

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. FRANCISCO CABACTULAN, ALFREDO SUGURAN, JAIME LAPINGKAW AND JOHN DOE, ACCUSED. ALFREDO SUGURAN, ACCUSED-APPELLANT.**

*G.R. No. 84398, December 02, 1992*

Ponente: REGALADO, J.

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**REGALADO, J.:**

In the present recourse, accused-appellant Alfredo Suguran seeks a reversal of the judgment rendered by the Regional Trial Court of Misamis Oriental, 10th Judicial Region, Branch XXI, finding him guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of life imprisonment together with all its accessory penalties, and to further indemnify the heirs of the deceased Pio Yagma in the amount of P30,000.00 without subsidiary imprisonment.[1]

The records show that on May 5, 1985, an information[2] was filed with the Regional Trial court of Misamis Oriental, Branch XVIII, charging Francisco Cabactulan, Alfredo Suguran, Jaime Lapinkaw and one John Doe with the crime of murder for the death of Pio Yagma, which was docketed as Criminal Case No. 5525 and later consolidated with Criminal Case No. 5526 before Branch XXI of the same court. It further appears that accused Francisco Cabactulan and Jaime Lapinkaw jumped bail before they could be arraigned, hence the case as against them was archived pursuant to the trial court's Order dated November 27, 1985.[3] Trial proceeded only with respect to accused Alfredo Suguran.

The facts as found by the court below are as follows:

"The evidence adduced by the Prosecution through the testimonies of Nenita Yagma, Elsie Yagma and Dr. Apolinar Vacalares revealed that at 7:00 or 8:00 o'clock in the evening of June 24, 1984, Pio Yagma together with his wife and four children and their cousin Cristituto Timaynon were in their house at Sitio Lokong of B. Dayawan, Villanueva, Misamis Oriental having a prayer. While they were singing religious songs, suddenly accused Alfredo Suguran, Francisco Cabactulan and Jaime Lapinkaw and another man who was wearing a mask come (sic) up their house and immediately tied Cristituto Timaynon. After tying Cristituto Timaynon, these aforesaid four persons also hogtied Pio Yagma and Nenita Yagma. After that they blindfolded Nenita Yagma. Nenita Yagma then heard her husband moaning saying in Visayan 'Agoy' meaning it's painful, and after that there was silence. Nenita Yagma later on managed to untie herself and was horrified to see her husband sprawled in blood on the floor. Her husband then asked for help and told Nenita Yagma to fetch his brother Rudy Yagma so he could be brought to the hospital. Consequently, Pio Yagma was brought to the hospital accompanied by the sister-in-law of Nenita Yagma. While in the hospital, Pio Yagma was investigated by one PFC. Romeo E. Bade, wherein he identified his assailant as accused Alfredo Suguran and Francisco Cabactulan and two others whom he could not identify, as his assailants. This investigation was reduced into writing which Pio Yagma was able to sign in the presence of Nenita Yagma, Romeo Bade and Elsi(e) Yagma (Exhs. A, A-1, A-2, & A-3). However, sad to say, Pio Yagma died at the hospital on the evening of June 26, 1984 and was consequently buried at Villanueva, Misamis Oriental.

"On the other hand, the evidence of the accused Antonio (sic) Suguran through the testimonies of Rodolfo\*

Jabeniao, Marciana Galon and the accused himself tend to establish that at about 5:00 PM of January 24, 1984 the accused was in the house of Rodolfo Jabeniao at Poblacion, Villanueva, Misamis Oriental, as he requested to borrow money from Rodolfo Julian (sic) to pay for medicine for his sick children. Unfortunately, however, the accused was not able to borrow money but Rodolfo Julian (sic) told him that he would accompany him to the house of Mrs. Galon and have them treated by her with herbal medicine. Together with his wife and children they proceeded to the house of Mrs. Galon at Poblacion, Villanueva, Misamis Oriental, which was about one half (1/2) kilometer away from the house of Rodolfo Jabeniao. They arrived at Mrs. Galon's house at about 6:00 PM. Aside from them there were no other persons in the house of Mrs. Galon. Later on, their children were treated by Mrs. Galon. They stayed in the house of Mrs. Galon that whole evening with his wife and himself alternating in watching their children. At about 8:00 AM the following day they left the house of Mrs. Galon and they hiked their way back to their house, as there was no available transportation. Since the road is very steep it took them about 3 hours to reach their place by hiking. The accused denied that he killed Pio Yagma. Accused also declared that he does not know Francisco Cabactulan, nor Jaime Lapingkaw. The testimony of the accused was corroborated by Mrs. Galon and Rudolfo Jabeniao who both confirmed that the accused was in the Poblacion of Villanueva on June 24, 1984 and that together with his family passed the night at the house of Mrs. Galon.

"Mercedes Yagma was presented as a rebuttal witness of the prosecution. Said witness also declared that (s)he knows the accused Alfredo Suguran because (s)he used to see him going with Jaime Lapingkaw. That it is not true that the road from Villanueva to Lokong is not passable by motor vehicle for in fact there are passenger jeeps plying that route." [4]

Based on the autopsy conducted on June 26, 1984 by Dr. Apolinar Vacalares, Chief Pathologist at the Northern Mindanao Regional Hospital, the cause of death of the victim was massive hemorrhage due to stab wounds.[5] Only Elsie Yagma was presented by the prosecution to testify on the fact of taking of the victim's ante mortem statement because Pat. Romeo Bade, who investigated the deceased, died during the trial of the case.

In this appeal, it is contended in appellant's brief that the trial court erred in (1) giving weight and credence to the testimony of Nenita Yagma despite her failure to pinpoint the person who inflicted the wound on her husband; (2) convicting appellant of the crime of murder despite insufficiency of evidence showing that he is the perpetrator of the crime; and (3) convicting appellant despite failure of the prosecution to prove his guilt beyond reasonable doubt.[6]

Appellant asseverates that there exists no clear and convincing evidence pointing to him as the culprit. He claims that the identity of the alleged malefactors has not been sufficiently established by the principal witness for the prosecution, Nenita Yagma. It is argued that it was improbable for said witness to have recognized the culprits for two reasons: first, she was blindfolded and, hence, was not able to see who actually stabbed her husband; and, second, the only available illumination at the time of the incident was merely an improvised kerosene lamp and it was therefore unlikely that Nenita Yagma could recognize with certainty the four persons who went up to their house.

The basic issue posited before this Court hinges on the prosecution witnesses' credibility.

Prefatorily, the Court has heretofore repeatedly held that the findings of fact of the trial court are entitled to great weight and respect and should not be disturbed on appeal unless it is shown that the findings are not supported by the evidence or the court failed to consider material facts and circumstances in its evaluation of the evidence.[7] This is because the trial court is deemed to be in a better position to examine real evidence as well as to observe the demeanor of the witnesses while testifying on the case.[8]

There is no reversible error in the questioned decision rendered by the court a quo which would warrant a reversal thereof, especially if we are to take into account the irresoluteness of the defense of alibi invoked by herein

appellant. We further find sufficiently clear and convincing evidence in this case to show that appellant is guilty of the crime charged.

Appellant was positively identified by the prosecution witness, Nenita Yagma. She already knew him even before that fatal day of the crime.[9] The house where the killing took place was lighted by a kerosene lamp. Contrary to appellant's postulation, it has been held that a kerosene lamp gives off sufficient illumination like a "gasera" or "lampara" and, in previous cases, this Court has held that the illumination produced by these gadgets is sufficient for the identification of persons.[10] Furthermore, the face of appellant was in full view of witness Nenita Yagma and very near her while he was busy tying the victim and the witness.

More importantly, we cannot ignore the fact that appellant was positively identified by the victim, Pio Yagma, in his ante mortem statement as one of those who attacked and stabbed him. The veracity and due execution of this dying declaration of the victim was never disputed nor controverted by appellant. Taking into consideration the seriousness of the victim's wounds at the time of his declaration, plus the fact that he died several hours thereafter, lead to the inescapable conclusion that the declarant was conscious of his impending death and, therefore, such declaration is admissible as a dying declaration since all the other requisites were present.

We have said that for the validity of a declaration in articulo mortis it is not indispensable that the declarant expressly state that he has lost all hopes of recovery. It is sufficient that the 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.[11]

Appellant would insinuate that he is being implicated in this case only because Nenita Yagma was motivated to do so by the latter's uncle who allegedly carried a grudge against the former.[12] But then, appellant failed miserably to establish that the same was the compelling factor which induced the witness to conjure the charge of murder against him. With the absence of any motive on her part to prevaricate, it would be unnatural for the witness, as the wife of the deceased victim and who is necessarily interested in seeing retribution exacted for the crime, to impute the same to any person other than those responsible therefor.[13] In addition, when there is no convincing evidence and nothing to indicate that the principal witness was actuated by improper motives, the presumption is that she was not so actuated and her testimony is entitled to full faith and credit.[14]

On the contrary, what is questionable and doubtful here is the testimony of appellant when, in his direct examination, he categorically stated that he does not know Francisco Cabactulan and Jaime Lapingkaw, his co-accused in this case.[15] However, he failed to refute the testimony of the rebuttal witness for the prosecution, Mercedes Yagma, that she often saw appellant in the company of his aforesaid co-accused prior to the incident.[16] This merely strengthens the findings on the guilt of appellant.

We have before us, once again, an appellant whose defense is founded on alibi. We have, therefore, to again emphasize the rule that alibi, which is an inherently weak defense, cannot prevail over the clear, direct and positive identification by the prosecution witness of appellant as the perpetrator of the crime,[17] nor can it prevail over the dying declaration of the victim and the testimony of the prosecution witness which uniformly pointed to appellant as the culprit.[18]

Furthermore, an alibi in order to be given full faith and credit must be clearly established and must not leave any room for doubt as to its plausibility and verity.[19] Appellant's defense of alibi is evidentially weak as he was not able to convincingly demonstrate that it was not physically possible for him to have been at the scene of the crime at the time it was committed.[20] In the instant case, no physical impossibility exists where the distance between the scene of the crime and the place where the accused allegedly was at that time is only five kilometers, which

could easily be negotiated by jeep or could otherwise be traversed on foot in more or less two hours.

The qualifying circumstance of treachery was properly appreciated by the lower court. Appellant and his co-accused deliberately employed a mode of execution which tended directly and especially to insure the consummation of the criminal act without risk to themselves arising from the defense which the victim could have made.[21] In the case at bar, where the four malefactors suddenly barged into the house of the deceased and hogtied the three persons inside, and the latter were caught by surprise and unable to defend themselves because of fear, much less to offer a fight, the aggression is evidently treacherous. This is undeniably so where the victim, as in this case, was hogtied and defenseless before being stabbed.[22]

Lastly, because of repeated lapses of this nature, we would like to stress and correct the error of the trial court in imposing the penalty of life imprisonment instead of reclusion perpetua. In *People vs. Literado*,[23] we made abundantly clear the difference between the two penalties in this wise:

"The crime of murder is defined and punished under Article 248 of the Revised Penal Code. The penalty provided thereunder is reclusion temporal in its maximum period to death. Within the range of the penalty prescribed, i.e., reclusion temporal maximum to death, is the penalty of reclusion perpetua. The penalty of reclusion perpetua is invariably imposed for serious felonies penalized under the Revised Penal Code. It carries with it imprisonment for at least thirty (30) years, after which the convict becomes eligible for pardon, and also accessory penalties, e.g., perpetual special disqualification, etc. (Art. 27, Revised Penal Code).

"Life imprisonment, on the other hand, does not have any definite extent or duration nor does it carry accessory penalties. It is imposed as a penalty for serious offenses penalized by special laws. The crime of murder committed by appellant being penalized under the Revised Penal Code, the proper imposable penalty should therefore be reclusion perpetua instead of life imprisonment. It is necessary to employ legal terminology in the imposition of penalties because of the substantial difference in their corresponding legal effects and accessory penalties."

WHEREFORE, the judgment appealed from is hereby **AFFIRMED**, subject to the modifications that the penalty imposed is reclusion perpetua and that the indemnity is hereby increased to P50,000.00 in accordance with present case law.[24]

### **SO ORDERED.**

Narvasa, C.J., (Chairman), Feliciano, Nocon, and Campos, Jr., JJ., concur.

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[1] Original Record, 119-125; penned by Judge Celso P. Largo.

[2] *Ibid.*, 52.

[3] *Ibid.*, 65.

\* His first name is spelled "Rodolfo" in the transcripts of the stenographic notes of the trial.

[4] *Ibid.*, 120-122.

[5] Exhibit 8; *ibid.*, 8.

[6] Rollo, 60.

[7] *People vs. Laureta, Jr.*, 159 SCRA 256 (1988).

[8] *People vs. Mandapat*, 196 SCRA 157 (1991).

- [9] TSN, October 29, 1986, 24.
- [10] *People vs. Reana*, 120 SCRA 583 (1983); *People vs. Almenario, et al.*, 172 SCRA 268 (1989).
- [11] *People vs. Avila*, 92 Phil. 805 (1953); *People vs. Devaras, et al.*, 37 SCRA 697 (1971); *People vs. Sarabia, et al.*, 127 SCRA 100 (1984); *People vs. Tanaman, et al.*, 152 SCRA 385 (1987).
- [12] TSN, September 15, 1987, 52-53.
- [13] *People vs. Espera, et al.*, 175 SCRA 728 (1987).
- [14] *People vs. Ruedas*, 194 SCRA 553 (1991).
- [15] TSN, October 26, 1987, 36-37.
- [16] TSN, November 17, 1987, 45-46.
- [17] *People vs. Obando, et al.*, 182 SCRA 95 (1990).
- [18] *People vs. Clamor*, 198 SCRA 642 (1991).
- [19] *People vs. Martinada, et al.*, 194 SCRA 36 (1991).
- [20] *People vs. Talla, et al.*, 181 SCRA 133 (1990).
- [21] *People vs. Valdemoro*, 102 SCRA 170 (1981).
- [22] *People vs. Bakang, et al.*, 26 SCRA 840 (1969); *People vs. Ong, et al.*, 62 SCRA 174 (1975).
- [23] G.R. No. 77114, May 27, 1992.
- [24] *People vs. Sison*, 129 SCRA 643 (1990).

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