

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO PLASENCIA Y DESAMPARADO ALIAS “TONYING,” ROBERTO DESCARTIN Y PASICARAN ALIAS “RUBY” AND JOELITO (JULITO) DESCARTIN Y P...

G.R. No. 90198. November 07, 1995

Ponente: VITUG, J.

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VITUG, J.:

Antonio Plasencia, Roberto Descartin and Joelito (Julito) Descartin were accused of robbery with homicide in an information, dated 20 December 1984, that read:

"That on or about the 29th day of November, 1984 at around 3:00 o'clock in the afternoon, more or less, in sitio San Juan, Barangay Patao, Municipality of Bantayan, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, and with treachery, evident premeditation and taking advantage of their superior number and strength and with intent to kill, treacherously attack, assault and use personal violence upon Herminio Mansueto, thereby inflicting upon him the following physical injuries:

"1. Stab wounds which was approximately two inches in length, parallel to the ribs and is located 1 1/2 inches below the right nipple on the right anterior axillary line and on the fifth intercostal space. On probing the wound was penetrating immediately up to the left parasternal border approximately hitting the heart;

"2. Hacking wound 9 inches in length extending from the coracoid process of the left clavicle passing between the left anterior and the left mid axillary line up to the left 4th intercostal space including all muscle underlying the skin exposing the ribs.

"Cause of death: Internal hemorrhage due to stab wound.

after which the body was placed inside a plastic bag and brought to an open sea by the pump boat owned by Roberto Descartin y Pasicaran and operated by Joelito Descartin y Pasicaran and dumped to the water by herein accused, and as a result of which said Herminio Mansueto died, herein accused, in pursuance of their conspiracy, wilfully, unlawfully and feloniously and with intent to gain, took and carried away the personal property belonging to Herminio Mansueto, namely: one (1) Seiko 5 'Stop Watch' valued at P3,000.00; one (1) Bicycle (standard size) valued at P1,000.00; and cash in the amount of P10,000.00, all in the total amount of FOURTEEN THOUSAND PESOS (P14,000.00), Philippine Currency, to the damage and prejudice of said owner (sic) in the said total sum.

"All contrary to law, and with the qualifying circumstance of alevosia, and the generic aggravating circumstance of known premeditation.

"CONTRARY TO LAW."[1]

When arraigned, all the accused entered a plea of "not guilty" to the charge; whereupon, trial commenced.

The prosecution sought to establish, as follows:

At around ten o'clock in the morning of 29 November 1984, Herminio Mansueto, wearing a blue and white striped t-shirt, maong pants, Seiko 5 stop watch and a pandan hat, left on his bicycle for Barangay Patao, Bantayan, Cebu. He had with him P10,000.00 cash which he would use to purchase hogs from a certain "Ruby."

In Patao, Francisca Espina, also known in the locality as Pansing and whose house was just across the street from the respective residences of the three accused, saw at the roadside Herminio Mansueto and Roberto Descartin alias "Ruby" engaged in conversation. Pansing approached them and asked Mansueto if he would be interested in buying two of her pigs for P1,400.00. Mansueto said "yes" and promised that he would be right back.

Mansueto and Ruby meantime proceeded to the latter's piggery. Joelito Descartin and his brother-in-law Rene were also seen going to the place. After some time, Pansing noticed Joelito take Mansueto's bicycle. Believing that Mansueto was already preparing to leave and in her desire to catch up with him, Pansing promptly walked towards the piggery which was around 100 meters away from her house. She could see Mansueto leaning on the pigsty with Ruby on his right side and Antonio Plasencia alias "Tonying" on his left; behind was Joelito.[2] Midway, she was halted on her tracks; she suddenly saw Antonio stab Mansueto. The latter staggered towards Ruby who himself then delivered another stab blow. Mansueto fell on his back. Joelito started hitting Mansueto on the forehead while Rene held Mansueto's legs.[3] Except for a coconut tree and some ipil-ipil trees around the area, nothing obstructed Pansing's line of vision. Pansing rushed back home. The image of Antonio waving the weapon and the thought that she might herself be killed kept her from revealing to anyone what she saw.[4]

The following day, in Kodia, Madridejos, Cebu, where Mansueto resided, his daughter Rosalinda reported to Francisca Tayo, the barangay captain, that her father had not returned home. Tayo proceeded to Putian, which was in Mansueto's itinerary, and then to Ruby's piggery in Patao, where a youngster, who turned out to be Ruby's son, innocently informed her that Mansueto's bicycle was taken by Joelito.[5]

The day after, Francisca Tayo, accompanied by police officers of Madridejos, Cebu, and some relatives of Mansueto, went back to Ruby's place. On a railing of the pigpen, she saw blood stains. When she asked Ruby's father about it, he said that the stains had come from chicken blood. Going around the piggery, she also saw blood stains on a bamboo pole, which Ruby's father once again so identified as chicken blood. At the back of the piggery, Francisca noticed a digging which looked like an empty grave. The digging was measured and photos were taken. The police found a hat at the back of a hut beside the piggery, which was later recognized to be that which belonged to Mansueto.[6]

In the morning of 30 November 1984, Patrolman Elpidio Desquitado of the Bantayan police went back to the piggery. This time, the police learned from Pansing herself that Joelito took Mansueto's bicycle.[7] Joelito was invited to the police headquarters to shed light on the case. Later, Joelito, waiving his right to counsel, executed a "confession." [8]

Joelito narrated that, upon Ruby's instruction, he brought the bicycle to the piggery. Unexpectedly, he said, Tonying Plasencia stabbed Mansueto. Stunned, Joelito tried to run away but Tonying stopped him. Tonying then dragged the victim to a nearby house. Threatened by Tonying, Joelito agreed to later return to where the victim's body was dragged. At around eleven o'clock that evening, Tonying and Joelito placed the body in a sack. Tonying asked Ruby to allow the use of the latter's pumpboat to ferry the body. Tonying paddled the pumpboat to the island of Po-Po'o where he picked up some pieces of stones. Then, again paddling the pumpboat farther away

from the island, he ordered Joelito to start the engine of the boat. They headed for the islet of Gilotongan (Hilotongan). On the way, Tonying filled the sack with stones and, using a rope, tied to it the body of the victim. Tonying then unloaded their cargo into the sea.

Guided by Joelito, members of the Bantayan police force headed for the islet of Hilotongan on two pumpboats[9] in the area pinpointed to be the place where the body was dumped. On the second day of the search, the group was informed that the body had already surfaced near the vicinity of the search and delivered to the municipal building.[10]

The municipal health officer of Bantayan, Dr. Oscar Quirante, examined the body and concluded that the victim died of internal hemorrhage due to stab wounds.[11] The bloated body was in a late stage of decomposition and its skin had sloughed off.[12] He found the victim's face to be "beyond recognition." There were "some rope signs in the body particularly in the waistline and in the knees." [13]

The main defense interposed is one of alibi.

Antonio stated that on the whole day of 29 November 1984, he was out at sea fishing with his son. Joelito, on his part, asserted that he was in Barrio Baod, about an hour's walk from his residence, at the house of his fiancée. He returned to his house, he said, only the day after. Roberto ("Ruby"), Joelito's uncle, testified that on that fateful day, he was in Samoco Purok 2, Iligan City, and then left for Cebu on 06 December 1984 only after receiving a telegraph that Joelito was implicated in the crime.

The Regional Trial Court[14] did not give credence to the defense of alibi. It convicted the three accused of murder (punishable under Article 248 of the Revised Penal Code), instead of robbery with homicide, explaining that the term "homicide" was used in the information in its generic sense.[15] Finding conspiracy, the trial court ruled that the killing was qualified by both treachery and abuse of superior strength with the latter, however, being absorbed by the former. No other aggravating or mitigating circumstances being attendant in the commission of the crime, the trial court said, the penalty that could be imposed upon each of the accused was reclusion perpetua with a joint and several civil liability for indemnification to the heirs of Herminio Mansueto in the amount of P30,000.00.

The instant appeal was interposed by the three convicted appellants.

Appellant Antonio Plasencia attacks the credibility of the prosecution's lone eyewitness, Francisca Espina, alleging that she is a perjured witness who has an axe to grind against him because his dog had once bitten Francisca's child.[16] He bewails the fact that it has taken Francisca until 29 December 1984 to reveal what she supposedly has seen to the police authorities. Contending that treachery has not been duly proven as "no wound was inflicted at the back and as a matter of fact only one wound was fatal,"[17] appellant argues that even if conspiracy were to be considered to have attended the commission of the crime, he could be held liable with the others, if at all, only for homicide.

Appellant Roberto Descartin, likewise challenging Francisca Espina's credibility because of her alleged inconsistencies, faults the trial court for allowing the witness to glance at the notes written on her palm while testifying. He also argues that his alibi, being corroborated, should have been given weight.

Appellant Joelito Descartin, in assailing the credibility of Francisca, has noted her "jittery actuation" while giving her testimony. He also questions the findings of the ponente for not being the presiding judge during the examination of Francisca on the witness stand.

The focus of this appeal is clearly one of credibility. The initial assessment on the testimony of a witness is done

by the trial court, and its findings still deserve due regard notwithstanding that the presiding judge who pens the decision is not the one who personally may have heard the testimony.[18] The reliance on the transcript of stenographic notes should not, for that reason alone, render the judgment subject to challenge.[19] The continuity of the court and the efficacy of its decision are not affected by the cessation from the service of the judge presiding it[20] or by the fact that its writer merely took over from a colleague who presided at the trial.[21]

It is asserted that the testimony of Francisca Espina should not be given worth since, while testifying, she would at times be seen reading some notes written on her left palm. Thus -

"Q

May I see your left hand, may I see what is written there?

"A

Witness showing to the court her left palm and the following words have been written in her palm in ball pen handwritten words and number of the pumpboat No. 56 and there is another word 'petsa' and there are words which cannot be deciphered and all found in the palm of the left hand.

"ATTY. MONTECLAR:

That is all.

"ATTY. GONZALES: RE-CROSS

"Q

Mrs. witness, you cannot deny of what these physical evidences or writings on the palm of your left hand. I want you to be honest, the law will not allow you to lie, you are subject to punishment and penalty. My question is, who wrote this on the palm of your left hand?

"A

I was the one who wrote this.

"Q

Why did you write that down?

"A

I was the one who wrote this.

"Q

Why, what was your purpose of writing that in your palm?

"A

I wrote this in my palm because I wanted to be sure of what time the incident happened, was the same as that I wrote in my palm.

"Q

And who furnished you the data in which you wrote in the palm of your hand?

"A

I was the one who made that.

"ATTY. GONZALES:

"Q

You don't understand my question. You wrote that writing but where did you get that data?

"A

This is just of what I know.

"Q

Since you claim to have all this knowledge of your mind, why did you find it necessary to write that in the palm of your hand and I notice during the trial that you used to look in your palm, why, is that necessary in your believe to testify here to what you knew about the incident.

"A

Because of the fact that I have an headache.

"Q

When did this headache occur?

"A

After I left my house because my sick child.

"Q

Now, knowing that you have an headache, did you not bring this to the attention of the Fiscal?

"A

No, I did not tell the Fiscal.

"Q

Do you know of your own that doing this is unfair and is not allowable while testifying in open court, do you know that that is illegal act?

"A

No, I did not know.

"Q

And you did all of this claiming that you do not know about the incident for the purpose of giving here testimony against the accused?

"A

Yes, sir."[22]

The use of memory aids during an examination of a witness is not altogether proscribed. Section 16, Rule 132, of the Rules of Court states:

"Sec. 16. When witness may refer to memorandum. - A witness may be allowed to refresh his memory respecting a fact, by anything written or recorded by himself or under his direction at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew

that the same was correctly written or re-corded; but in such case the writing or record must be produced and may be inspected by the adverse party, who may, if he chooses, cross-examine the witness upon it and may read it in evidence. So, also, a witness may testify from such a writing or record, though he retain no recollection of the particular facts, if he is able to swear that the writing or record correctly stated the transaction when made; but such evidence must be received with caution." (Italics supplied.)

Allowing a witness to refer to her notes rests on the sound discretion of the trial court.[23] In this case, the exercise of that discretion has not been abused; the witness herself has explained that she merely wanted to be accurate on dates and like details.

Appellants see inadvertency on Francisca's appearing to be "jittery" on the witness stand. Nervousness and anxiety of a witness is a natural reaction particularly in the case of those who are called to testify for the first time. The real concern, in fact, should be when they show no such emotions.

Francisca did fail in immediately reporting the killing to the police authorities. Delay or vacillation, however, in making a criminal accusation does not necessarily adulterate the credibility of the witness.[24] Francisca, in her case, has expressed fears for her life considering that the assailants, being her neighbors, could easily exact retribution on her.[25] Also, the hesitancy in reporting the occurrence of a crime in rural areas is not unknown.[26]

Francisca's inability to respond to the summons for another appearance in court for further questioning was satisfactorily explained by the prosecution. Francisca at the time just had a miscarriage and was found to be too weak to travel. The recall of the witness was, after all, at the sound discretion of the trial court.[27]

The claim of appellant Roberto Descartin that Francisca and her husband, a tuba-gatherer, owed him P300.00, and the assertion made by appellant Antonio Plasencia on the dog-biting story involving Francisca's son truly were too petty to consider. It would be absurd to think that Francisca, for such trivial reasons was actually impelled to falsely implicate appellants for so grave an offense as murder.

Appellants questioned Francisca's ability to recognize them from a distance. Francisca knew appellants well; they all were her neighbors while Antonio Plasencia himself was her cousin.[28] The crime occurred at around three o'clock in the afternoon only about fifty (50) meters away from her. With an unobstructed view, Francisca's positive identification of the culprits should be a foregone matter.[29]

The alleged inconsistencies in Francisca's testimony and in her sworn statement of 18 December 1984, cover matters of little significance. Minor inconsistencies in the testimonies of witnesses do not detract from their credibility;[30] on the contrary, they serve to strengthen their credibility and are taken as badges of truth rather than as indicia of falsehood[31] even as they also erase suspicion of rehearsed testimony.[32]

All considered, the case against the appellants has been proven beyond reasonable doubt even with the retracted extra-judicial admission of Joelito Descartin.[33] The testimony of a single witness, if found to be credible, is adequate for conviction.[34] The defense of alibi hardly can overcome the positive identification of an unprejudiced eyewitness.[35]

Like the trial court, we are not persuaded that robbery has been proven to be the principal motive for the crime that can warrant the conviction of appellants for the complex crime of robbery with homicide.[36] Appellants could only thus be held responsible for the killing of Mansueto. Conspiracy among the appellants has been established beyond doubt by the sum of their deeds pointing to a joint purpose and design.[37]

Three aggravating circumstances were alleged in the information, i.e., treachery, evident premeditation and abuse of superior strength. The trial court disregarded the circumstance of evident premeditation and concluded that the

attack upon Mansueto was committed with treachery and abuse of superior strength. On its finding that the assault was unexpectedly perpetrated upon the unarmed victim to ensure its execution without risk to themselves from the defense that the victim might make, the trial court appreciated treachery, which it deemed as having so absorbed abuse of superior strength.

The trial court was correct when it concluded that the crime committed was murder, a crime technically lower than robbery with homicide,[38] not, however, because of the attendance of treachery but of abuse of superior strength. Treachery, in our view, was not satisfactorily proven by the prosecution. Francisca Espina simply testified that appellant Plasencia stabbed Mansueto while the latter and the appellants were in a huddle. There was nothing adduced on whether or not the victim gave provocation, an indispensable issue in the proper appreciation of treachery.[39] The presence, nonetheless, of the aggravating circumstance of abuse of superior strength qualified the killing to murder.[40] The three appellants utilized superiority in numbers and employed deadly weapons in assaulting the unarmed Mansueto.

There being no other aggravating or mitigating circumstances to consider, the trial court aptly imposed the penalty of reclusion perpetua, the medium period[41] of the penalty of reclusion temporal maximum to death prescribed by Article 248 of the Revised Penal Code. In conformity with prevailing jurisprudential law, the heirs of the victim should be indemnified in the amount of P50,000.00.[42]

WHEREFORE, the decision of the trial court convicting appellants Antonio Plasencia, Roberto Descartin and Joelito (Julito) Descartin of the crime of murder and imposing on each of them the penalty of reclusion perpetua is hereby **AFFIRMED** with the modification that the indemnity to the heirs of the victim, Herminio Mansueto, is raised to P50,000.00. Costs against appellants.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Panganiban, JJ., concur.

[1] Rollo, pp. 1-2

[2] TSN, 22 January 1985, p. 19.

[3] TSN, 22 January 1985, pp. 8-9.

[4] Ibid., p. 22.

[5] TSN, 22 January 1985, p. 32.

[6] Ibid., pp. 35-36.

[7] TSN, 29 January 1985, pp. 5 & 37-38.

[8] Exh. J.

[9] TSN, 29 January 1985, pp. 27-28.

[10] Ibid., pp. 9-10.

[11] Exh. K.

[12] The phrase used in the transcripts is "slumped off" (TSN, 29 April 1985, p. 33).

[13] Ibid., p. 23.

- [14] Regional Trial Court of Cebu City, Branch 5, presided over by Judge Celso M. Gimenez.
- [15] Decision, p. 28.
- [16] Exh. 2-Plasencia.
- [17] Appellant Plasencia's Brief, p. 5.
- [18] *People v. Peralta*, 237 SCRA 218, 220; *People v. Fuertes*, 229 SCRA 289.
- [19] *People v. Jaymalin*, 214 SCRA 685; *People v. De Paz*, 212 SCRA 56; *People v. Juanga*, 189 SCRA 226; *People v. Abaya*, 185 SCRA 419; *People v. Escalante*, 131 SCRA 237.
- [20] *Ayco v. Fernandez*, 195 SCRA 328.
- [21] *People v. Sadlangabay*, 220 SCRA 551, 552.
- [22] TSN, 22 January 1985, pp. 23-24.
- [23] FRANCISCO, THE REVISED RULES OF COURT OF THE PHILIPPINES, Vol. VII, Part II, 1991 ed., p. 312.
- [24] *People v. Errojo*, 229 SCRA 49, 57.
- [25] *People v. Peran*, 215 SCRA 152.
- [26] *People v. Villaruel*, 238 SCRA 408; *People v. Carizo*, 233 SCRA 687.
- [27] *People vs. Rodriguez*, 193 SCRA 231.
- [28] TSN, 22 January 1985, p. 4.
- [29] *People v. Villaruel*, 238 SCRA 408.
- [30] *People v. Reyes*, 236 SCRA 264.
- [31] *People v. Ponayo*, 235 SCRA 226.
- [32] *People v. Joya*, 227 SCRA 9.
- [33] On 18 January 1985, Joelito (Julito) Descartin executed an affidavit stating that his confession was extracted by the police in violation of his constitutional rights as an accused. Clearly designed to exonerate his uncle, Roberto Descartin, he stated therein that on the whole day of 29 November 1984, he never saw Roberto Descartin (Exh. 4).
- [34] *People v. Abapo*, 239 SCRA 469; *People v. Pablo*, 239 SCRA 500; *People v. Evangelista*, 235 SCRA 247; *People v. Paglinawan*, 233 SCRA 494; *People v. Torres*, 232 SCRA 32.
- [35] *People v. Barlis*, 231 SCRA 426; *People v. Espinoza*, 228 SCRA 143; *People v. Escosio*, 220 SCRA 475.
- [36] *People v. Cadevida*, 219 SCRA 218; *People v. Barlis*, 231 SCRA 426, 443.
- [37] *People v. Bayrante*, 235 SCRA 19.
- [38] AQUINO, THE REVISED PENAL CODE, Vol. III, 1988 ed., p. 111.
- [39] *People v. Abapo*, 239 SCRA 469.
- [40] *People v. Caras*, 234 SCRA 199; *People v. Cantre*, 186 SCRA 76; *People v. Dumpe*, 183 SCRA 547; *People*

v. Resayaga, 159 SCRA 426.

[41] Art. 63 (1), Revised Penal Code. People v. De la Cruz, 216 SCRA 476; People v. Pletado, 210 SCRA 634; People v. Sabornido, 214 SCRA 150.

[42] People v. Adonis, 240 SCRA 773; People v. Logronio, 214 SCRA 519; People v. Serdan, 213 SCRA 329; People v. Sison, 189 SCRA 643.

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