

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS BOCATCAT, SR. (DECEASED), TOMAS BOCATCAT, JR., AUGUSTO BOCATCAT, ROMULO MILADO, ROGELIO MILADO (DECEASED), AND ISMAEL ON...

G.R. No. 79966. July 31, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Basey, Samar, convicting the appellants, Tomas Bocatcat, Jr., Augusto Bocatcat, and Romulo Milado of the crime of murder.

Tomas Bocatcat, Jr., Augusto Bocatcat, Tomas Bocatcat, Sr., Romulo Milado, Rogelio Milado, and Ismael Ong were charged with murder under the following amended Information:

“The undersigned Assistant Provincial Fiscal accuses Tomas Bocatcat, Sr., Tomas Bocatcat, Jr., Augusto Bocatcat, Romulo Milado, Rogelio Milado and Ismael Ong of the crime or Murder, committed as follows:

“That on or about the 12th day of February, 1977, at nighttime, in the Municipality of Tala-lora, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill, with treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hold and stab several times one Dr. Conrado I. Teodoro, Municipal Health Officer of said municipality of Talalora, with knives with which the said accused had convenient-ly provided themselves for the purpose, thereby inflicting upon him multiple wounds on the diffe-rent parts of the body, which wounds directly caused his death.

“Contrary to law.

“Basey, Samar, July 28, 1978.”

Upon arraignment, all the accused entered a plea of not guilty. While the case was on trial, Rogelio Milado died on 26 October 1980; Tomas Bocatcat, Sr. died on 28 November 1985. Hence, the case against them was dismissed.

After trial, the court found the accused Tomas Bocatcat, Jr., Augusto Bocatcat, and Romulo Milado guilty as charged and accordingly rendered a decision, the dispositive part of which reads as follows:

“IN VIEW OF THE FOREGOING, this Court hereby renders judgement declaring the accused Ismael Ong innocent of the crime charged due to reasonable doubt of his complicity in the same; declaring the accused Tomas Bocatcat, Jr., Augusto Bocatcat and Romulo Milado guilty beyond reasonable doubt of the crime of Murder; and with respect to the accused Tomas Bocatcat, Jr. appreciating the mitigating circumstance of voluntary surrender.

“ACCORDINGLY, the Court hereby sentences the accused Tomas Bocatcat, Jr., appreciating the mitigating

circumstance of voluntary surrender and applying the Indeterminate Sentence Law, to undergo and suffer an imprisonment of TEN YEARS AND ONE DAY (10 years and 1 day) of PRISION MAYOR to SEVENTEEN YEARS, FOUR MONTHS AND ONE DAY (17 years, 4 months and 1 day) of RECLUSION TEMPORAL.

“As far as the accused Augusto Bocatcat and Romulo Milado are concerned, there being no mitigating or aggravating circumstances, this Court sentences them to RECLUSION PERPETUA.

“Furthermore, the accused are ordered to pay the heirs of Dr. Conrado Teodoro the sum of P300,000.00, as moral damages and the sum of P97,800.00 representing his salaries for a period of ten (10) years, without subsidiary imprisonment in case of insolvency.

“SO ORDERED.”

The facts, as found by the trial court, are as follows:

“All the accused are natives of Talalora, Samar. The late Tomas Bocatcat, Sr. is the father of the accused Tomas Bocatcat, Jr. and Augusto Bocatcat and the stepfather of the accused Romulo Milado and the late Rogelio Milado. The accused Ismael Ong is the cousin of the accused Romulo Milado and the late Rogelio Milado because the mother of the latter is his aunt.

“On or about the time of the stabbing incident, the late Tomas Bocatcat, Sr. was engaged in the copra business and in the transportation business utilizing his motorboat as a public conveyance for passengers and cargoes along the Talalora-Tacloban route with prosecution witness Francisco Tandinco, Jr. as the Patron, the accused Augusto Bocatcat as Engine Operator and the accused Ismael Ong as the purser.

“The deceased Dr. Conrado I. Teodoro, the Municipal Health Officer of Talalora, Samar, was not a native of the place but his wife, Fe Teodoro, nee Saavedra, is a native in the sense that her mother is a native of Talalora, Samar. Aside from being the Municipal Health Officer, the deceased was also engaged in the copra business actively assisting his father-in-law Exequiel Saavedra in the conduct of the same and was also engaged in the transportation business by utilizing a motorboat as a public conveyance for passengers and cargoes in the same Talalora-Tacloban route. The deceased Conrado I. Teodoro was ahead of the Bocatcats in both the copra and transportation businesses.

“Although the deceased and the Bocatcats were in competition in both the copra and transportation businesses, there was (sic) no untoward incidents between them and their crew members and/or employees prior to February 1977.

“After the Talalora-Tacloban-Talalora trip of the motorboat owned by the late Tomas Bocatcat, Sr. on February 12, 1977, there was a drinking spree at around 4:00 o'clock in the afternoon of that day in the house of Francisco Tandinco, Jr. in the Poblacion of Talalora, Samar with Tanduay ESQ Rhum for liquor and dog meat as 'pulutan'.

“The partakers in the drinking spree were the accused Romulo Milado, Ismael Ong, Tomas Bocatcat, Jr., Augusto Bocatcat, the late Rogelio Milado, Leo Abellar, Cresencio Viscaya, Rodolfo Jomaya, Melchor Sabian, Rogelio Cinco and the owner of the house, Francisco Tandinco, Jr. In the course of the drinking, the late Dr. Conrado I. Teodoro arrived to remind Leo Abellar that he was to play with the band in a nearby barrio during that evening. After Leo Abellar left to proceed to the barrio and join the band, the group invited the deceased to join them and the deceased accepted the invitation sitting himself on the chair formerly occupied by the said Leo Abellar.

“Although no mention was made by the witnesses for the defense, prosecution witness Francisco Tandinco, Jr., the owner of the house where the drinking spree was held, categorically stated that prior to the arrival of the deceased and in the course of their drinking spree, a heated discussion developed between the accused Augusto Bocatcat and Leo Abellar regarding the competition in the copra and transportation businesses. His testimony

on this point was not refuted by the defense.

“It also appears that in the course of their drinking, there developed a conversation and some sort of a discussion between the deceased on the one hand and the accused Augusto Bocatcat and Ismael Ong and the late Rogelio Milado on the other hand also regarding their copra business and competition in the ferry of passengers of their motorboats. The accused Augusto Bocatcat admitted this ‘slight altercation’ between himself and the deceased regarding the operation of the trips or routes from Talalora to Tacloban City and vice versa. He further admitted that the altercation started when he suggested to the deceased that it would be better if they had alternate trips to Tacloban, one day to the deceased, the next day for them and so on. The proposal was, however, not acceptable to the deceased and who in fact flatly refused him with a loud voice and even blamed him for engaging in a business in which the deceased was already into. The accused Augusto Bocatcat further admitted that he then told the deceased that the latter would not lose anything and there would be no more competition and that since the deceased was a government employee receiving a monthly salary, his businesses are just sidelines to which remark the deceased even got madder. Thereupon, the accused Tomas Bocatcat, Jr. who was also in the drinking spree challenged the deceased by saying ‘Doctor, what do you want?’. The deceased left immediately after this.

“The accused Augusto Bocatcat further admitted that when the deceased had already left, he asked his brother the accused Tomas Bocatcat, Jr. why he had done what he did and the accused Tomas Bocatcat, Jr. replied by saying, ‘I only threatened him because he has looked down on us’. After saying this, the accused Tomas Bocatcat, Jr. told him that he would be going home and as his brother was leaving, he advised him to be careful as the deceased might return since he suddenly left.

“Again while no mention was made by the defense witnesses, no refutation was also given to the testimony of prosecution witness Francisco Tandinco, Jr. to the effect that in the course of their drinking spree, he saw the accused Tomas Bocatcat, Jr. box deceased Dr. Conrado Teodoro while the latter was seated but the fist blow did not hit the deceased and instead hit the shoulder of Melchor Sabian because the deceased was covered by the said Melchor Sabian and that after a while the said accused Tomas Bocatcat Jr. again delivered another fist blow at the deceased but the latter was not hit because he had held on the accused.

“Be that as it may, after the heated discussion had taken place, Cresencio Viscaya, the accused Ismael Ong and Romulo Milado and the late Rogelio Milado left and it was only Francisco Tandinco, Jr., Melchor Sabian, the deceased Conrado Teodoro and the accused Tomas Bocatcat, Jr. and Augusto Bocatcat who were left to continue drinking. After the boxing incident, the deceased Dr. Conrado Teodoro left at around 7:00 o’clock and thereafter, Melchor Sabian and the accused Tomas Bocatcat, Jr. and Augusto Bocatcat left also.

“With the departure of the partakers in the drinking spree, the same ended. A few minutes thereafter, the deceased was stabbed in the middle of Santiago Street in the Poblacion of Talalora, Samar, just in front of or a little oblique to his 2-storey house.

“The place where the stabbing incident occurred was well illuminated because of the lights coming from the residence of the deceased Dr. Conrado Teodoro, which lights were from pneumatic kerosene lamps bearing the brand Petromax.

“It is also undisputed that the deceased Dr. Conrado Teodoro, as a result of the stabbing incident, sustained multiple wounds, namely, (1) stab wound about 1/2 inch long just above the left eyebrow, (2) stab wound about 3/4 inch long on the inner left root of the nose, (3) wound about 3/4 inch long just below wound No. 2 and below the maxillary region, (4) stab wound about 1 (1/2) inches long on the right portion of the abdomen and about 3 1/2 inches from the umbilicus, (5) superficial wound about 1 inch long situated one inch parallel to wound No. 4, (6) 2 abrasions, each about 1/2 inch long, on the left and right elbows, and (7) 3 abrasions, each about 1/2 inch long on the left knee and 1 abrasion about 1/2 inch long on the right knee.

“It is also undisputed, as testified to by Dr. Modesto Villarin, Jr. who performed the autopsy and examination

on the cadaver of the deceased Dr. Conrado Teodoro, that Wound No. 1 was caused by a sharp or pointed weapon like a 'pisao', Wound No. 2 was caused by a sharp or pointed weapon like a bolo, Wound No. 3 was caused by a blunt instrument, Wound No. 4 was caused by a sharp or pointed weapon like a 'pisao', Wound No. 5 was caused by a sharp or pointed weapon like a bolo or 'pisao', Wounds No. 6 were caused by own force or as a matter of natural instinct to defendant (sic) oneself and Wounds No. 7 were caused by a fall to the ground.

"Wound No. 4 was a penetration wound by which on internal examination showed that the liver was hit and a wound about 1 1/2 inches deep was found on the internal surface of the lower lobe of the liver and the cause of death was a massive internal hemorrhage secondary to a stab wound in the inferior surface of the liver.

"The aforementioned wounds may have been caused by different objects, only that it cannot be told how they were inflicted. (at page 17, T.S. N., Hearing of April 2, 1979)."[2]

In this appeal, appellants assign to the lower court four (4) errors, namely:

1. The trial court erred in giving full faith and credit to the autopsy report, Exhibit "A", and in concluding that based on said report inter alia more than one person had inflicted the wounds sustained by the deceased.
2. The trial court erred in relying almost wholly on the so-called ante-mortem state-ment, Exhibit "E", and in convicting accused Romulo Milado although not mentioned therein.
3. The trial court erred in giving credence to the testimony of prosecution witnesses Emmanuel Abellar and Felino Pantanosas, and in rejecting that of the witnesses for the defense.
4. The trial court erred in not absolving the accused appellants.[3]

Under the first assignment of error, counsel for the appellants assails the autopsy report of Dr. Modesto Villarin, the physician who performed the autopsy, by pointing out that the autopsy was conducted in the residence of the deceased Dr. Conrado Teodoro, when there was a health center in Talalora where the autopsy could have been done. Moreover, appellants maintain that it was not Dr. Villarin who actually conducted the autopsy but Dr. Lilia O. Arteche, Dr. Villarin's superior and the then Assistant Provincial Health Officer of Samar. These contentions are untenable.

There was nothing wrong or irregular about the autopsy being conducted in the residence of the deceased which he was also using as a clinic. The records do not show that Dr. Villarin was ill-motivated when he conducted the autopsy in the residence of Dr. Teodoro. Absent any convincing evidence that Dr. Villarin was prompted by improper motives, the presumption is that he regularly performed his duty as a medical officer of Samar. The Solicitor General is correct in observing that the fact that the autopsy was done in the deceased's residence cannot affect the worth of the autopsy findings, for the autopsy was done in the presence of witnesses.

As for appellants' contention that the autopsy was performed actually by Dr. Lilia O. Arteche, the unequivocal testimony of witness Dr. Villarin during his cross-examination by the counsel for the defense should erase any doubt on the matter. He testified thus:

"Q Doctor, I will ask you straight because you are under oath. You were not the one who conducted an autopsy on Dr. Conrado I. Teodoro and this report was made or rather the autopsy was conducted by Dr. Arteche?

A I was the one who conducted that autopsy. You could see attorney that on the first page appears the persons present because I cannot perform an autopsy without a witness for that matter."

(tsn, April 2, 1979, pp. 19-20; emphasis supplied).[4]

In discussing the second assignment of error, counsel for appellants argues that Exhibit "E" is not admissible as

an ante-mortem statement because it was not in question-and-answer form and that it does not show that when Dr. Teodoro gave his statement to Pat. Felino Pantanosas, he was under consciousness of an impending death.

To be admissible, it is necessary (a) that a dying declaration must concern the cause and surrounding circumstances of the declarant's death; (b) that at the time it was made, the declarant was under the consciousness of an impending death; (c) that he was a competent witness, and (d) that the declaration was offered in evidence in a criminal case for homicide, murder or parricide in which the declarant is the victim.[5] All these circumstances are present in the instant case.

The trial court noted that at the time the deceased gave his ante-mortem statement, he was a doctor of medicine, and it could be reasonably presumed that from his wounds he knew he was at the point of death. In fact, he had already called on God, his father and mother, and asked to be taken to Tacloban City for medical treatment.[6] For the validity of an ante-mortem statement, it is not indispensable that the declarant expressly state that he has lost all hopes of recovery. It is sufficient that circumstances are such as to inevitably lead to the conclusion that at the time the declaration was made, the declarant would not expect to survive the injury from which he actually died. The degree and seriousness of the wounds and the fact that death supervened thereafter constitute substantial evidence of the victim's consciousness of his impending death.[7]

Sec. 31, Rule 130 of the Rules of Court reads as follows:

“Sec. 31. Dying declaration. - The declaration of a dying person, made under consciousness of an impending death, may be received in a criminal case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.”

The rule does not specifically require that the declaration be in writing or verbal, or that it should be in question-and-answer form. In one case, this Court held that the statement of the deceased given to his widow in one of his conscious moments that the accused had inflicted the wounds from which he eventually died, is admissible in evidence as a dying declaration.[8] And then, even if the victim's statement were not admissible as an ante-mortem declaration, it may still be considered as part of the *res gestae*, having been made immediately after a startling occurrence in regard to the circumstances thereof, and when the victim did not have time to contrive or devise a falsehood.[9]

Appellants contend next that the prosecution witnesses are biased. According to them, Emmanuel Abellar is a first cousin of the widow, Mrs. Fe Saavedra Teodoro, and was then an employee of the Teodoro and Saavedra Enterprises. Felino Pantanosas was, according to appellants, a close friend of the deceased and used to supervise the unloading of passengers and cargoes from the pumpboats of the deceased whenever the boats arrived at the Talalora wharf. Moreover, appellants allege that the testimonies of these two (2) witnesses and that of Violeta Teodoro, a daughter of Dr. Conrado Teodoro, are full of glaring inconsistencies, improvisations and adjustments.

After a close perusal of the evidence, the Court finds that the credibility of the prosecution witnesses is not affected by their relationship with the deceased. The Court has consistently ruled that the mere fact that witnesses are relatives of the victim is not proof sufficient to disregard their testimony nor does it render the same less worthy of credit, as what is important is, they had positively identified the accused as the assailants.[10] Moreover, minor inconsistencies in the testimonies of witnesses are to be expected. In fact, discrepancies in the testimonies of witnesses are indicative of credibility, for completely congruent testimonies are suspect, considering that different persons obtain different impressions even of the same event or occurrence.[11]

Finally, appellants contend that the trial court erred in not absolving them. They argue that Tomas Bocatcat, Jr. admitted that he alone stabbed Dr. Conrado Teodoro in self-defense; that Augusto Bocatcat denied participation and complicity in the commission of the crime charged; that Romulo Milado put up the defense of alibi which is

corrobo-rated by the ante-mortem statement of the deceased himself, as he made no mention therein of Romulo Milado.

The defense of accused Tomas Bocatcat, Jr. that he alone stabbed the deceased in self-defense is negated by the autopsy report of Dr. Villarin. The report states that several wounds were inflicted on the deceased with the use of different objects. We agree with the finding of the trial court that from the position and nature of the wounds, the same could not have been inflicted by only one (1) person using one (1) weapon. And then, granting for the sake of argument that accused Bocatcat, Jr. stabbed the deceased in self-defense, yet he himself admitted that Dr. Teodoro was already “sick” after he knocked down the latter with a second blow. He (Bocatcat, Jr.) was, moreover, able to deflect the hand of the victim, which was holding the gun. Considering the weakened condition of the deceased, there was no longer a rational necessity to stab him several times even in self-defense.

The number and nature of the stab wounds on the body of the victim prove that more than one (1) person inflicted the wounds and belie Bocatcat’s theory of self-defense. The records show that the appellants stabbed the victim, while his two (2) hands were held back and when he was already lying down on the street. That the assailants acted in concert and with community of criminal purpose to ensure the death of the victim is indicative of conspiracy between them. Conspiracy is established by concerted action.[12]

Augusto Bocatcat denies that he participated in the commission of the crime. However, the positive identification of the accused by the prosecution witnesses as to his participation in the crime cannot be overcome by his mere denial. He was positively identified by witness Pantanosas as the one who fired a gun into the air when Pantanosas ordered him to surrender the gun.[13] Witness Abellar also testified that he saw Augusto Bocatcat get the pistol from the holster of the victim who was already lying down on the ground.[14]

Romulo Milado’s defense is alibi. Alibi is an inherently weak defense. It was not impossible for him to be at the scene of the crime, his house being only 80 to 100 meters from the residence of the victim in front of which the crime was perpetrated. At any rate, he (Romulo Milado) was also positively identified by the prosecution witnesses as one of those who participated in the commission of the crime notwithstanding the omission of his name in the ante-mortem statement of the deceased.

As against the positive identification of appellant Milado by the prosecution witness, his alibi cannot stand, for it must be established by clear evidence that the accused was in another place for such a period of time as to negate his presence at the time and place the crime was committed.[15] The defense of denial and alibi cannot prevail over the positive identification by the prosecution witnesses of the authors of the crime.[16]

Finally, the Court notes that the lower court’s judgment was penned by a judge who did not hear the evidence. And so, while the rule is settled that findings of fact by the trial court are entitled to great weight on appeal, as they are in a better position to examine and observe the demeanor of witnesses, this rule does not, however, apply in the case at bar, yet, we find no cogent reason to reverse His Honor’s judgment as his conclusions are fully substantiated and supported by the evidence on record.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

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

[1] Penned by Judge Ruben A. Mendiola.

[2] Rollo, pp. 39-44

- [3] Brief for the Accused-Appellants, pp. 1-2
- [4] *Supra*, p. 6
- [5] *People vs. Saliling*, G.R. No. L-27974, February 27, 1976, 69 SCRA 427, 438
- [6] RTC decision, pp. 21-22
- [7] *People vs. Tanaman*, G.R. No. 71768, July 28, 1987, 152 SCRA 385; *People vs. Serrano*, 58 Phil. 669 (1933)
- [8] *People vs. Ancasan*, 53 Phil. 779 (1929)
- [9] *People vs. Tanaman*, *supra*.
- [10] *People vs. Castillo*, G.R. No. L-32864, March 8, 1989, 171 SCRA 30; *People vs. Abagon*, G.R. No. 68940, May 9, 1988, 161 SCRA 255; *People vs. Paras*, G.R. No. 61773, January 31, 1987, 147 SCRA 594
- [11] *People v. Gutierrez*, G.R. No. L-30314, March 15, 1982, 112 SCRA 409
- [12] *People vs. Abagon*, G.R. No. 68940, May 9, 1988, 161 SCRA 255, 262
- [13] TSN, August 20, 1979, pp. 144-147
- [14] TSN, September 14, 1979, p. 209
- [15] *People vs. Almario*, G.R. No. 69374, March 16, 1989, 171 SCRA 291
- [16] *People vs. Dava*, G.R. Nos. L-41642-45, May 15, 1987, 149 SCRA 582

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