

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO BUSTARDE Y PAMA AND ANTONIO MARTIN, JR. Y VLACER, ACCUSED-APPELLANTS.***G.R. No. 79160, February 23, 1990*

Ponente: NARVASA, J.

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In the Regional Trial Court of Manila, Mario Bustarde and Antonio Martin, Jr. were charged with the crime of murder committed against the person of Jaime Habar, a student of the Manila High School,[1] and after arraignment and trial, were convicted of the felony and sentenced "to suffer the penalty of RECLUSION PERPETUA, together with all the accessory penalties, \*\*\* to indemnify jointly and severally, the heirs of the late Jaime Habar in the amount of P30,000.00, and to pay the proportionate costs." [2]

Their conviction was made to rest chiefly on the testimony of the only eyewitness presented by the Government, to whom the Trial Court accorded full credence, Victoria Lacap, a manicurist. Victoria testified that at about 5 o'clock in the afternoon of August 3, 1983, while she was attending to a customer at Ilaya Street, Divisoria, Manila, she heard some people shouting, and then, from a distance of about 3 or 4 meters, she saw two (2) persons holding Jaime Habar (Jimmy) by the hands, and another stabbing him from behind. The three assailants thereafter ran away. According to her, the one who stabbed Jaime was Mario Bustarde — whom she described as having a sharp nose and a light brown complexion. One of the two men holding Jaime's hands as he was being stabbed was Antonio Martin, Jr. — described by her as shorter than Mario and stouter. The third, she did not know. Victoria averred that she was certain of her identification of Bustarde and Martin because she was quite close to them and had watched them for several minutes as they were attacking Jaime Habar; that she did not then report the incident to the police for fear of retaliation by the accused, opting instead to narrate when she had seen to the victim's grandmother, Mrs. Liwayway Arevalo; that on the following day, however, she did go to the police station, accompanied by Mrs. Arevalo, and there gave a written statement about the killing, and identified both Mario Bustarde and Martin from a "line-up" of seven persons.

Corroboration of Victoria's narrative as regards the manner by which Jaime Habar was assaulted and slain was given by the testimony of Dr. Rodolfo Lisondra, a medico-legal officer, whose qualifications were admitted by the defense. Dr. Lisondra deposed that Jaime's cadaver bore three (3) stab wounds in the back, caused by a single instrument, a flat bladed, sharp pointed and single-edged knife: one, fatal — penetrating the back, perforating the lungs and causing their partial collapse, and penetrating the heart, causing massive bleeding and cessation of its function; another — not necessarily fatal, entering the back left side, penetrating the abdominal cavity, and perforating the mysentery and stomach; and the third — also not necessarily fatal, penetrating the abdominal cavity from the back and penetrating the right kidney. Dr. Lisondra opined that the wounds were inflicted in rapid succession and in all probability, the victim was held by one of his assailants, and while thus immobilized, was stabbed at the back with strong force by the other.

Opining that the government proofs were sufficient to establish the defendants' commission of the felony charged, and declining to accord credit to the evidence of the defense tending to show that it was neither accused, but an unknown person who had murdered Jaime Havar, Jr.,[3] both defendants being at another place at the time of the perpetration of the crime, the Court a quo rendered judgment pronouncing Bustarde and Martin guilty beyond reasonable doubt as co-principals of the crime of murder, qualified by treachery, and sentencing them, absent any modifying circumstance, "to suffer the penalty of RECLUSION PERPETUA, together with all the accessory penalties, and to indemnify jointly and severally, the heirs of the late Jaime Havar in the amount of P30,000.00, and to pay the proportionate costs."

Both accused have taken an appeal to this Court and here decry the Trial Court's alleged error "in giving weight and credence to the testimonies of the prosecution witnesses and in disregarding the theory of the defense," and pray for reversal of the judgment of conviction on the ground that "their guilt was not established beyond reasonable doubt." Quite logically, they focus their attention on the testimony of Victoria Lacap and attempt to convince this Court that it should not have been relied upon by the Trial Judge because replete with inconsistencies and improbabilities. They theorize that Victoria's testimony was rendered valueless by —

- 1) her inability to state the number of stab wounds sustained by the victim, or what happened to the latter after the incident;[4]
- 2) the fact that she was not seen by the police officers who went to the scene of the crime shortly after receiving a report of the killing at about 5:25 P.M., or failed to present herself to them, or to any police officer at the station;[5] and
- 3) the contradiction between her statement that after witnessing the killing at about 5:00 o'clock in the afternoon on August 3, 1983, she had gone to the victim's grandmother (Mrs. Arevalo), and the latter's declaration that she had gone, alone, to the police station at about 5:25 o'clock that same afternoon.[6]

They also contend that the evidence given by the defense witnesses is more credible and should have tilted the balance in their favor.

The testimonial flaws imputed to Victoria Lacap are either inexistent or exaggerated. For one thing, it is not shown that she had any reason to lie under oath and impute such a grave offense as murder to the appellants. For another, the flaws ascribed by the accused to her testimony are not substantiated by the record. It is not true, for instance, that Victoria was unable to tell the Court what happened to Jaime Havar, Jr. after he was stabbed. She testified that after Bustarde had stabbed Jaime, "there was a commotion of people and they — meaning the three assailants — run (ran) away." And as to what happened to the victim thereafter, her terse answer was, "He died." She did not, to be sure, state the number of times that Jaime was stabbed by Bustarde. It was however a detail that, in the state of shock she admittedly was in at the time, does not negate the concession of credit to her declarations. What should be kept in mind is that she was so positioned with respect to the protagonists in that fatal happening as to afford her an unobstructed view of the manner by which Jaime Havar was attacked and killed by the appellants and their third companion, and close enough to make positive identification of the attackers, which she afterwards did, at the police station and then in the courtroom.

There is no contradiction between Victoria Lacap's testimony and that of Jaime's grandmother, Liwayway Arevalo, as the appellants seem to imagine. On the witness stand, she stated that she did not think of going directly to the police immediately after the killing because she "feared for her life," she was afraid that if it came to be known that she had indeed gone to the authorities to report the matter, those who had stabbed Jaime would "go after" her. This is a factor that is entirely human, quite understandable, and should not detract from her testimonial credit. Instead, after leaving the crime scene, she first went home, and later, to the victim's

grandmother to tell her what she had seen. This should explain why the police investigators did not see her at the murder scene and why she did not present herself to them. In any event, she did report the crime to the police authorities on the following day, in company with the victim's grandmother, evidently having overcome her earlier apprehensions, and been prevailed upon to do what was needful for justice's sake. There is furthermore nothing in Victoria's statements before the police or the Court inconsistent with Liwayway Arevalo's averment that she had gone to the police precinct some thirty minutes after the killing of her grandson.

On the other hand, the appellants' alibi, i.e., that at the time the crime was committed they were some place else, cannot be sustained. As this Court has held in numerous instances, the defense of alibi cannot stand against the positive identification of a credible witness or witnesses.[7] The proposition is especially enhanced by the circumstance that, as in this case, the accused were reasonably proximate to the situs of the offense (only fifty meters away).[8]

As to the witness, Osmundo Doganato, on whom the appellants mainly rely for exculpation, his testimony being that it was another man, yet unknown, who had assaulted, chased, stabbed and killed Jaime Havar, Jr., the defects that appellants would attribute to Victoria Lacap — failure to report the matter to the police, inherent implausibility of narrated story — may instead be more accurately imputed to him. Doganato came forward with his tale only when the case was being tried. Before that, he never went to the authorities, or ever attempted to locate and talk to the relatives of the victim. He attempts to explain his unusual reticence by the claim that he might be disturbed in his work and hence, dismissed. His reported reactions, moreover, during and after the commission of the crime by the unidentified man, do not inspire belief. His attitude was one of complete detachment, total indifference, as he watched the slaying and the supposedly futile attempts of the victim to flee from his attacker. When asked how he felt at the time, his answer was, "Bale wala naman, pagkatapos lumakad na lang ako pauwi." "I did not feel anything. I went home after the incident, I did not feel anything." He was not at all disturbed by the shocking occurrence, because, as he laughingly remarked on the witness stand, he knew he was "not involved in the incident." Behavior such as this is, under the circumstances, extremely strange and unnatural; it cannot but debilitate the narrative to which it is collateral. The Trial Court was therefore correct in refusing to accord credence to Doganato's evidence.

Also correct is the Trial Court's conclusion that the appellants and their third companion, still at large, had committed the crime of murder in conspiracy, and the offense was attended by the qualifying circumstance of alevosia. The evidence establishes that the three (3) assailants acted in concert, helping and cooperating with each other. Two of them seized the victim's arms and held him immobile while the third thrust a knife into his back several times, after which the three malefactors fled together. This is conspiracy.[9]

The manner by which the felony was consummated shows the adoption by the conspirators of a means of attaining their nefarious purpose without risk to themselves from the defense which the victim might make. This is treachery.[10]

WHEREFORE, the decision of the Trial Court subject of the appeal is AFFIRMED in toto, with costs against the appellants.

### **SO ORDERED.**

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

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[1] The case was docketed as Criminal Case No. 83-19863 of Branch 48, presided over by Judge (now Court of Appeals Associate Justice) Bonifacio A. Cacadac, Jr.

[2] Copy of the judgment, rendered on November 28, 1986, is found at pp. 20-32 of the rollo.

[3] Written as "Jaime Habar, Jr. in the information.

[4] Appellant's brief, p. 10.

[5] Id., pp. 10-11, 14.

[6] Id., p. 11.

[7] Peo. v. Selfasion, 1 SCRA 235; Peo. v. Garcia, 1 SCRA 796; Peo. v. Morado, 4 SCRA 292; Peo. v. Rafanan, 6 SCRA 53; Peo. v. Sersano, 10 SCRA 609; Peo. v. Bato, 21 SCRA 1445; Peo. v. Jamero, 24 SCRA 206; Peo. v. Tarrayo, 27 SCRA 956; Peo. v. Marquez, 30 SCRA 442; Peo. v. Gande, 31 SCRA 347; Peo. v. Aboga, 147 SCRA 404.

[8] Peo. v. Ilanto, 4 SCRA 978; Peo. v. Hamtig, 29 SCRA 14; Peo. v. Bautista, 30 SCRA 558; Peo. v. Pingol, 33 SCRA 73; Peo. v. Aboga, 147 SCRA 404.

[9] Peo. v. Clarit, 3 SCRA 331; Peo. v. Vilanueva, 5 SCRA 792; Peo. v. Simon, 10 SCRA 280; Peo. v. Tiongson, 12 SCRA 402; Peo. v. Estrada, 22 SCRA 111; Peo. v. Peralta, 25 SCRA 759; Peo. v. Magcamit, 27 SCRA 450; Peo. v. Tapac, 28 SCRA 191; Peo. v. Pagaduan, 29 SCRA 54.

[10] Peo. v. de Gracia, 18 SCRA 197; Peo. v. Labis, 21 SCRA 871; Peo. v. Condemena, 23 SCRA 910; Peo. v. Ramos, 22 SCRA 58.

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