

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GIL UY AND ROGELIO JOLITO (AT LARGE), ACCUSED-APPELLANT.

G.R. No. 84275. February 14, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the March 15, 1988 decision* of the Regional Trial Court of Palo, Leyte in Criminal Case No. 6586 entitled "People of the Philippines vs. Gil Uy and Rogelio Jolito", the dispositive portion of which reads:

"WHEREFORE, finding accused GIL UY guilty beyond the penumbra of moral certainty, as principal of the crime of murder defined and penalized under Article 248 of the Revised Penal Code, in relation to Par. (1) Sec. 19, Article III of the Constitution, with the aggravating circumstance of recidivism without any mitigating circumstance to offset the same, sentences Gil Uy to Reclusion Perpetual, and to indemnify the heirs of Felino Bantanos in the sum of Fifty Thousand (P50,000.00) Pesos, without subsidiary imprisonment in case of insolvency.

SO ORDERED."

(RTC Decision, Rollo, pp. 33-34)

On September 12, 1984, Alfredo F. Morados, P/Lt. INP, Substation Commander, filed a complaint for Murder against Gil Uy and Rogelio Jolito before the Municipal Trial Court of Alangalang, Leyte (Original Records, p. 8). On the same day, Municipal Trial Judge Norberto Hobayan, after conducting a preliminary examination of the complainant and her witnesses, ordered the issuance of a Warrant of Arrest against Gil Uy and Rogelio Jolito (Ibid., p. 12). Said warrant was served upon Gil Uy, as a result of which he was arrested and detained at the Alangalang Municipal Jail. The other accused Rogelio Jolito was not arrested and has remained at large (Ibid., p. 13). On September 19, 1984, Municipal Trial Judge Norberto I. Hobayang granted the Motion to Fix Bail Bond of Gil Uy (Ibid., p.14) and fixed the same at P30,000.00 (Ibid., p. 17). On September 28, 1984, finding a prima facie case against both accused after conducting a preliminary examination of the complainant and her witnesses and the accused having waived their rights to present their evidence by their failure to submit their counter-affidavits and those of their witnesses, the Municipal Trial Judge ordered that the records of the case be forwarded to the Office of the Provincial Fiscal, Government Center, Candahug, Palo, Leyte for further proceedings (Ibid., p. 32). Hence, on December 19, 1984, Provincial Fiscal Josephine Bayona filed an information against Gil Uy and Rogelio Jolito which reads:

"That on or about the 8th day of September 1984, in the Municipality of Alangalang, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery, evident premeditation and taking advantage of their superior strength, conspiring and confederating together and mutually helping one another, did, then and there, willfully, unlawfully and feloniously attack, assault, hack and stab FELINO BANTANOS with the use of sharp bladed instruments which said two accused provided themselves for the purpose, inflicting upon said Felino Bantanos mortal

wounds in the different parts of his body which caused his death. That accused Gil Uy has previously been convicted of Homicide in Criminal Case No. 2093 in the Court of First Instance of Leyte and of the crime of Theft in Criminal Case No. 61942 in the Court of First Instance of Manila.

Contrary to law."

(Original Records, p. 1)

Upon arraignment on February 12, 1985, appellant Gil Uy entered a plea of not guilty (*Ibid.*, p. 37). Thereafter, trial ensued.

The prosecution presented five (5) witnesses, namely: Dr. Edilberto Trinidad, Sonia Bantanos-Andrada, Laurentino Pla, Fiscal Hernan de Leon and Arnulfo Bantanos, while the defense presented Ciriaco Jamora, Rosita Catindoy, Virginita Poblete, Pfc. Leovegildo Marmita and Gil Uy himself as witnesses.

Dr. Edilberto Trinidad, Municipal Health Officer of Alangalang, Leyte, testified that he conducted a post-mortem examination on one Felino Bantanos on September 9, 1984 which was reduced to writing (Exhibit "A", Original Records, p. 33). As shown by said report, Felino Bantanos sustained six (6) wounds, three (3) of which were fatal since they traversed vital organs of the body. The fatal wounds, as shown in a sketch (Exhibit "B", Original Records, p. 45), are wounds nos. 1, 5 and 6. Wound No. 1, which is located at the left side of the sternum and which traversed the muscles, left lung, base of the heart and blood vessels, could have been inflicted when the assailant and the victim were facing each other. On the other hand, wounds nos. 5 and 6, which are located at the back of the victim and both of which traversed muscles, the left lung and blood vessels, could have been inflicted when the assailant was at the back of the victim. He further testified that wound no. 1 was caused by a sharp-bladed, pointed and long instrument while wounds nos. 5 and 6 were caused by a sharp-bladed, pointed but shorter instrument, thereby suggesting that at least two (2) different weapons were used on the victim (TSN, March 28, 1985, pp. 4-13).

Sonia Bantanos-Andrada, sister of the victim, testified that on September 8, 1984, at about 5:30 in the afternoon while she was inside their house cuddling her eight-month old child, she heard a woman shout "Ouch, don't do that!". This prompted her to look outside through the window. She saw her brother, the deceased Felino Bantanos, with Rogelio Jolito, the latter's arm on Felino's shoulder. Shortly thereafter, Gil Uy went behind them and stabbed Felino Bantanos with a long knife (about 10 inches long) hitting him in a portion below the left armpit. As Felino reeled, he was again stabbed by Gil Uy on the left side of his chest as a result of which, he fell to the ground. Both Rogelio Jolito and Gil Uy took turns in stabbing Felino. She further stated that Rogelio was armed with a shorter knife (about 8 inches). Thereafter, they ran towards the house of Gil Uy (TSN, July 19, 1985, pp. 5-10).

Regarding the possible motive of the assault, she testified that on July 23, 1983, her brother filed a complaint against Gil Uy, Romeo Mesina, Antonio Mesina and Berting Catalla before their Barangay Captain Laurentino Pla for challenging him to a fight. Her brother Felino suspected that the employees of Gil Uy were stealing rice and other things from his house. As a consequence of the complaint filed by Felino, Gil Uy and his employees were summoned by the Barangay Captain. This could have triggered the attack on her brother (TSN, September 20, 1985, pp. 4-6).

Laurentino Pla, Barangay Captain of Barangay Blumentritt, Alangalang, Leyte, took the witness stand and testified that on July 23, 1983, the deceased Felino Bantanos and his wife, Salvacion Bantanos, went to his office to complain that Gil Uy, Tomas Mesina, Romeo Mesina, Antonio Mesina and Berting Catalla challenged them to a fight. Said complaint was reduced to writing (Exhibit "C", Original Records, p. 83). He personally served the summons (Exhibit "D", Original Records, p. 84) to the respondents who verbally assured him that they will appear on the scheduled date. All of the respondents, except Gil Uy, appeared but did not ask for forgiveness from

the deceased, insisting on their innocence. He then indorsed the complaint to the Sub-station Commander of the Integrated National Police (Exhibit "E", Original Records, p. 85). However, he does not know what happened to said complaint (TSN, September 23, 1985, pp. 3-13).

Hernan de Leon, Fourth Assistant Provincial fiscal of Leyte, testified that he was the one who conducted the preliminary investigation in Criminal Case No. 6586 entitled "People of the Philippines vs. Gil Uy and Rogelio Jolito". He likewise prepared the Information although it was Provincial Fiscal Josephine Bayona who signed the same. During the preliminary investigation, he was informed that Gil Uy had previously been convicted and sent to the National Penitentiary in Muntinlupa. Following this information, on November 19, 1984, he wrote to the Director of the Bureau of Prisons with a request that he be furnished with a copy of the record of conviction and imprisonment of Gil Uy. In response, Brig. Gen. Vicente Eduardo, then acting Director of the Bureau of Prisons, sent a synopsis of the prison record of one Gil Uy, Prison No. 37071-P (Exhibit "H", Original Records, p. 4). Since there was no way of confirming whether the Gil Uy, accused in Criminal Case No. 6586, is the same Gil Uy with Prison No. 37071-P, the Director of Prisons was requested to attach a picture of prisoner Gil Uy (TSN, June 5, 1986, pp. 3-9). This was complied with on June 27, 1986 and marked Exhibit "F" (Original Records, p. 153) and the picture (Exhibit "F-1") was attached to a xerox copy of the synopsis of the prison record (Original Records, p. 154).

Arnulfo Bantanos, younger brother of the deceased, testified on the aspect of damages. He stated that he incurred expenses in the total amount of P3,550.00, P1,400.00 of which represents the costs of the coffin and the pantheon which are the only ones supported by receipts. He placed moral damages at P50,000.00 and P164,162.00 as the income that the victim could have earned during his lifetime (TSN, August 4, 1986, pp. 7-16).

The first defense witness to take the witness stand was Ciriaco Jamora, retired policeman. He testified that in the afternoon of September 8, 1984, on his way home after his duty at the market, he met Salvacion Yu, wife of Felino Bantanos. She was crying and asked his help because something had happened to her father, Felipe Bantanos. He passed by the municipal building to seek the help of other policemen. Finding no other policemen in the building except the guard, he decided to proceed to the place of the incident alone. He again met Salvacion Yu who asked him to hurry as some people might be killed (TSN, January 22, 1987, pp. 3-6). He first went to the house of Felipe Bantanos which he found closed. On inquiry from the latter, he was informed that the house was closed because his son, Felino had turned mad. Next he went to a group of people gathered around the dead body of Felino Bantanos. Dominador Catindoy, the owner of the house next to Gil Uy, told him that it was Rogelio Jolito who killed Felino Bantanos. He proceeded to the house of Gil Uy who informed him that Rogelio Jolito had been there a few moments before. Failing to find the latter in the vicinity, he brought the body of Felino Bantanos to the municipal building. He then informed their Station Commander, Lt. Alfredo Morados, of the incident. The latter, together with P/Sgt. Marmita, Pat. Marmita and Pat. Versoza, proceeded to the place of the incident to investigate (Ibid., pp. 7--15).

On cross examination, he testified that he did not submit a police report regarding the matter (Ibid., p. 16) neither was he the one who recorded it on the police blotter since when he went back to the office, the incident was already recorded (Ibid., p. 35).

Rosita Catindoy, a resident of Santisima Trinidad St., Alangalang, Leyte, testified that in the afternoon of September 8, 1984, she went to the house of Gil Uy to collect the amount of P30.00 which the latter owed her husband, Dominador Catindoy. It was the birthday of the daughter of Gil Uy and there was a drinking spree at the latter's house when she arrived. Rogelio Jolito was among the visitors. She was offered some snacks and while taking the same, she heard the deceased Felino Bantanos challenging the people to a fight. Jolito stood up, went outside and returned after a few minutes after conducting Felino to his father's house which was about 60 meters

from Gil Uy's house. Not long after, Felino was again challenging people to a fight. Again, Jolito stood up and went outside. She asked permission to leave as she had already collected Gil Uy's debt. She saw Jolito with the deceased Felino Bantanos, with the former's left arm around the shoulder of the latter, debating. She was about five (5) meters behind them. Thereafter, she saw Jolito stab Felino. She further stated that Gil Uy was left behind inside his house as it was he who closed the door behind her when she left (TSN, February 17, 1987, pp. 4-10).

Virginita Poblete, a resident of San Roque St., Alangalang, Leyte, testified that in the evening of September 8, 1984, Rogelio Jolito came to their house to surrender to her husband, Pat. Poblete. However, her husband was then detailed at Sitio Buyog, Alangalang to watch over a dance. Jolito left towards the direction of the farm. Later, Pat. Beldo Marmita, and Dado Versoza came looking for Jolito. She informed them that earlier, he came to surrender to her husband but since her husband was not at home and Jolito was drunk, he sent him out of the house and observed that he went towards the farm (TSN, April 8, 1987, pp. 3-6).

Pfc. Leovegildo Marmita, INP member of the Alangalang Police Station, testified that when he arrived at the municipal building in the evening of September 8, 1984, he saw the body of Felino Bantanos. Thereafter, together with Lt. Morados, Sgt. Romeo Marmita and Pfc. Leonardo Versoza, he went to the place of the incident to investigate. In particular they went to the house of Pat. Bienvenido Poblete whose wife informed them that earlier, Rogelio Jolito had come to their house to surrender to her husband. With this information, they went to the house of Gil Uy to look for Jolito. Gil Uy and his wife were ordered by Station Commander Morados to accompany Pfc. Marmita and Pfc. Leonardo Versoza to their camarin where Jolito resides. However, they did not find Jolito in his house (TSN, February 20, 1987, pp. 3-9).

Gil Uy testified that the day in question was the birthday of his daughter hence, there was a celebration in their house. Rosita Catindoy came to collect his debt of P30.00. A few moments later, he heard somebody challenging the people to a fight. Jolito stood up and went out of his house. Rosita Catindoy likewise asked permission to leave since she had collected his debt. He then closed the door behind Rosita. Thereafter, there was a commotion outside and he learned from Roque Arpon that his tenant Rogelio, whose family name was unknown to Arpon, had stabbed somebody (TSN, July 13, 1987, pp. 3-9).

Later that evening, Pat. Ciriaco Jamora came to his house looking for Jolito. He informed him that the latter had been there earlier to attend the party of his child but must have gone to the farm after the incident. Much later, the Chief of Police, Dado Versoza, Romeo Marmita and Leovegildo Marmita came looking for Jolito. He was instructed to accompany Dado Versoza and Leovegildo Marmita to the farm to look for Jolito but they did find him there (Ibid., pp. 10-12).

He finds the declarations of Sonia Bantanos--Andrada unbelievable since he cannot possibly stab the victim from behind and inflict the wound in front of the victim. Furthermore, he was inside his house when the incident happened. On top of all these, it was already dark and there were tall plants that can obstruct one's line of vision from the window where Sonia allegedly witnessed the event (Ibid., p. 13).

On cross-examination, he admitted having been convicted of the crime of Homicide in Criminal Case No. 2093 by the court of First Instance of Leyte and Theft in Criminal Case No. 61942 in Manila. He likewise admitted the synopsis of the prison record (Ibid., pp. 18--20).

As aforementioned, the trial court convicted Gil Uy of the crime of Murder qualified by treachery and with the aggravating circumstance of recidivism, without any mitigating circumstance to offset the same.

Hence, this appeal.

The main issue in the case at bar is the credibility of witnesses. Appellant Gil Uy alleges that the trial court erred

in appreciating the testimony of prosecution witness Sonia Bantanos-Andrada. He contends that her testimony contains contradictory statements, like the direction her brother was pursuing when the incident took place, and improbabilities that renders her testimony doubtful. She testified that he stabbed Felino from behind with his left hand. Appellant asserts that it is quite improbable for someone to strike another with his left hand unless he is left-handed. There is no showing that Gil Uy is left-handed. In the same manner, she could have warned her brother of the impending harm when she saw him approaching from behind rather than watch the whole event from the window without doing anything. Being the sister of the deceased, her testimony would naturally lean in favor of the prosecution (Appellant's Brief, pp. 4-11, Rollo, p. 50).

Appellee, through the Solicitor General, contends that these contradictions refer to minor details which could be dispensed with since they are not the decisive factors in her testimony. What is of more consequence is her actual presence in the scene of the crime and her narration on how the victim was stabbed by appellant Gil Uy and Rogelio Jolito which is supported by the medical findings and testimony of an unbiased witness, Dr. Edilberto Trinidad (Appellee's Brief, pp. 28-29, Rollo, p. 72).

The appeal is devoid of merit.

It is well settled that regarding the credibility of witnesses, the findings of the trial court should not be disturbed on appeal, unless some facts or circumstances may have been overlooked that may otherwise affect the result of the case. The appellant failed to show any justification to depart from this rule (*People vs. Kyamko*, 192 SCRA 374 [December 18, 1990]).

Besides the testimony of the defense witnesses did not generally negate the active participation of Gil Uy in the killing. For instance, the retired policeman Ciriaco Jamora merely testified on the existence of possible trouble, and he said nothing about who the culprits were. Another defense witness, Rosita Catindoy, merely referred to what she referred to as Rogelio's (not Gil Uy's intent to surrender). This testimony did not in any way help appellant Gil Uy. The two policemen who testified presumably for the defense did not really say anything substantial for when they arrived at the scene, everything was already over.

On the other hand, mere relationship to the victim need not automatically tarnish the testimony of the witness. When there is no showing of improper motive on the part of the witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. On the contrary, their natural interest in securing the conviction of the guilty would prevent them from implicating persons other than the culprits, for otherwise, the latter would thereby gain immunity (*People vs. De Mesa*, 188 SCRA 48 [July 28, 1990]). What is more important is that they have positively identified the accused as the assailant (*People vs. Bocatcat, Sr.*, 188 SCRA 175 [July 31, 1990]).

In the case at bar, Sonia Bantanos-Andrada, sister of the victim, positively identified appellant Gil Uy as the assailant who came from behind and stabbed her brother with a long knife, hitting the latter in a portion below the left armpit. She further recounted that after her brother has fallen to the ground, the other accused, Rogelio Jolito, armed with a shorter knife, joined Gil Uy in stabbing her brother. This jibes with the autopsy report and testimony of Dr. Edilberto Trinidad, who was admitted by the defense as an expert witness, that two (2) of the six (6) wounds sustained by the victim were located at the left side of his back and that more than one (1) weapon was used on him. This collaborating testimony of the doctor who conducted the autopsy on the victim renders the testimony of the eyewitnesses credible (*People vs. Encipido*, 146 SCRA 478 [December 29, 1986]). This Court has likewise held that numerous wounds in the body of the victim indicate plurality of assailants (*People vs. Laredo*, 185 SCRA 383 [May 14, 1990]).

Appellant's contention that no sufficient motive can be attributed to him in killing Felino Bantanos is untenable.

Motive is essential only where there is doubt as to the identity of the culprit and not where the accused was positively identified as the assailant, as in the case at bar (*People vs. Yeban*, 190 SCRA 409 [October 11, 1990]). Greater weight is given to the positive identification of the accused by the prosecution witness than the accused's denial and explanation concerning the commission of the crime (*People vs. De Mesa*, supra.).

The Court a quo convicted appellant Gil Uy of the crime of Murder qualified by treachery, and noted the presence of conspiracy and the aggravating circumstance of recidivism since appellant had previously been convicted of the crime of Homicide in Criminal Case No. 2093 by the then Court of first Instance of Leyte. Well settled is the rule that the circumstances that would qualify the killing to murder must be proved as indubitably as the crime itself (*People vs. Raquipo*, 188 SCRA 571 [August 13, 1990]).

For alevosia or treachery to be appreciated as a qualifying circumstance, the offender should have employed means, methods or forms in the execution of the crime which tended directly and specifically to insure its execution without any risk to himself arising from the defense which the offended party might make (*People vs. Cempron*, 187 SCRA 248 [July 6, 1990]). Hence, the lower court correctly appreciated the qualifying circumstance of treachery when it ruled that:

"The crime committed by the accused is murder qualified by treachery because while Rogelio Jolito had his arm on the shoulder of Felino Bantanos, Gil Uy without the least warning, came from behind and stabbed Felino Bantanos hitting the latter below his left armpit and the left side of his chest, causing Felino to fall and while already on the ground Gil Uy and Rogelio Jolito took turns in stabbing Felino Bantanos thereby employing means, methods and forms in the execution, without risk to themselves arising from the defense which Felino Bantanos might make."

(RTC Decision, Rollo, p. 33)

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. While proof of the agreement need not rest on direct evidence, the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them with respect to the commission of the offense (*People vs. De la Cruz*, 190 SCRA 328 [October 5, 1990]). It is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack so that the act of one accused becomes the act of all (*People vs. Gupo*, 190 SCRA 7 [September 24, 1990]). In the case at bar, the trial court noted the presence of conspiracy in this manner:

"According to the circumstances of the case conspiracy exists where the accused in concert toward a common purpose. The fact that Rogelio Jolito had his arm on the shoulder of the victim, and while at the situation Gil Uy went at the back of the two and without warning stabbed Felino Bantanos from behind, and when Felino Bantanos was already prostrate on the ground took turns in stabbing their victim, show unequivocally the accused Gil Uy and Rogelio Jolito were in concert toward a common purpose to finish their victim to death. x x"

(RTC Decision, Rollo, p. 32)

PREMISES CONSIDERED, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

* Rendered by Judge Getulio M. Francisco

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