

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSEPH FAGYAN ALIAS KISEP, DEFENDANT-APPELLANT.***G.R. No. 90197. May 22, 1992*

Ponente: CRUZ, J.

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The nearly deserted street was already dark at around seven o'clock in the evening of January 12, 1982. Elsie de Castro had just fetched her husband Rogelio from a drinking spree with his friends. Sabas Camil, one of his group, ran after him and handed him a bottle of beer they had just bought. Rogelio told him to hold it but he gave it instead to Elsie and returned to the store. The spouses waited for him to come back as they did not know what to do with the beer. Then it happened.

In the shadows, a man approached Rogelio from behind and put his left arm on the latter's shoulder. Then he started to shove something with his right hand on Rogelio's chest, causing the latter to shout "Anay!" Elsie, standing barely a meter away, was shocked but not petrified. She immediately switched on the electric torch she was carrying and focused it on the fleeing man. Providentially, he turned as he ran and she was able to have a good look at his face and attire.[1]

Elsie's screams brought Rogelio's friends to where he lay stricken with blood oozing from his chest. One of them, Ariston Mazo, called for an ambulance, which arrived fifteen minutes later. Mazo said that when they were taking him to the hospital, he asked Rogelio who had stabbed him. Rogelio whispered to him that it was "the person with whom we had a misunderstanding." [2]

Rogelio de Castro died that same night, two hours after he was attacked. Cause of death was cardio-respiratory arrest due to the five wounds in his body.[3]

The misunderstanding he supposedly spoke of relates to an earlier incident that same night when Camil was tripped by Joseph Fagyan and fell to the ground. A heated exchange followed between the two and ended only when Mazo held Fagyan by the collar and told him to stop. The spat was soon settled, and Fagyan left.[4] The rest of Rogelio's group apparently continued drinking.

Fagyan was subsequently identified by Elsie as the one who had stabbed her husband. Indicted for murder, he was found guilty after trial by the Regional Trial Court of Baguio and Benguet and sentenced to reclusion perpetua. He was also required to pay P30,000.00 civil indemnity to the victim's heirs and the costs of the suit.[5]

The lone eyewitness for the prosecution was Elsie de Castro, who identified Fagyan as the man he saw stabbing her husband on that tragic night. She stoutly insisted that she was able to recognize him by the light she flashed on him as he looked back while fleeing and by the leather jacket he was wearing. This was the same jacket in which she had seen him several times before at the Mankayan Plaza.[6]

Mazo also narrated the victim's identification of his assailant while they were in the ambulance.[7]

Testifying for himself, Fagyan pleaded the defense of alibi. He said that about 7 o'clock in the evening in question, he was with some friends in the Mankayan National High School, where they butchered and cooked a dog. This took some two hours. At about 10 o'clock, they went to attend a wake, where he fell asleep. He was awakened at midnight by Patrolman Alfonso Archog, who frisked him and found the knife he had used in butchering the dog.[8]

Dimas Clemente and Alfonso Sagamla corroborated his testimony.[9]

In his brief, the accused-appellant faults the trial court for having given full credence to the prosecution witnesses. His thesis is that their testimonies are full of improbabilities and inconsistencies and have not overcome the constitutional presumption of innocence in his favor.

The Court does not agree.

The defense wonders why Elsie could not recognize Fagyan, who was only one meter away from her when he approached her husband, but was able to do so when he was already six steps away and running. The reason is simple. The street was dark when Fagyan appeared and there was no particular reason to see who he was at that time. Suspecting nothing, she naturally assumed he was a friend as he put his arm on her husband's shoulder.

But after the stabbing, there was a need to identify him, which was why she flashed the electric torch on him. That he turned to look back was his bad move, but that was not itself unnatural. He must have wanted to know if he had been recognized. Moreover, he had no way of telling that a flashlight would be trained on him to reveal his identity.

The defense contends that Elsie could not have recognized him in the split second the light was on his face, for that moment was too short for reliable recollection. That is not necessarily so. There are things a person cannot forget. As Elsie pointed her flashlight in that dark street, the memory of that fleeing man who had just stabbed her husband was etched in her mind like an unavoidable intrusion. The widow's problem might have been, in fact, not how to remember him but how to push him out of her mind.

The defense also finds it incredible that after her husband was stabbed and shouted out his pain, Elsie did not think to immediately succor him as any loving wife would have done. Instead, she turned her attention on the fleeing man and tried to identify him even as Rogelio lay bleeding. This was curious conduct, to be sure, but not decidedly irrational. Persons do not react uniformly to a given situation. At any rate, the fact that she admittedly did not go to her wounded husband does not necessarily mean she was lying on the stand. On the contrary, it might reveal that she was indeed telling the unvarnished truth, without any attempt to make it more believable.

The defense also doubts Elsie's testimony that she left the hospital that night when her husband dying (and in fact died) and that she left the morgue at 1 o'clock in the morning to go to the police station for investigation of the stabbing. Such conduct is not improbable although admittedly also strange. It could be that she left the hospital because she was worried about her three-year old child who was all alone in their boarding house. As for going to the police station from the morgue, it is likely that she was not thinking rationally, at the time because of the shock she had sustained as a result of the stabbing she had witnessed. In any case, such acts, even if rather odd, do not affect her credibility. Her testimony that she went back to go to her child in the boarding house has not been refuted by the defense. And the sworn statement she made expressly indicated that it was indeed taken at about 1 o'clock in the morning of January 13, 1982, as she testified.

Mazo's testimony is another matter. The defense doubts its veracity because Rogelio did not identify his assailant by name. That did not make the identification suspect or insufficient. A person may have many acquaintances whose names he does not know and which he may not bother to ascertain. Fagyan was obviously not a close

friend of Rogelio's but a mere acquaintance he may have met several times. If he was told his name, he did not remember it, and if not, he did not bother to check it. Nevertheless, he was making an adequate identification when he referred to Fagyan as "the person with whom we had a misunderstanding." That could only mean the accused-appellant.

But despite all this, the Court does not find that this identification should have been admitted as a dying declaration. The reason is that it has not been shown to have been made under the consciousness of impending death. Mazo testified that Rogelio whispered the description to him, but that did not necessarily mean the dying man believed he was dying. Mazo said nothing about such feeling as all Rogelio whispered was the said description.

If at all, the victim's statement maybe admissible as part of the *res gestae*, having been made immediately after the incident.[10] But even if that ground were also discarded, the cause of the prosecution would still not fail. We are satisfied that the testimony of eyewitness Elsie de Castro was, by itself alone, sufficient identification of her husband's killer.

That identification calls for rejection of Fagyan's defense of alibi. The alibi just does not ring true enough. Elsie's testimony is more convincing. Even if it be conceded that Fagyan really was in the Mankayan National High School at 7 o'clock that night, the record will show that Rogelio was stabbed before that hour in Aurora Street in Mankayan, Benguet. The high school is also on that street. In fact, it is only a few hundred meters away from the scene of the crime. Hence, it was entirely possible for him to first stab Rogelio, then proceed to the high school and later to the wake to establish his alibi.

It is not necessary to prove motive when the accused has been positively identified, as in the case at bar. Nevertheless, it may be assumed that the stabbing was the result of the encounter of the accused-appellant with Camil and Mazo earlier that evening. Fagyan must have felt humiliated and so planned revenge against Camil, whom he had tripped, and Mazo, who held him by the collar and told him to stop quarreling with Camil. It simply was Rogelio's misfortune to be mistaken for either of these two.

The Court believes that the guilt of the accused-appellant has been proven beyond reasonable doubt, principally by the testimony of Elsie de Castro, who actually witnessed the stabbing of her husband. This must be sustained, for all its supposed improbabilities and inconsistencies, as against the implausible alibi offered by the defense.

WHEREFORE, the appeal is DISMISSED and the challenged decision is AFFIRMED as modified. The civil indemnity is increased to P50,000.00 conformably to present policy.

SO ORDERED.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] TSN, July 18, 1983, pp. 95-100, 117-121.

[2] TSN, March 29, 1983, pp. 49-52, 62.

[3] Exhibits D and E.

[4] TSN, March 29, 1983, pp. 45-47.

[5] Rollo, p. 22; penned by Judge Nicodemo T. Ferrer.

[6] TSN, July 18, 1983, pp. 99-100.

[7] TSN, March 29, 1983, pp. 62-63.

[8] TSN, October 31, 1984, pp. 12-15.

[9] TSN, February 22, 1984, pp. 17-22; July 19, 1984, pp. 5-8.

[10] *People v. Reyes*, 52 Phil. 534; *People v. Araja*, 105 SCRA 133; *People v. Alban*, 1 SCRA 931; *People v. Diva*, 23 SCRA 332.

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