

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMANDO TASARRA AND ABELARDO TASARRA, ACCUSED-APPELLANTS.

*G.R. No. 85531. December 10, 1990*

Ponente: REGALADO, J.

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### REGALADO, J.:

Accused-appellants Amando Tasarra and Abelardo Tasarra, together with one Antonio Boseo, were charged in the Regional Trial Court, Branch 42 at Virac, Catanduanes,[1] with the crime of murder, attended by treachery, evident premeditation, abuse of superior strength and nighttime, for allegedly conspiring and stabbing to death with bladed weapons one Ildefonso Panti y Manoguid on October 9, 1987.[2]

Only appellants Amando and Abelardo Tasarra, however, were arraigned and pleaded not guilty to the crime charged, their co-accused Antonio Boseo having theretofore and up to now remained at large. After trial, the court a quo found appellants guilty as charged and sentenced them to suffer the penalty of reclusion perpetua. Appellants were further ordered to jointly and severally indemnify the heirs of the victim in the sum of P30,000.00 for the victim's death; P10,000.00 for moral and exemplary damages; and P1,000.00 for burial expenses.[3]

Through the prosecution witnesses, on whose testimonies the trial court based its judgment, the following recital of the factual findings appear in the court's decision:

"The evidence for the prosecution consists of the testimony of Rosita Panti, widow of the late victim, Ildefonso Panti y Manoguid; that of Tita Panti Tawat, a married daughter of the deceased victim, and that of Dr. Loreto T. Rojas, Municipal Health Officer of Bato, Catanduanes who was admitted as an expert by the defense, besides certain exhibits. Pieced together and shorn of unessentials, it is to the effect, that:

1. About 10:00 p.m. on October 9, 1987, Rosita Panti and her husband, the late Ildefonso Panti y Manoguid, went out of their house in Obo, San Miguel, Catanduanes, to stroll as it was a moonlit night and, at the same time, to buy a gin bottle of kerosene from the store of Romeo Bernal around 120 meters away from their home. On their way home after buying kerosene and while they were only about eight (8) meters away from the store, Rosita Panti heard a sound behind them which she thought was that of an approaching carabao. When she turned to look, she saw her husband whose arm was then on her shoulder already being stabbed by the three accused from behind.
2. Rosita Panti recognized the three accused very well as the ones who stabbed her husband because of the light coming from the store and from the electric post, besides the fact that it was a moonlit night and she knows them personally as they are also from Obo, San Miguel, Catanduanes.
3. While her husband was being stabbed, Rosita Panti kept on shouting for help but nobody, even among those in the store, came to help until the accused left the place. It was because, she learned later, they were afraid.
4. After the accused left, the victim, with the help of Romeo Bernal, was brought to the house of Mrs. Morales where he died on arrival. For his burial, his family spent One Thousand (P1,000.00) Pesos.

5. According to the Medico-Legal Necropsy Report (Exh. D, p. 3, record) issued by Dr. Loreto T. Rojas, MHO, Bato, Catanduanes RHO (Exh. D-1), the late Ildefonso Panti y Manoguid whose name was erroneously written as 'Alfonso Panti y Manoguid' sustained, per the Post-Mortem Findings:

#### I. PERTINENT EXTERNAL FINDINGS:

1. Cut wound with clear cut borders (sic) with sharp edges 1.5 cm. in length, 6 cms. from id. vertebral column 10.5 cms. below superior lateral angle of scapula left.
2. Stab wound 8 cms. in length 16.5 cms. from the mid-vertebral column 17 cms. below shoulder left.
3. Cut wound with clear cut borders (sic), sharp edges 1.5 cms. in length 1.5 cms. from the mid-vertebral column 31 cms. below shoulder left.
4. Cut wound with clear cut borders (sic), oblique directed upwards laterally 1 cm. in length 7 cms. from the mid-vertebral column located over lumbar region right.

#### II. INTERNAL FINDINGS:

1. Cut wound with clear cut borders (sic) with sharp edges 1.5 cm. in length 6 cms. from mid-vertebral column 10.5 cms. below superior lateral angle of scapula left directed anteriorly and horizontally involving the skin subcutaneous tissues, muscles, the lungs pericardium and terminating at the cardiac muscles.
2. Cut wound with clear cut borders (sic), oblique directed upwards laterally 1 cm. from the mid-vertebral column located over the lumbar region right directed anteriorly and upward involving the skin subcutaneous tissues, muscles middle 3rd of the posterior border (sic) of the kidney, interior border (sic) of the liver and terminating at the mesentery.
3. Hemo-thorax 3 liters more or less.

and died of 'shock secondary to hemorrhage, massive.'

6. The motive of the accused for killing the victim was most probably because he was a witness for the prosecution in Criminal Case No. 1374 for violation of P.D. No. 533 before this Court (Branch 43) in which Abelardo Tasarra and Vicente Boseo were among the accused. Abelardo Tasarra and Vicente Boseo's brother, Antonio Boseo (at large) are among the accused in the instant case.

7. About 10:00 a.m. on October 5, 1987 or for four days before the incident, Tita Panti Tawat, a married daughter of the deceased victim, was washing clothes in the river in Obo, San Miguel, Catanduanes. Antonio Boseo, the herein accused (at large) approached her and asked where her father was. After she replied that her father was in their house, Antonio Boseo said to her, 'Tell your father that he should pass his own way. If he passes our own way, I'll kill him.' This, according to Tita P. Tawat, she caused to be blotted in the police station."<sup>[4]</sup>

Traversing such findings, appellant Amando denies having participated in the killing of the victim and claims that on the date of the incident he was with Jose Tayamora in the abaca plantation of the latter at Bontahiya, Patagan, Salvacion, San Miguel clearing the plantation and splitting and stripping abaca.<sup>[5]</sup> Abelardo, on the one hand, also denies having had a hand in the murder and claims that he was in their family's abaca plantation at Maysima, Patagan, Salvacion, San Miguel, with Melecio Boseo likewise clearing the plantation and stripping abaca.<sup>[6]</sup> Both Jose Tayamora and Melecio Boseo were presented as witnesses to corroborate appellants' claims.

The case is now before us on appeal with the defense contending in its brief that the trial court erred (1) in not giving credence to the defense of alibi of accused-appellants; (2) in giving full faith and credence to the testimony of Rosita Panti despite its very serious inconsistencies; and (3) in finding appellants guilty of murder beyond

reasonable doubt.[7]

We sustain appellants' conviction.

Firmly entrenched is the rule that conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed, unless for strong and valid reasons, because the trial court is in a better position to examine and observe the demeanor of witnesses while testifying in the case.[8]

Although there are admitted exceptions to this rule, we find no cogent basis for their application in the present case. Contrary to appellant's submission, the conclusions of the trial court are fully substantiated and supported by the evidence on record.

The defense's allegation that appellants were at some other place other than the scene of the crime at the time it happened is puerile. As aptly stated by the trial court:

"If the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers (People vs. Lumantos, 28 SCRA 764), or two and one-half (2 1/2) kilometers (Peo. vs. Catalino, 22 SCRA 1091), or three (3) kilometers (Peo. vs. Binsol, L-8346, Jan. 22, 1957), or five (5) kilometers (Peo. vs. Manabat, 100 Phil. 603), it was held not so far as to preclude the possibility of the accused's presence at the locus criminis, even if the only means of travel between the two places is by walking (Peo. vs. Aparato, 80 Phil. 199)."[9]

Indeed, for alibi to prosper, the evidence must show that the accused was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[10] Evidently, appellants were not so situated on that occasion.

Besides, we have consistently held that the defense of alibi cannot prevail over the positive identification of the accused.[11] In the case at bar, eyewitness Rosita Panti positively identified the appellants as the ones who almost simultaneously attacked her husband on their way home on the moonlit night of October 9, 1987. Recognition was made easy also by the circumstance that the scene where the killing took place was well illuminated by the lights from the store and the streetlight nearby.[12]

As we have heretofore held under similar considerations, appellants' bare denials of their participation in the crime cannot stand in the face of their identification where, as in this case, there is no showing whatsoever why eyewitness Rosita Panti would foist such a serious liability on the appellants.[13]

Anent the argument that Rosita Panti's testimony is replete with inconsistencies, suffice it to say that a careful review of the records reveals that the alleged lapses were merely on some details thereof, that is, regarding the distances of the assailants from the victim and as to who did strike the first blow, which do not in any way materially impair Panti's credibility or detract from the substance of her testimony. On the contrary, such minor inconsistencies indicate veracity rather than prevarication and only tend to strengthen her testimony.[14]

Finally, the trial court correctly ruled that the crime committed is murder, qualified by treachery, established by the sudden and unexpected attack upon the victim by the appellants which rendered the victim unable to defend himself.[15] Evident premeditation cannot, however, be said to be in attendance for want of the evidential requisites to support the allegation.[16] While the other aggravating circumstances of abuse of superior strength and nighttime have been sufficiently established, the same are absorbed in treachery.[17]

Appellants' civil liability for the death indemnity due the heirs of the victim is, however, hereby increased to P50,000.00 in accordance with the policy adopted by the Court en banc on August 30, 1990 and conformably with current jurisprudence.[18]

ACCORDINGLY, with the above-stated modification, the judgment appealed from is hereby AFFIRMED.

**SO ORDERED.**

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

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[1] Presided over by Judge Silvestre S. Felix.

[2] Rollo, 14.

[3] Ibid., 28.

[4] Ibid., 22-25.

[5] TSN, May 25, 1988, 54.

[6] Ibid., 70.

[7] Rollo, 120.

[8] People vs. Fernandez, 124 SCRA 319 (1983); People vs. Grefiel, etc., 125 SCRA 102 (1983); People vs. Pimentel, et al., 147 SCRA 25 (1987).

[9] Rollo, 27.

[10] People vs. Baniaga, et al., 1 SCRA 283 (1961); People vs. Aquino, 133 SCRA 283 (1984); People vs. Pacada, Jr., et al., 142 SCRA 427 (1986); People vs. Madriaga IV, etc., et al., 171 SCRA 103 (1989).

[11] U.S. vs. Garcia, 9 Phil. 434 (1907); People vs. Ocaya, 144 SCRA 165 (1986).

[12] See People vs. Manzanares, 177 SCRA 427 (1989).

[13] People vs. Espejo, et al., G.R. No. 88662, June 18, 1990.

[14] People vs. Cabeltes, 91 SCRA 208 (1979); People vs. Agudo, etc., et al., 137 SCRA 516 (1985).

[15] People vs. Vicente, et al., 28 SCRA 247 (1969); People vs. Renegado, 57 SCRA 275 (1974);

[16] See People vs. Diva, et al., 23 SCRA 332 (1968).

[17] People vs. Sudoy, etc., 60 SCRA 174 (1974).

[18] People vs. Sazon, etc., G.R. No. 89684, September 18, 1990.

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