

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO BACHAR Y GABAY ALIAS “ROMY”;
DEFENDANT-APPELLANT.**

G.R. No. 78269, February 27, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision[*], dated 13 November 1985, rendered in Criminal Case No. 85-118-B of the Regional Trial Court of Eastern Samar, finding the accused guilty of the crime of Murder and sentencing him to suffer the penalty of death; to indemnify the heirs of the victim in the sum of P66,000.00, and to pay the costs.[1]

The facts of the case, as stated by the Solicitor General in his brief, are as follows:

"On October 9, 1984 at about past 7:00 o'clock in the evening, Nathaniel Boco, Danny Daza and Manuel Contado were drinking wine (White Castle) in front of the sari-sari store owned by Danny Daza, situated in Real St., Borongan, Eastern Samar (p. 27, tsn., Aug. 1, 1985). At about past 10:00 o'clock, appellant Romeo Bachar arrived at the place where the three were drinking. After a while, appellant left only to return later. Nathaniel Boco offered him a drink, but appellant declined and left. Later he returned again and introduced himself to the trio as Romeo Bachar, alias Romy, a member of the military. Nathaniel Boco, Danny Daza and Manuel Contado likewise introduced themselves to the appellant. Appellant, however, did not believe the trio, so he got mad and told them, 'Sinugaling kayo; dudurugin ko mukha ninyo.' Appellant left. Then appellant returned again, approached the group, picked up a glass and hit Danny Daza with it. A fight ensued between appellant and Danny Daza. Nathaniel Boco joined the fight and boxed the appellant twice. Sensing that he was overpowered, appellant ran away, but before leaving he shouted that he will be back (pp. 28-29, tsn. Aug. 1, 1985).

"At around 11:00 o'clock, appellant returned to the house of Jesus-Daza, bringing with him his Armalite rifle. On seeing him, Danilo, Nathaniel and Manuel hurriedly went up to the second floor of the house, but left the door ajar so they could see what appellant would do. Meantime, appellant went up through the stairway. First, he removed the fluorescent bulb then proceeded towards the door. As the door was locked he tried to push and kick it, but to no avail. Then he shouted in Tagalog, 'Ilabas ninyo si Danny Lopez, kung hindi sasabog itong bahay na ito.' Jesus Daza who was in the adjacent bedroom with his grandson Joseph asked: 'What is it that you would want from Danny?' There was no answer. Instead, a gun blast rang out. Jesus-Daze was dead, (pp. 5-8, tsn, Aug. 22, 1985; pp. 32-34, tsn, Aug. 1, 1985)."[2]

The appellant, however, denied having committed the crime with which he is charged. His version of the incident, as summarized by his counsel in the appellants's brief, is as follows:

"According to Appellant, who is a member of the Philippine Army, he was requested, on that fateful evening of October 9 by Cpl. Hilario Ballesca to buy cigarettes and eggs in town. On his way back from this errand, he was accosted by three men whom he later recognized and came to know in Court to be Danilo, Taniel and Manuel. These three had obviously been drinking and they demanded that appellant buy them a bottle of White Castle Whiskey. When Appellant answered that he had no money, Danny boxed him, prompting appellant to

run away. Upon arriving at the barracks, appellant simply delivered the ciga-rettes and eggs. He did not report the incident for fear that he would be rebuked and because he was not hurt anyway. Instead, he just watched the other soldiers play chess and played a few games himself until they all went to sleep some-time after midnight. Cpl. Balleca corroborated the testimony of Appellant, especially with respect to the fact that from about 9:00 p.m. until 12:30 p.m. they were playing chess in the barracks, after which they went to bed. The other witnesses for the defense testified that Appellant had no access to a firearm on the night of October 9, 1984 inasmuch as he was off-duty."[3]

The trial court, after subjecting the evidence of the prosecution to a minute and careful scrutiny, found that the guilt of the appellant had been established beyond reasonable doubt. The trial court said:

"Taking into consideration the testimony of prosecution witnesses, their manner, deportment, gestures and features when testifying, the facts testified [sic] by them, their natural and straightforward answers, their credence which hurdled the test of cross-examination questions propounded [sic] by the defense counsel, as well questions asked by the Court in its effort to clarify facts and elicit the truth, the court must perforce accept prosecution's version of the facts and circumstances which lead [sic] to the violent death of Jesus Daza and immediately thereafter. While admittedly no prosecution witness ever testified to have actually seen the accused in the act of shooting Jesus Daza, the circumstantial evidence is consistent with each other and is such that the accused Romeo Bachar y Bagay, alias Romy, and no other, was the culprit, and is guilty thereof."[4]

In this appeal, the appellant claims that the trial court erred in not acquitting him on the ground of reasonable doubt and in finding that the offense committed is murder, qualified by treachery.

The appellant argues that the facts as gathered by the trial court reveal a host of incredible allegations and inconsistent statements on the part of the prosecution witnesses which, when taken together, engenders such doubt that merits the acquittal of the appellant.

Clearly, the pivotal issue presented here whirls around the credibility of witnesses, i.e., whether or not the trial court was correct in giving weight and credence to the testimony of the prosecution witnesses. The well-established rule on this point is that the factual conclusions reached by the trial court, which had the opportunity, unlike the reviewing tribunal, to observe and gauge the demeanor and conduct of the witnesses while testifying, and to properly appreciate the same, are not to be disturbed, unless there is proof of misappreciation of evidence.

In this case, we find no cogent reason to disagree with the findings of the trial court.

Besides, the alibi of the accused is unworthy of credence and cannot stand over and above the positive identification by prosecution witnesses, since the appellant and Danny Daza had engaged in fisticuffs earlier, and Wilma Daza saw the appellant in the act of removing a lighted fluorescent bulb. It would also appear that the alibi of the appellant is not supported by positive, clear and satisfactory evidence. As the trial court had observed, the defense put up by the defendant could easily be fabricated and appeared to be simply unbelievable.

We find, however, that the trial court erred in appreciating the qualifying circumstance of treachery. The prosecution failed to present any eyewitness to give testimony as to the manner the victim was actually attacked by the appellant. The prosecution witnesses merely testified to having seen the appellant climb the stairs of the house of Jesus Daza and of hearing a gunshot after Jesus Daza had inquired what the appellant wanted from Danny. In fact, nobody knew that Jesus Daza had been shot until his dead body was discovered by his grandson in the morning of the next day, and the judgment of conviction was based upon circumstantial evidence which the trial court found to be abundant to prove the appellant's responsibility for the offense perpetrated.

In *People vs. Duero*,^[5] the Court said:

"It is our view, however, that the appellate court erred in appreciating the circumstance of treachery against the appellant. There is treachery when the offender employs means, methods or forms in the execution of the crime which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

"As heretofore stated, not a single eyewitness to the stabbing incident had been presented by the prosecution. Thus, the record is totally bereft of any evidence as to the means or method resorted to by appellant in attacking the victim. It is needless to add that treachery cannot be deduce from mere presumption, much less from sheer speculation. The same degree of proof to dispel reasonable doubt is required before any conclusion may be reached respecting the attendance of alevosia."

Absent the qualifying circumstance of treachery, the crime committed is not murder, but homicide as defined and penalized under Art. 249 of the Revised Penal Code.

WHEREFORE, the judgment appealed from is AFFIRMED, with the modification that the appellant shall suffer the penalty of from six (6) years and one (1) day of prision mayor as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. With costs against the appellant.

SO ORDERED.

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

[*] Penned by Judge Sixto T. Balanquit, Jr.

[1] The records of the case were elevated to this Court for review in view of the death sentence imposed upon the accused. With the reduction of the death penalty to reclusion perpetua, under the 1987 Constitution, the accused, duly assisted by counsel, manifested his desire to still continue with the case as an appealed case.

[2] Rollo, p.182; appellee's brief, pp. 2-4

[3] Rollo, pp. 91-92; appellant's brief, pp. 3-4

[4] Rollo, pp. 120-121; trial court decision, pp. 16-17

[5] G.R. No. 65555, May 22, 1985, 136 SCRA 515, 519-520

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