

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PANFILO DIGA, ACCUSED-APPELLANT.

G.R. No. 94546. April 24, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Panfilo Diga alias “Amin” and Eusebio Pigao, were charged with Multiple Murder in the Regional Trial Court, Branch 5, of Tuguegarao, Cagayan, for the murder of Fermin Domingo, his six-year-old son, Crisologo, and his wife’s cousin, Rodolfo Ganaban. Diga was sentenced to suffer the penalty of reclusion perpetua. He has appealed to this Court to seek a reversal of the decision.

The personal circumstances of the *dramatis personae* in these cold blooded murders were summarized by the trial court as follows:

“In 1969, the barangay captain of Alba was Fermin Domingo and the barangay secretary was his wife Lucia Domingo. One of the councilmen was accused Eusebio Pigao. The Domingos were staunch political supporters of the then incumbent Municipal Mayor Wilfredo Pallagao while Eusebio Pigao was Dr. Alarico Herrero’s political leader in Alba.” (p. 3, RTC Decision.)

“Panfilo Diga was a farmer who is a native and used to reside in Tallang, Baggao. In 1967, Mrs. Juanita Herrero invited him and his family to live with her in her house in San Jose, Baggao. Panfilo agreed and so he and his family lived with Mrs. Juanita Herrero in San Jose from 1967 to 1970.

“In time, Panfilo became the checker in the rice threshing business and recorder in the tobacco trading of Gogo Herrero, a son of Mrs. Juanita Herrero and a resident of Tungal, Baggao.” (pp. 13-14, RTC Decision.)

On October 14, 1969, the provincial fiscal of Cagayan filed an Information for multiple murder against Panfilo Diga and Eusebio Pigao which reads:

“That on or about August 22, 1969, in the municipality of Baggao, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Panfilo Diga alias Amin and Eusebio Pigao, armed with a gun, conspiring together and helping each other, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack and shoot Fermin Domingo, Crisologo Domingo and Rodolfo Gannaban, inflicting upon them several wounds on their bodies, which wounds caused their death.” p. 3, Rollo.)

When the two accused were arraigned on October 22, 1969, they pleaded not guilty. Trial on the merits commenced on December 9, 1969. After the prosecution had finished the presentation of its evidence on March 15, 1973, the accused filed on April 23, 1974 a demurrer to the evidence. It was denied by the court. Thereafter, Pigao stopped coming to the hearings. His wife appeared later and informed the court that her husband had been abducted on February 16, 1978. On motion of the prosecution, the court ordered a separate trial for Panfilo Diga.

The murders, which are the subject of this criminal case, occurred in the late afternoon of August 22, 1969 in the

remote barangay of Alba, Baggao, Cagayan, which is bisected from east to west by the 25-meter-wide-Paranan River. The public elementary school in Alba, which was located on the north side of the road which runs parallel to the Paranan River, was undergoing repairs and renovation, a communal task of the barrio folks led by the barrio captain, Fermin Domingo.

The following factual findings of the trial court are reproduced hereunder:

“On August 22, 1969, Fermin was informed that sand and gravel were needed in the work in the school. At past 1:00 o’clock in the afternoon of that day, Fermin instructed Rodolfo Gannaban to call for the brothers Telesforo and Jose Medrano to help them in the hauling of sand and gravel. Rodolfo complied and in short while he came back with the two brothers.

“About 2:00 o’clock that same afternoon, Fermin and his son, the 6-year old Crisologo, Rodolfo and the Medrano brothers boarded the weapon’s carrier of and driven by Fermin and proceeded to the river. They went downrgade through that ascending road then turned westward until they reached the gravel pit some 60 to 100 meters away.

“The men went about their work. After sometime, they were able to make two deliveries of sand and gravel to the school. Then they returned to the pit. After the men had loaded the weapon’s carrier with sand and gravel, they readied themselves for the third delivery. It must have already been between 4:30 and 5:00 o’clock in the afternoon. They boarded the vehicle. Those who sat in the front seat were Fermin who was at the wheel, Crisologo who sat at the right side of his father and Rodolfo who was at the extreme right beside Crisologo. Telesforo stayed at the back of the carrier on the left side. Left behind in the pit to continue piling sand and gravel for the succeeding deliveries was Jose Medrano.

“Then the vehicle reached the ascending road. As it was moving upgrade and northward and was about to reach the level of the river bank, a sudden burst of automatic gunfire from the left or western side of the ascending road rent the air. Telesforo instinctively turned his face toward the west and saw Panfilo Diga standing and holding a long gun while Eusebio Piga stood beside him at the western side of the road. Fermin was hit but he still managed to blurt out ‘we are in trouble!’

“The weapon carrier’s engine conked out and the vehicle violently rolled back downward. Telesforo Medrano lost his balance and was thrown out into the water. When the rear wheels of the vehicle reached the water of the river, it finally stopped.

“Telesforo found himself lying upward at the water edge under the vehicle. He could not move because his chest was pressed down by an under chassis iron bar. His feet were between the two rear wheels of the vehicle pointing northward. While his body was submerged in the shallow water, his head was above water and near the left rear side of the weapon’s carrier.

“Then Panfilo Diga and Eusebio Pigao moved toward the stalled vehicle. When Panfilo Diga was just about five (5) meters northwest of the vehicle in an upgrade level and while Eusebio Pigao was beside him, Panfilo opened fire with his automatic carbine at the people in the front seat of the weapon’s carrier.

“After this, Eusebio Pigao went much closer to the vehicle and told the mortally wounded Fermin: ‘What a fate, Pare.’ Then Eusebio ran northward while Panfilo Diga went away toward the west.

“The two automatic gunfires alarmed Jose Medrano who was left at the gravel pit and Lucia Domingo who was in her house. In the case of Jose Medrano, having heard the gunfires to have come from the east in the direction of the ascending road and failing to hear anymore the revving of the engine of the weapon’s carrier, he immediately dashed toward the ascending road to find out what happened. As he neared the vehicle, he met Panfilo holding an automatic carbine. At that time Panfilo was about ten (10) meters west of the stalled weapon’s carrier proceeding westward.

“When Jose Medrano got near the weapon’s carrier, Fermin, between gasp of breath, warned him not to get nearer because they too might shoot him. He also requested him to immediately go to Tallang and tell his father Cirilo Domingo to look for a vehicle to bring them to a hospital in Tuguegarao. Jose complied.

“In the case of Lucia Domingo, when she heard the gunshots from the direction of the Paranan River, she asked councilman Inocencio Balanay to accompany her to verify what were they all about. When the two went out of the road, Lucia saw Eusebio Pigao coming from the south in the direction of the river. Eusebio entered his house but came out of it momentarily.

“Once in the road in front of his house, Eusebio, with both hands beckoned Lucia to approach him. When Lucia went near Eusebio, he told her: ‘Comadre, Fermin and Crisologo were shot. They have a companion but I don’t know if he too was hit.’ He even offered to accompany her to the place where Fermin and his companions were, but Lucia declined.

“Instead, Lucia asked the help of her neighbors. Among those who respondent were Felipe Cacatian, Domingo Zalun, Dencio Robles and Amado Robles. These men went to the river and came upon the ill-stricken weapon’s carrier with its fatally injured passengers.

“They saw Fermin slumped on the steering wheel but still alive, Crisologo curled on his father’s lap already lifeless, Rodolfo prostrate on the right shoulder of the road but still breathing and Telesforo pinned down under the vehicle but otherwise unhurt.

“One of the men went back to get a hammock while the others pushed the weapon’s carrier forward to free Telesforo from it.

“When the man with the hammock arrived, one of the men carried the dead Crisologo while the rest put Fermin in the hammock. Father and son were then brought to their house, then, the men went back for Rodolfo who was also placed in a hammock and brought to the same place. Telesforo was helped to his feet and accompanied to the house of Fermin.

“Fermin asked Lucia to give him a piece of cloth to bind his wounds. Lucia removed one of the curtains in their house and gave it to Fermin. Fermin wrapped the curtain around his chest.

“In the presence of Domingo Zalun, Felipe Cacatian, Lina Fronda, Amado Robles and others, Lucia asked her husband Fermin who shot them. Fermin answered: ‘We were shot by men of Herrero. They were Panfilo Diga and Eusebio Pigao.’ Then Fermin added: ‘I’m dying, look after our children. I’m going with Crisologo.’ After about three (3) minutes, Fermin expired. Rodolfo Gannaban also gave up the ghost a few minutes thereafter.

“The foregoing story substantially conforms with the Sworn Statement (Exhibit ‘H-2’) dated August 26, 1969 of Lucia Domingo, Sworn Statement (Exhibit ‘4-Diga’) dated August 25, 1969 of Telesforo Medrano and Sworn Statement (Exhibit ‘5’) dated August 26, 1969 of Jose Medrano.” (pp. 7-12, RTC Decision.)

The motive for the killings, as ascertained by Judge Hilarion Aquino from the records, lay in at least two past incidents of humiliation, oppression and physical violence which Diga had suffered in the hands of Domingo.

“From the testimonies of prosecution witnesses Lucia Domingo, Telesforo Medrano, Dra. Dulce Baculi, Jose Medrano and Cirilo Domingo, the following story emerges:

“One harvest time before the incident in question, accused Panfilo Diga tried to bring to Alba the rice thresher of his employer and patron Gogo Herrero to do business therein. For unexplained reasons, Fermin Domingo, asserting his misplaced authority, put down his foot and prevented the entry of Herrero’s rice thresher in his territory. Fermin’s arbitrary action was of course resented by Panfilo.

“But a more serious incident between the two occurred on a night in the month of February or March 1969. It

was the last canvassing in the popularity contest for the 1969 Miss Tallang. Fermin and his wife attended the affair because Fermin operated his sound system which was hired for that occasion. While a dance was going on, Panfilo Diga, a native of Tallang, was creating trouble in the dancing place. Fermin stopped the music and approached Panfilo to calm him down. Panfilo shrugged off Fermin's entreaties and resumed his loathsome behavior. Unable to control his temper any longer, Fermin slapped Panfilo in front of so many people. That incident terribly humiliated Panfilo and cut deep into his psyche." (pp. 6-7, RTC Decision.)

Diga's defense was an alibi which the lower court summarized as follows:

"On August 22, 1969, Mrs. Herrero instructed Panfilo and her laborers Juanito Gamacam, Fabian del Rosario and Edong Sayong to bring out palay from her bodega to be dried under the sun. Complying, the men brought out forty sacks of palay and spread the grains on a pavement to dry.

"At about 3:00 o'clock in the afternoon, Panfilo and the laborers started putting back the palay into the sacks. Noticing that there was no sack needle to sew and close the sacks, Panfilo went to the house of Alfonso Cruz which was just a few meters away from Mrs. Herrero's to borrow a sack needle. Thirty (30) minutes later on Panfilo returned with the needle.

After re-sacking the palay, the men carried them to the bodega. Then they cleaned the yard where they dried the palay finishing the work at 4:55 o'clock in the afternoon. The men washed and cleaned themselves and called it a day.

"Minutes later at about 5:30 o'clock, Panfilo went out into the road and was surprised to see a crowd in front of Mrs. Herrero's house. He heard someone in the crowd excitedly saying that somebody was killed. Curious to know who was killed, Panfilo went nearer to the crowd. It was a certain Mrs. Martin, a niece of Fermin Domingo, who said that his uncle Fermin had been shot.

"Panfilo went back to the house of Mrs. Herrero and informed her of what he just heard." (pp. 14-15, RTC Decision.)

To show that it was impossible for him to be in Alba at the time of the killings, Diga testified that in 1969, only a logging trail, used mainly by logging trucks and weapons carriers, connected San Jose and Alba. Reaching Alba by boat through the river, would take three or four hours. On foot, one would have to cross two rivers, one in San Jose and another in Tallang. On horseback, it would take two hours. On August 22, 1969, the road, being very muddy, was impassable.

Diga believed that Mayor Pallagao instigated the filing of the criminal case against him on account of politics and that the Mayor coached the Medrano brothers to testify falsely against him. In his Sworn Statement, Diga alleged that the real assassin was a certain Orlino Robles of Barangay Alba, Baggao, Cagayan, who was bitter at Fermin for having grabbed his five-hectare riceland. After the killings, Orlino allegedly disappeared from Alba.

In a decision dated May 28, 1990, Judge Hilarion I. Aquino found the accused, Panfilo Diga, guilty beyond reasonable doubt of the murders of Fermin Domingo, his son, Crisologo, and Rodolfo Gannaban. He sentenced Diga to suffer the penalty of reclusion perpetua for each of the murders and to indemnify the heirs of each victim in the amount of P30,000.

The accused appealed and seeks the reversal of that decision on the grounds: (1) that his guilt was not proven beyond reasonable doubt; (2) that the testimonies of the prosecution witnesses were fraught with inconsistencies; and (3) that the case was decided by a judge (Judge Hilarion Aquino) who had not heard a single witness testify at the trial.

The appeal has no merit.

Diga's alibi (the weakest of possible defenses) cannot stand in the face of the testimony of Telesforo Medrano and the dying declaration of Fermin positively identifying him as one of the gunmen. As found by the Court:

"Witness Telesforo Medrano positively identified accused Panfilo Diga as the one who twice fired his automatic long gun at Fermin, Crisologo and Rodolfo.

"xxx xxx xxx

"x x x Telesforo Medrano had the full opportunity to see the gunwielder, knew the gunwielder, and therefore, he was telling the truth. This conclusion is in effect a reaffirmation of the earlier conclusion of this Court when it denied the demurrer to evidence of the accused.

"There is no question that Telesforo Medrano was in the group of Fermin in the weapon's carrier when the incident in question happened. In fact, defense witness Felipe Cacatian in his written statement (Exhibit 'I') dated August 26, 1969 narrated that -

"Immediately, some of us carried the body of Crisologo, Rodolfo and Fermin Domingo while some assisted Telesforo who could still manage himself to walk and we brought them to our barrio (Alba)."

"The incident took place between 4:30 and 5:00 o'clock in the afternoon. Therefore, it was still bright. At the first burst of automatic gunfire, Telesforo was at the back carrier of the vehicle. He was not hit. It is, therefore, very easy to believe, because it conforms with human nature, that upon hearing the gunfire, Telesforo instinctively turned his head toward the direction of the gun reports. There, at the west side of the ascending road at a distance which could not be more than ten (10) meters, he saw Eusebio Pigao and Panfilo Diga who was holding a gun.

"There may have been talahib growth alongside the ascending road but they were sparse and could not have provided cover to the accused. Telesforo could not have mistaken the identity of Panfilo because he personally knew him. Telesforo oftentimes saw Panfilo in Alba in the company of Eusebio.

"But that was not all because Telesforo Medrano saw Panfilo Diga a second time - and this time, he saw him actually firing his automatic long arm at the persons in the front seat of the weapon's carrier. This was when, after the first volley of automatic gunfire, the weapon's carrier rolled down backwards throwing Telesforo into the water.

Telesforo laid flat in the water face upwards. The river was shallow at the water edge. While his body was submerged in the water, his head was above it. He could not move because his chest was pinned down by an under-chassis iron bar - which means that his back rested on the riverbed. His head was toward the south but near the western side of the vehicle while his feet were between the rear wheels directed northward.

"In this position, Telesforo had a clear view of the western and northern vicinity of the vehicle. When Panfilo Diga and Eusebio Pigao approached the vehicle and Panfilo, standing at just around five (5) meters northwest of the vehicle on a place higher in elevation than the water level, opened fire at the victim, Telesforo clearly saw him for nothing blocked his line of sight." (pp. 16-19, RTC Decision.)

He had a good view of the men who fired the shots from the rear of the motor vehicle. The Autopsy findings of Dra. Baculi confirmed that the deceased were shot in the back. The appellant's argument that Telesforo could not have seen the assassins because he was down in the water, is not well taken because he fell off the motor vehicle only when it slid back into the river after Fermin was shot and lost control of the steering wheel as a result.

"The testimony of Telesforo does not stand alone as the inculpatory evidence against Panfilo. There were strong corroborating evidences, to wit:

"1. When Fermin was already in his house and in the throes of death, in answer to the query of wife, he

identified in the presence of several persons those who ambushed and fired at them as Panfilo Diga and Eusebio Pigao. This declaration was made within the hour after he was shot and just three minutes before he expired. In fact, when he made the utterances, he added, 'I'm dying.' Thus, Fermin's declaration as to the identity of his killer is an ante-mortem declaration admissible in evidence under Sec. 37, Rule 130 of the Revised Rules on Evidence. It can also be part of the res gestae under Sec. 42 of the same Rule." (p. 21, RTC Decision.)

Moments after the shooting, Jose Medrano met Diga holding a long gun just ten (10) meters west of the weapon's carrier. He was going westward. Using the familiar Yankee expression: Jose Medrano saw Panfilo holding the smoking gun.

The Court dismissed as pure invention-hearsay Felipe Cacatian's allegation that when Fermin's brother-in-law, Amado Robles, asked who shot him, his reply was: "I did not see because they were among the bushes and it was dark," (p. 13, RTC Decision) and that in a weak voice, he identified the killer as "the man of Lelo" (p. 21, RTC Decision). The trial court observed:

"x x x This witness would make of Fermin a liar even at the point of death. How could Fermin have said that the assailant were 'among the bushes' when there were no bushes but a few talahibs. How could Fermin have said that at the time of the incident in question it was dark when it was only between 4:30 and 5:00 o'clock in the afternoon? How could Fermin have said at one time that he did not see the gunwielder and just a few minutes later, he would say that they were the 'men of Lelo?' How could Fermin have said that his assailants were 'the men of Lelo' when there is no one by that name in Baggao? But more than that, the Court cannot believe this witness because in his written statement (Exhibit 'I'), he stated:

'That I and my companions suggested that Mrs. Domingo, wife of Fermin, will inquire from the latter who shot them and the late Fermin Domingo who could still talk told the following: 'Lucing, ti nangi kasta kanyak ni tao ni Herrero nga Panfilo Diga (alias Amin) kenni Eusebio Pigao.'

"The Ilocano portion of the quoted statement is translated, thus:

'Lucing, the ones who did us in were the men of Herrero who were Panfilo Diga alias Amin and Eusebio Pigao.'" (pp. 21-22, RTC Decision.)

Since a criminal case generally hangs on the credibility of the testimonies of witnesses and the trial court had the fullest opportunity to observe their demeanor while they were giving their evidence, we are not inclined to disturb its finding that the guilt of the accused was established beyond a reasonable doubt (People vs. Cayaan, G.R. No. 78900, May 21, 1990; People vs. Elizaga, 73 SCRA 524).

WHEREFORE, the appealed judgment is affirmed but with modification as to the imposable penalty. The accused, Panfilo Diga, is hereby sentenced to suffer three (3) penalties of reclusion perpetua and to pay death indemnity in the sum of P50,000 to the legal heirs of each of the victims, or a total of P150,000. Costs against the the appellant.

SO ORDERED.

Narvasa, C.J., Cruz, and Medialdea, JJ., concur.

Bellosillo, J., on leave.

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