

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARMANDO MAESTRO, LANTOY REAL, NESTOR REAL, DEONY RUADO
AND QUIDONG RUGA, ACCUSED. LANTOY REAL,
ACCUSED-APPELLANT.**

G.R. No. 76951. May 25, 1993

Ponente: MELO, J.

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MELO, J.:

When Rudy Rivas bade good-bye over the microphone to the guests who were attending a ceremony during the eve of a wedding, little did he know that it was his last adieu.

He and his daughter Divina Rivas left the celebration past 10 o'clock in the evening of May 20, 1984. As they walked along a barrio trail towards home at Buri, Mandaon, Masbate, Rudy felt he had to answer the call of nature. While he was relieving himself under a guava tree near the road, five men armed with a scythe and bolos stabbed him in different portions of his body which caused immediate death (TSN, August 9, 1985, pp. 11-12; p. 10, Record).

This incident was supposedly witnessed by the victim's daughter from a distance of five meters who thereafter ran to report what she saw to her uncle who was still attending the ceremony (TSN, January 17, 1985, p. 13; TSN, October 9, 1985, p. 4). Divina and her uncle returned to the scene of the incident and found the victim already dead. Dulcesima Rivas, the wife of Rudy, was informed of the crime by her daughter that same night and she also went to the place where her husband was slain.

All of these gory details led to the apprehension and prosecution of Armando Maestro, Lantoy Real and Deony Ruado for the crime of murder qualified by alevosia. Nestor Real and Quidong Ruga, who were also implicated, remained at large (p. 216, Record).

Testifying for the prosecution, Divina narrated on the witness stand that her father was attacked by Armando Maestro who inflicted the first stab wound, followed by Lantoy Real, Nestor Real, Deony Ruado, and Quidong Ruga (TSN, January 17, 1985, p. 4). On Deony Ruado's ill-motive, she claimed that she heard him say during the ceremony: "You are still announcing by and by you will fall down" while her father was speaking over the microphone (TSN, January 17, 1985, p. 3). The wife of the victim also testified that she was informed by her daughter of the identities of the assailants during the same night her husband was killed (TSN, January 23, 1985, p. 11). She also adduced proof to demonstrate that Armando Maestro and the other malefactors have a collective axe to grind against her husband in view of the victim's previous testimony as a witness which implicated the assailants in a case involving theft of a carabao (TSN, January 23, 1985, p. 13). Other incidents which she tried to recall to show that there had been occasions in the past when Armando Maestro threatened to kill her husband were impressed upon the court a quo (TSN, January 23, 1985, pp. 5-10; p. 12, Record).

On the other hand, the defense offered alibi and denial for exculpation. It was at Balud Sea where Deony Ruado

claimed that he was fishing from 7 o'clock in the evening of May 20, 1984 until the wee hours of the morning. He stressed further that he and his companions thereafter went to Kulasi, Roxas City where he stayed for two months until he was apprehended thereat by the police authorities (TSN, August 12, 1985, pp. 1-5). Herein appellant Lantoy Real asserted that he, too, was fishing with some of his companions (TSN, August 22, 1985, p. 5).

The trial court pronounced a verdict of conviction against Armando Maestro on July 15, 1985 for the crime of murder (p. 139, Record; TSN, August 9, 1985, p. 5). Four months later, Lantoy Real and Deony Ruado were also adjudged guilty of the crime as charged, but Deony Ruado escaped and has remained at large even before the judgment against him was promulgated (pp. 61 & 73, Rollo). Together with Armando Maestro, Lantoy Real, and Deony Ruado were sentenced to suffer the penalty of reclusion perpetua and were ordered to proportionately pay the sum of P30,000.00 to the heirs of Rudy Rivas as moral damages, the amount of P30,000.00 as indemnity, plus the costs of suit (p. 6, Decision; p. 221, Record).

In thus adjudging these persons accountable for the killing, the trial court observed that the defense of denial and alibi cannot overcome the People's evidence showing their participation derived from the positive testimony of Divina Rivas as an eyewitness to the commission of the felony. The daughter of the victim, said the lower court, could not have been mistaken in pointing the accusing finger against the perpetrators whom she recognized with ease due to past acquaintance with them (TSN, August 9, 1985, pp. 14-15, TSN, October 9, 1985, p. 7). Alibi, as emphasized below, could barely produce the desired result as expected by the defense inasmuch as the distance between the situs of the felony at Barangay Buri, Mandaon and Balud Sea where they were supposedly fishing can be negotiated by pumpboat within a span of thirty minutes (TSN, October 12, 1985, p. 2). In short, the trial judge formulated the conclusion that:

... The evidence does not show that it was physically impossible for the accused to be at the place of incident on the fatal evening. For alibi to prosper, it is not enough to prove that the accused were somewhere else when the crime was committed but it must likewise be demonstrated that it was physically impossible for them to have been at the scene of said crime at the time of its commission (People vs. Dueno, 90 SCRA 23; People vs. Cortes, 57 SCRA 3080). (p. 5, Decision; p. 220, Record)

In the appeal before us, appellant Lantoy Real tries to impeach the credibility of Divina Rivas by contending that the latter could not have actually witnessed the killing. In support thereof he relies on the testimony of Felix Ruga and Barangay Captain Apolonio Ruado who declared that Ruga was told by the victim that he will leave his daughter behind at the ceremony and that he will go home ahead. Lantoy Real thereby concludes that Divina could not have been with her father when he was killed later (p.12, Brief for Accused-Appellant, p. 82, Rollo). Further, the defense introduced the Barangay Captain whose story is to the effect that it was he, on the morning following the slaying, who informed the wife of the victim and Divina of the incident.

These narrations do not necessarily suggest the idea regarding the alleged absence of Divina at the locus criminis. Busy as Felix Ruga was in attending to the guests, he could not have known, much less, monitored if Divina did not accompany her father home. Verily, Felix Ruga was not sure of himself as to when Divina actually left the party:

ATTY. ALFORTE:

Q. You mean that May 20, just after Rudy Rivas left that wedding party you knew that he was killed?

WITNESS FELIX RUGA:

A. Yes, sir.

Q. From whom did you come to know?

A. From Gloria Ruga.

x x x

Q. Did you not inform Divina Rivas, the daughter of Rudy Rivas about the incident?

A. I was not able to tell her because she already went home.

Q. Is it not that Divina Rivas was with his father when they left the wedding party?

A. No, sir, she was left behind.

Q. Why did you not tell Divina Rivas that her father was killed?

A. She already went home ... She already went home.

Q. For how long a time Divina Rivas left the wedding party that his father left?

A. Rudy Rivas left the place at 9:00 o'clock while his daughter asked permission to leave at about 2:00 o'clock in the early morning.

Q. What time were you informed that Rudy Rivas was killed?

A. 1:00 o'clock.

Q. So, in other words Divina Rivas was still there?

A. Yes, sir.

Q. Will you please reconcile that statement of yours when you said that somebody reported to you that Rudy Rivas was killed Divina, the daughter of the victim, left the wedding party and now you said that Divina Rivas was still there?

A. She was no longer there. (Tsn, February 28, 1985, p. 7). (pp. 11-12, Appellee's Brief, p. 164, Rollo)

Regarding the barangay captain's statement that it was he who informed the wife and daughter of the victim about the killing, this, too, does not convey the impression that Divina did not accompany her father on the way home. The premise was established in the course of Divina's cross-examination on January 17, 1985 that after she informed her uncle and mother about the killing, Divina and her mother spent the night together (TSN, January 17, 1985, p. 15). It was but natural for the barangay captain to claim that he informed the wife of the victim and Divina about Rudy's killing the following day (TSN, March 1, 1985, pp. 273), for mother and daughter were then together. Therefore, it is erroneous to say that Divina did not witness the killing of her father simply because Divina was with her mother the following morning when the barangay captain went to their house conveying the sad message of the killing of Rudy.

Appellant argues next that even assuming Divina was present when her father was mercilessly ganged upon, she could not have witnessed the actual killing because it was dark since the moon appeared from the horizon only at around 10:53 in the evening or a few minutes later. In addition, appellant avers that the victim had to conceal himself so as to move his bowels, thereby insinuating that Divina's view could have been obstructed when the killing took place. Even if the moon had not yet risen from the horizon, it was not totally impossible for Divina to see the assault from a distance of five meters (TSN, January 17, 1985, p. 4). Too, Divina and her father had travelled some distance before the attack so that Divina's eyes had already adjusted to the unlighted barrio trail. Neither is it correct for appellant to assume that Rudy concealed himself before relieving himself because there was no proof to indicate that there were shrubs or other obstructions nearby which he could have utilized as cover.

About two and half hours by pumpboat from Lantoy Real's residence at Barangay Bugnay, Mandaon to where the crime was perpetrated does not demonstrate such physical nor actual insurmountable barrier as to preclude his presence at the place of the crime, especially so when appellant frankly stated that he was out at the sea around 4 o'clock in the afternoon of May 20, 1984 whereas Rudy's death occurred at around 10 o'clock that evening (TSN, August 22, 1985, p. 5). Indeed, alibi as a form of excuse is inherently weak if it is established mainly by the accused himself (People vs. Solis, 195 SCRA 405 [1991]) and principally due to its easy fabrication (People vs. Bugho, 202 SCRA 164 [1991]). Moreover, alibi cannot prevail over the positive identification of a credible witness of the People, like Divina Rivas who testified in a straightforward manner with respect to the presence and participation of the malefactors at the scene of the felony at the time of the commission thereof (TSN, January 17, 1985, p. 4; People vs. Plaga, 202 SCRA 53 [1991]; People vs. Montanilla, 211 SCRA 119 [1992]).

On the aspect of treachery alleged in the information as a circumstance to qualify the crime to murder, it has been held, and the trial court correctly observed, that alevosia is present if the victim was attacked without any opportunity on his part to repel the aggression or escape like when he is answering a call of nature (People vs. Gerardo, 91 Phil 395 [1952]; Gregorio, Fundamentals of Criminal Law Review, Eight Ed., 1988, p. 127), more so when he was stabbed by several persons (People vs. Lopez, 132 SCRA 188 [1984]; People vs. Surban, 123 SCRA 218 [1983]; Gregorio, supra, at p. 129). Indeed, there was here the employment of means or manner of execution which insured the attackers' safety from any defensive or retaliatory act on the part of the victim (People vs. Toribio, 198 SCRA 529 [1991]). The trial court properly noted that nighttime cannot be considered separate from, as it is deemed absorbed by, alevosia (People vs. Necerio, 211 SCRA 415 [1992]) in the absence of proof that nighttime was specifically sought in the commission thereof (People vs. Pinto, Jr., 204 SCRA 9 [1991]).

Murder is punishable by reclusion temporal in its maximum period to death under Article 248 of the Revised Penal Code. In default of any mitigating or aggravating circumstance that attended the offense which would have either reduced or increased the penalty, the trial court properly imposed the penalty of reclusion perpetua (People vs. Deslate, 192 SCRA 644 [1990]).

WHEREFORE, the decision appealed from is hereby AFFIRMED with the modification as to the indemnity which is hereby increased to P50,000.00 consistent with jurisprudential policy (People vs. Saulo, 211 SCRA 888 [1992]).

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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