of the doctrine to the case at bar is the principal question now before this Court. The Court resolves the issue in the affirmative.

In the evening of October 5, 1983, Josefino Garcia, a tricycle driver, was in the kitchen of his house at Bacnotan, La Union, talking to his wife, Rebecca Lapitan. Rebecca was just outside the kitchen's doorway, washing clothes. Josefino had just come home from work. Suddenly, Rebecca saw two men appear at the window, which was about three and a half meters from where she was. She recognized them; one was Cuyo, whom she had known since childhood; the other, Felix Buen, the Chief Tanod of the barangay. As Rebecca looked on, horrified, one of the two men rested a gun on the sill and fired twice at Josefino. The two then fled as Josefino slumped to the floor, mortally wounded. Rebecca cried, "Daddy, Daddy," rushed to the fallen Josefino and embraced him.

Shortly thereafter, one of her daughters, Mary Ann Garcia, came running and saw her mother on the floor, hugging her stricken father. Hysterically, Rebecca told her, "Your father is gone; he was shot by Felix Buen and Alejo Cuyo!" Close on Mary Ann's heels came Noli Cabagbag and Efren Cuevas. Rebecca said the same thing to them, and also asked, apparently to no one in particular, "Apay nga incastayo, apay nga pinaltoganyo toy lacayco?" (Why did you do this, why did you shoot my husband?). Police Lieutenant Claudio Dacanay, INP Station Commander, also came later; and to him she said, "I know who are the killers. There were no other who perpetrated the crime, none other than the barangay captain and Felix Buen."

Efren and Noli brought Josefino to the Lorma Hospital in an effort to save his life, but by then the latter had already expired. Dr. Miguel T. Ocampo, resident physician of Bacnotan Emergency Hospital, performed a post mortem examination and thereafter reported the cause of death as "Cardiorespiratory Arrest Secondary to Severe Hemorrhagic Shock Secondary to Severe Bleeding due to Gunshot Wound."

Before the shooting, Mary Ann Garcia was at her grandmother's house, which was about 40 meters south of her own house. At that time, she observed Cuyo and Buen loitering in the vicinity, seated at one time, standing the next, or walking to and fro. Later, she heard two gunshots coming from the direction of her home, followed by her mother's repeated cries, "Daddy, Daddy!" and immediately ran to her house. When she was about eight meters from her house, she saw Cuyo and Buen running away. They were then about three meters from her. She

recognized them by the light of a fluorescent lamp hanging from a post about twelve feet high as well as the light outside of her grandmother's house. Upon reaching her home, she saw her mother crying, and embracing her father, who, bloodied and pale, was lying on the floor. Her mother told her, "Your father is dead; he was shot by Felix Buen and Alejo Cuyo."

Rebecca Garcia went to her uncle, Marcelino Collado, the Barangay Captain of Nagsabaran, Bacnotan; and the two of them reported the crime to the police authorities. The entry of her report in the police blotter included a reference to "Felix Buen y Paredes alias Totoy and Alejo Cuyo y Mortero alias Econg, Barangay Capt. of Baroro" as "suspects of shooting incident."

Alejo Cuyo and Felix Buen were taken into custody but later released for lack of evidence. They were also subjected to paraffin tests; and according to Forensic Chemist Felisa P. Viguila of the National Bureau of Investigation, only Buen was found positive for nitrates in both hands; no trace of nitrates was detected in Cuyo's hands. Viguila also opined that the specks on Buen's hands were gunpowder, not dynamite, specks, it not being difficult to distinguish one type from the other, the former being larger in size.

It further appears that a week or so before his violent death, Josefino Garcia — whose nickname was "Sipin" — was told about a threat on his life by another tricycle driver, Danilo Cabanban. Josefino was told by Danilo that while he (Danilo) was on night patrol duty in their barangay, together with Alejo Cuyo, Felix Buen, Benjamin Buen (Felix's brother), and one other, Benjamin had said, "Un-unsan tayo nga patay ni Sipin" (Let us kill first Sipin). Felix responded by simply nudging Benjamin and going home. When told of this, Josefino had said, "Agannadcayo laeng" (Just be careful).

Cuyo and Buen were re-arrested and charged with murder some sixteen days later, when Rebecca Garcia, after having attended to her husband's wake and interment, gave a written statement about Josefino's murder to the police. In her sworn statement, she also declared that Cuyo was resentful of Josefino's having been elected PTA President; that indeed, another election for PTA President was held, to accommodate Cuyo's nominee, but Josefino won again.

The foregoing are the facts tended to be established by the evidence of the prosecution, in substantiation of the charge of Josefino Garcia's murder proffered against Cuyo and Buen by the Provincial Fiscal on February 14, 1984. According to the indictment, Cuyo and Buen committed the crime, "conspiring together and mutually helping one another," by going to Josefino's house "and with evident premeditation and treachery, * * * then and there wilfully, unlawfully and feloniously * * * (shooting said) Josefino Garcia, inflicting several fatal gun shot wounds on different parts of the body * * * that directly caused his death a few moments thereafter * * *."

Both Alejo Cuyo and Felix Buen denied any part in the killing of Josefino Garcia, claiming that at the time of the shooting, they were in different places, in the company of other persons.

Cuyo testified that when Josefino Garcia was shot, he himself was in the house of his neighbor, Arsenio Cabagbag, watching an episode of "Wonder Woman" on television, and learned of the shooting while watching the show, from his son, Anselmo; he had then gone to see what had happened and proceeded to the victim's place with P/Lt Claudio Dacanay, whom he saw on the way; he did not follow Dacanay into Josefino's house, having been told that the victim had been brought to the hospital; he had observed the victim's wife going in and out of her house and heard her saying, "I know whom I should suspect," and that the killers had gone eastward to the mountains. He also deposed that the light at the victim's kitchen was a dim fluorescent lamp, not an incandescent one; that the victim's wife could not have seen the assailant at the kitchen window because her view was obstructed by her husband's big, husky body; and that he and the victim bore no grudge against each other. To support his alibi, Cuyo presented four of his neighbors as witnesses, namely: Felicitas Manalang, Carmen

Esperon, Nori Esperon, and Arsenio Cabagbag. They all declared that Cuyo was watching the "Wonder Woman" show with them, and that Cuyo never left the house until his son came with news of the shooting.

Felix Buen, for his part, testified that on October 5, 1983, from 6:00 to 10:00 o'clock at night, he was having a drinking party at his house with four persons: Quirino Callejo, Teofilo Sanchez, Romeo Jabonitalia and Dencio Ramos, who happened to be at his house to get their identification tags as tanods; that in the morning of that day, and for the very first time in his life, he had caught fish by blasting, using gunpowder from a shell which he had discovered in a garbage pile the year before. He also denied awareness of the candidacy of Josefino, his compadre, in the second election for PTA president, and gave it as his opinion that relatives of the victim's paramours or mistresses could have been the perpetrators of the crime. Buen presented his four drinking companions as witnesses, to establish his alibi.

The Trial Court rejected the defenses of alibi set up by the accused and pronounced the evidence of the prosecution sufficient to prove the defendants' guilt of murder beyond reasonable doubt. In its judgment promulgated on July 18, 1986, the Trial Court imposed on each of them the penalty of reclusion perpetua, and the solidary obligation to pay to the heirs of Josefino Garcia indemnity for death in the sum of P30,000.00, and reimbursement of funeral expenses in the amount of P6,000.00.

The defendants appealed, and in this Court branded as erroneous practically every finding and conclusion of the Trial Court, i.e.:

- 1) that Rebecca Garcia and her daughter, Mary Ann, had accurately identified the appellants;
- 2) that Rebecca Garcia's statements to Mary Ann and Noli Cabagbag were admissible as part of the res gestae;
- 3) that Felix Buen had fired a gun because found positive for nitrates in a paraffin test;
- 4) that appellant Cuyo "held a serious grudge" against the victim, Josefino Garcia;
- 5) that Josefino was killed by two gunshots at the back, coming from the south window of his kitchen;
- 6) that there were no serious discrepancies and inconsistencies in the testimony of Rebecca Garcia and her daughter regarding the direction to which the killers fled;
- 7) that the appellants' defense of alibi should not be credited;
- 8) that the evidence of the prosecution deserved full credit.

Rebecca testified that while conversing with her husband and as she "was about to look at * * * (him) in order to answer him," she saw the two appellants; that said appellants were then very close to each other and, bent forward, were looking into the kitchen; that the gun borne by one of them "was already leaning on the window pane," and "almost simultaneous * * * it emitted fire." She recognized one of the men to be Cuyo because she had known him since childhood; she also recognized his companion, Felix Buen, because he was the Chief Tanod of the barangay.

Appellants theorize that because it was "comparatively very dark" outside the kitchen window where the killers were then standing, Rebecca Garcia could not have seen them long enough to identify them because "her eyes were still blinded by or stunned to the bright light in the kitchen." And they liken her situation to a driver at night, "meeting another car from the opposite direction with headlights ablazed, sharp and glaring," or a "person entering a theater, with the screen show going on, (who) would be blinded for sometime before he could see and take a VACANT seat." The parallels sought to be drawn do not exist. Rebecca did not move from a bright place to a dark one; nor did she have bright lights suddenly beamed directly at her. She was in a small area brightly lit by

the kitchen light and had been there for some time; the illumination from the kitchen light would of course have radiated towards and also lighted up the window where the killers appeared; the killers' faces would thus have been clearly seen in the radiance of the kitchen light thus making identification entirely possible, and plausible.

Appellants contest the admission against them of Rebecca's statements as part of the *res gestae*. The point is inconsequential. Whether the statements were made by Rebecca in a state of shock, or under the influence of the startling occurrence — her husband's murder — or while totally untouched thereby, is immaterial. Even if the latter were the case, her testimony, and that of others, as to said utterances would nonetheless be admissible, not as an exception to the hearsay rule, but in completion of the narration of the material occurrences: what the protagonists saw, heard, did, or said at the time, and appreciated as confirmatory of other testimony positively identifying the appellants and giving the reasons for the ability to make such identification.

In truth, however, the evidence regarding said utterances given by Mary Ann Garcia, Noli Cabagbag and Efren Cuevas — such as, "Your father is gone." "Your manong is dead." "He was shot by Felix Buen and Alejo Cuyo!" "Apay nga incastayo, apay nga pinaltoganyo toy lacayco?" (Why did you do this, why did you shoot my husband?) — was correctly accepted as part of the *res gestae*. From all indications, Rebecca Garcia made the statements under the stress of great excitement, in near hysteria. The statements were made immediately after her husband had been gunned down and appeared to be dying, and before she had time to contrive or devise. The statements related to that shocking occurrence and the circumstances surrounding it. These are spontaneous statements within the meaning of the first part of Section 36, Rule 130 of the Rules of Court, to wit: "Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*." [3]

Appellants also impugn their identification by Mary Ann Garcia because supposedly made impossible by "her grave concern and anxiety for her parents," and the "terrific stress and strain" she was under, "with eye single to reach home without a second to lose." On the contrary, it seems to the Court more likely that the emotional and psychological state in which she was then would have sharpened her perceptive senses; that the gunshots she had heard, and her mother's anguished cries, would have caused her to try to know the persons who might possibly be involved or were otherwise acting abnormally. [4]

The record reflects Rebecca's and Mary Ann's categorical declarations regarding the appellants' identities, and no acceptable reason of sufficient gravity has been demonstrated to cause them to implicate innocent persons in so serious an offense as murder. [5]

Appellants seek to make capital of the 16-day delay in the execution of sworn statements by Rebecca and her daughter, Mary Ann. The delay is not only sufficiently explained by their preoccupation with the wake and burial of Josefino Garcia and the religious devotions and prayers usually attendant thereon, but is also rendered insignificant by the undeniable fact that they had made positive identification of the appellants on the very same night that Josefino was slain, to the police authorities and other persons.

Rebecca Garcia's testimony is confirmed by the fact that Felix Buen tested positive in the paraffin test conducted by a NBI forensic expert. The attempt to negate the significance of the latter fact by dismissing it merely as a remarkable coincidence, Buen having engaged in dynamite fishing earlier in the day, cannot succeed. The argument on this point was correctly disposed of by the Court *quo*, as follows:

“ * * * To extricate himself, he (Buen) testified that he went dynamite fishing on that date which shows the puerility of his evidence. His version is too flimsy to merit belief because he said that it was his first time to fish by dynamite on October 5, 1983, notwithstanding his claim that he discovered the gunpowder for almost a year prior to October 5, 1983. Besides, if it were true that the nitrates found on his hands were caused by

dynamite explosion, then his hands would have been blown off. * * * ."

The inconsistency between Rebecca's testimony and that of Mary Ann — anent the direction that the assailants took in fleeing from the scene of the crime — to which appellants also draw attention, refers to a collateral matter and not to the commission of the offense itself, to which not much significance may be attached, and may not be invoked to destroy the probative value of the entirety of their evidence. Indeed, as this Court has more than once stressed, complete uniformity in details in the testimony of witnesses cannot be expected because witnesses react differently to what they see depending upon their situation and state of mind, and may in fact indicate untruthfulness; on the other hand, contradictions on minor or trivial details are not unnatural and are normally considered as enhancing, rather than debilitating, their testimony.[6]

The closeness of their relationship to the deceased, Josefino Garcia, should not, contrary to appellants' view, be deemed erosive of their credibility as witnesses. Rebecca was present and actually saw the crime perpetrated. Mary Ann arrived at the scene only minutes later. That they were wife and daughter, respectively, of the victim, does not make them incompetent as witnesses, nor should it serve to detract from the credit otherwise due them. The weight of their evidence must be assessed by the same norms applicable to other witnesses.[7]

The defense of alibi was also correctly rejected, in view of the positive identification of the appellants by witnesses not otherwise shown to be incompetent, and the inability of the defense to establish that it was physically impossible, in view of the remoteness of the place where they were at the time, or otherwise, for them to have been at the scene of the crime at the time of its perpetration. Germane and cogent are the following findings of the Trial Court:

"The ocular inspection definitely established that the distance between the houses of the victim and Arsenio Cabagbag (where Cuyo claimed he was, at the time) is 300 meters only which was negotiated by the inspection team in 5 minutes by leisurely walking. From the house of accused Buen to the national highway the inspection team walked the distance in 5 minutes also. It was not, therefore, impossible for the two accused to have gone to the house of the victim, shot him, and returned to their respective points of origin."

It seems evident that the appellants acted in conspiracy. The acts shown to have been done by them demonstrate that unity of purpose and intention that constitutes that nefarious juridical relation.[8] And that the killing of Josefino Garcia was attended by alevosia is indisputable. There is treachery, the law says, when the offender adopts means, methods, or forms in the execution of the felony which ensure its commission without risk to himself arising from the defense which the offended party might make.[9] In this case, Josefino Garcia was shot at close range, unexpectedly, without warning and without opportunity or means to offer any defense, and this mode of assault was apparently deliberately adopted to ensure success of the felonious enterprise. Treachery qualifies Josefino's killing to murder.[10]

The aggravating circumstance of dwelling was also correctly appreciated against the appellants. Josefino Garcia was assassinated in his own home, without his having given any provocation.[11]

As to the other aggravating circumstance of evident premeditation, the evidence thereof seems to the Court quite deficient. It consists merely of the testimony of Danilo Cabagbag as to what was said by a person other than the two appellants. Danilo testified that Benjamin Buen, the brother of appellant Felix Buen, who was never himself accused of complicity in any capacity in the killing of Josefino Garcia, had said, "Un-unsan tayo nga patay ni Sipin" (Let us kill first Sipin). But there was no response thereto by either of the appellants. What Felix did, according to the witness, was simply to touch Benjamin and go home. On proof as tenuous as this, a finding of the existence of an aggravating circumstance should not be grounded.

The appellants were therefore properly found guilty of murder, qualified by treachery, and attended by the

aggravating circumstance of dwelling. There being no other modifying circumstance, the penalty properly imposable on them is reclusion perpetua, it not being permitted by the Constitution that the death penalty be imposed.[12]

WHEREFORE except for the elimination of the aggravating circumstance of evident premeditation, the appealed decision is AFFIRMED in toto, with costs de oficio.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] People v. de Guzman, G.R. No. 95685, March 4, 1991; People v. Arceo, G.R. No. 88324, July 6, 1990

[2] People v. de Guzman, G.R. No. 95685, March 4, 1991; People v. Catubig, G.R. No. 71626, March 26, 1991; People v. Gupo, G.R. No. 75814, September 24, 1990

[3] SEE People v. Talingdan, G.R. No. 94339, November 9, 1990, citing People v. Roca, 162 SCRA 696 (1988)

[4] People v. Ampo-An, G.R. No. 75366, July 4, 1990, citing People v. Cabeltes, June 29, 1979, 91 SCRA 208

[5] People v. de Guzman, G.R. No. 95685, March 4, 1991

[6] People v. Lagota, G.R. No. 85795, Feb. 14, 1991; People v. Bolima, G.R. No. 96549, March 22, 1991; People v. Arceo, G.R. No. 88324, July 6, 1990

[7] SEE Peo. v. Nepomuceno, 136 SCRA 556

[8] SEE People v. Alitao, G.R. No. 74736, February 19, 1991; People v. Manzon, G.R. No. 74784, October 11, 1990; People v. Solis, G.R. No. 93629, March 18, 1991; People v. Catubig, G.R. No. 71626, March 26, 1991

[9] ART. 14, par. 16, Revised Penal Code

[10] ART. 48, par. 1, Revised Penal Code

[11] ART. 14, Revised Penal Code

[12] SEC. 19 (1), Article III, 1987 Constitution

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