

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLITO ACUÑA, JESUS RAMOS AND ANTONIO (TONY) DIONISIO, DEFENDANTS. JESUS RAMOS AND ANTONIO (TONY) DIONISIO, DEFENDANT-APPELL...**

*G.R. No. 94702. October 02, 1995*

Ponente: ROMERO, J.

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**ROMERO, J.:**

Petitioners Jesus Ramos and Antonio (Tony) Dionisio appeal from the Decision of May 22, 1990 of the Regional Trial Court of Malolos, Bulacan, Branch 20,[1] in Criminal Case No. 528-M convicting them of the crime of murder for the killing of Tranquilino Mariano and imposing on them the penalty of reclusion perpetua.

Ramos and Dionisio were charged together with one Carlito Acuña in an information which reads as follows:

"That on or about the 22nd day of November, 1988, in the municipality of Calumpit, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill one Tranquilino Mariano, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and stab with a bladed instrument, and use personal violence on the said Tranquilino Mariano hitting the latter on the different parts of his body, thereby causing him serious physical injuries which directly caused his death.

Contrary to law."

Ramos and Dionisio were arrested and detained on April 17, 1989 while Acuña remains at large. The following day Ramos and Dionisio filed an urgent motion for admission to bail. A hearing was conducted and on June 1, 1989, the trial court denied the motion. On June 28, 1989 Ramos and Dionisio were arraigned and pleaded not guilty to the charge.[2] Evidence presented at said hearing was automatically reproduced at the trial on the merits of the case, pursuant to Sec. 5, Rule 114 of the 1985 Rules on Criminal Procedure:

The record shows that on November 20 and 21, 1988, Acuña, Ramos and Dionisio went to the house of Tranquilino Mariano in Pungo, Calumpit, Bulacan. On both occasions, Mariano declined the invitation of the trio to go with them. Between 6:00 and 7:00 o'clock in the evening of November 22, 1988, the three came back and Acuña asked the permission of Virginia, Mariano's wife, to allow Mariano to go with them. Mariano then left the house with the three while Virginia went to sleep.

Around 11:00 o'clock that evening, Victoria Magaña and Luisa Blanco were on their way home from Monumento, Caloocan City. Since they were the only passengers left, the jeepney driver took them to the point nearest their respective residences ("inihatid"). As they alighted from the jeepney in front of the house of Ramos, they saw from a distance of two arms length, Ramos, Acuña, Dionisio and Mariano quarelling at the "pasibi" of the house of Ramos. They both saw Acuña hit the head of Mariano with a "dos por dos" piece of wood while

Ramos and Dionisio were holding the right and left hands of Mariano, respectively. As Mariano fell, the three, all armed with bladed weapons, took turns in stabbing Mariano. Afraid, the two women went home.

On or about 1:00 to 2:00 o'clock in the morning of November 23, 1988, while heeding the call of nature, Precy Bautista went out of her house. As she was passing through the terrace on her way to the comfort room outside, she saw Ramos, Dionisio and another person who was "small, thin and black," dragging a person whom she learned the following day to be Mariano.

Mariano's body was discovered by an unidentified person. It was brought to a funeral parlor where Dr. Juanito B. Sacdalan conducted an autopsy. Dr. Sacdalan found that Mariano sustained twelve (12) stab wounds, six (6) in front of his body and six (6) at the back. Mariano also had a hematoma on the left eye which might have been caused by a blow from a "hard" object.[3] He certified that 31-year-old Mariano died from multiple stab wounds, punctured lungs and a cut carotid artery.[4]

Virginia Mariano, the victim's wife, testified that she spent around P10,000 for the week-long wake for her deceased husband, P6,500 for his funeral service and P4,000 for his tomb and marker ("nitso" and "lapida"). In following up the prosecution of the case, she spent around P5,000.[5]

The defense interposed simple denial. Dionisio, 24 years old, testified that on November 23, 1988, he saw the prone body of Mariano with his face towards the field, his right hand on his back and his feet on the shoulder of the road. Mariano was wearing t-shirt, pants and slippers. His body was found three Meralco posts away from the house of Ramos which was located on the left side of the highway going to Pulilan, Bulacan.

For his part, 44-year-old Ramos testified that at about 8:00 o'clock in the evening of November 22, 1988, Mariano went to his house inquiring whether or not his brother-in-law, Rodolfo Acuña, who was Mariano's friend, had already been found. Mariano was riding a bicycle when he left Ramos' house at about 8:00 o'clock. The next morning, he saw the lifeless body of Mariano by the side of the highway. The bicycle was near Mariano's body, more or less fifty meters away from the house of Mariano's mother-in-law, Leoning Sorbito.

On May 22, 1990, the trial court rendered the aforementioned decision convicting Ramos and Dionisio of the crime of murder for the killing of Mariano. Hence, the instant appeal which hinges on the issue of credibility of the prosecution witnesses.

This Court has always adhered to the rule that where the issue is one of credibility, the appellate court will not disturb the findings of the trial court unless certain facts have been overlooked which, if considered, would affect the result of the case. The trial judge is, after all, in a better position to decide the question having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[6] A thorough poring over the records of the case at bench has not yielded any reason to depart from this rule on credibility so as to warrant reversal of the trial court's findings and conclusions. However, in the interest of justice, the contentions of appellants branding as contrary to human nature the testimonies of the prosecution eyewitnesses, shall be considered individually.

Appellants assert that, assuming the eyewitnesses' account to be true, it is highly incredible that they had not sensed the presence of Luisa Blanco and Victoria Magaña at the crucial time that the crime was being committed considering the distance of two arms length between them and said witnesses. However, as correctly pointed out by the Solicitor General, it could be that appellants and Acuña were so engrossed in the assault upon Mariano that they failed to notice the arrival and presence of other persons in the area. Moreover, there was a "gumamela" plant between the appellants and the witnesses which had been planted in such a way that while the witnesses could see the incident and observe what transpired, the appellants, preoccupied as they were in committing the criminal act,

failed to notice them in turn.[7]

While it is true that Victoria Magaña and Luisa Blanco are first cousins (not sisters as alleged by appellants), and also first cousins of the victim, their respective fathers being the brothers of the victim's mother,[8] such relationship alone need not affect their credibility. There is nothing in our laws that disqualifies relatives of the victim from testifying in a criminal case involving said victim as long as said relatives who were actually present at the scene of the crime, witnessed its execution.[9] Furthermore, the absence of evidence showing possible ill motive on the part of prosecution eyewitnesses Victoria and Luisa in testifying against appellants raises the presumption that they were not so moved. Therefore, their testimonies must be given full faith and credit.[10]

That they failed to report the incident immediately to the victim's wife is explained by the fact that they feared for their lives because the appellants were locally known troublemakers who would intimidate people once they fell under the influence of liquor.[11] Their initial reluctance in getting involved in the criminal investigation and prosecution is understandable. We take judicial notice of the fact that when their townmates are implicated in a criminal case, most people turn reticent. They do not promptly report the incident for fear of reprisal. Such reticence has in fact been declared as not affecting credibility.[12]

In the same manner, the credibility of prosecution witness Precy Bautista may not be affected. Failing to find a reason strong enough to discredit her, appellants claim that her testimony is flawed by the six-month delay before she volunteered her testimony. However, regardless of such testimony, the prosecution's case remains on solid ground relating as it does to a matter transpiring after the actual commission of the crime and dovetailing with the account of the two eyewitnesses. One witness less on a circumstantial matter cannot possibly reverse a finding of guilt inasmuch as the testimony of a lone credible eyewitness, absent signs of impropriety or falsehood, suffices to convict an accused.[13]

Appellants cite alleged inconsistencies and contradictions in the testimonies of the prosecution witnesses which they insist should be considered in their favor. Thus, they point to the testimony of Dr. Sacdalan that the victim sustained stab wounds both in front and at the back of his body, which is allegedly contrary to the prosecution eyewitnesses' account that the victim was stabbed several times after he had fallen on the ground. They believe that it would have been impossible for the victim to suffer stab wounds on his back unless his body was rolled over before it was stabbed. We find, however, that this alleged inconsistency is a minor one that cannot detract from the prosecution's evidence on the stabbing of the victim. The transcripts show that the eyewitnesses did not categorically state that after he was hit by a piece of wood, the victim immediately collapsed. Rather, it was after the victim had been hit on the head several times by Acuña that he fell.[14] As such, the possibility that even before the victim fell, the assailants had begun stabbing him, cannot be discounted. After all, in the scuffle, the stabbing could not have been perpetrated in slow motion, such that each movement of the protagonists could be delineated with precision. It is sufficient that the manner of stabbing is congruent to the stab wounds found on the body of the victim.

The fact that Dr. Sacdalan found only one hematoma on the victim's left eye which could have been caused by the blow of a blunt object is not contradictory to the prosecution eyewitnesses' testimony that the victim's head was hit several times. There is no definitive testimony that all the "several" blows of the "dos por dos" which were inflicted by Acuña landed on the victim. It is possible that while Acuña swung the piece of wood a number of times, only one hit his left eye, producing the hematoma referred to in Dr. Sacdalan's findings.

Appellants also capitalize on the testimony of Dr. Sacdalan that when he autopsied the body of the victim at around 10:00 o'clock in the morning of November 23, 1988, rigor mortis had not yet set in. According to Dr. Sacdalan, cadaveral rigidity or rigor mortis normally sets in within three to six hours from death. Thus, appellants

assert that the prosecution eyewitnesses' testimony that the crime transpired between 10:00 and 11:00 o'clock in the evening of November 22, 1988 could not possibly be true. It should be remembered, however, that while the testimony of Dr. Sacdalan was accepted by both the prosecution and the defense as that of an expert, his conclusions were merely tentative. It devolved upon the defense to prove that the victim died instantaneously after the assault. Since there is no proof regarding the exact time of expiration of the victim, it is possible that he might not have died immediately thereafter. Moreover, even Dr. Sacdalan admitted that his opinion on the time rigor mortis sets in is not a hard and fast rule which applies in all cases of death because several factors have to be taken into account.[15]

As such, these alleged inconsistencies may be regarded as minor ones which do not affect appellants' guilt or innocence. On the contrary, contradicting statements on minor details may very well be considered badges of candor instead of determinative of the credibility of eyewitnesses.[16] Inconsistencies which may be caused by the natural fickleness of memory tend to strengthen rather than weaken the credibility of witnesses because they erase any suspicion of a prior rehearsal. What is important is that the testimonies reinforce each other on the essential facts and that the respective versions corroborate and substantially coincide with each other to make a consistent and coherent whole.[17]

In their defense, appellants did not resort to alibi but on bare denial which constitutes self-serving negative evidence. This cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testified on affirmative matters.[18] Firm is the rule that an affirmative testimony has greater value than a negative one for the reason that he who denies a certain fact may not remember exactly the circumstances on which he bases his denial.[19]

Appellants' reliance on the oft-quoted line that a "guilty man flees even if no one pursues him while the innocent stands bold as a lion," sounds more like a whimper of desperation than a strong assertion of innocence. That an accused proved that he stayed to watch nonchalantly the outcome of his culpability does not negate his guilt. Although it is settled that flight of an accused is competent evidence against him as tending to establish his guilt, non-flight, on the other hand, is not conclusive proof of innocence.[20]

The trial court correctly convicted appellants of the crime of murder under Art. 248 (1) of the Revised Penal Code. The killing is qualified by abuse of superior strength which is alleged in the information. Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime.[21] The collective strength of the three assailants, even if they were all drunk,[22] was obviously disproportionate to that of the victim.

Like the trial court, we find that neither treachery nor evident premeditation attended the killing. There was no treachery because the manner by which the initial assault was inflicted had not been clearly proved. Treachery cannot be presumed but must be proved by clear and convincing evidence as conclusively as the killing itself.[23] Neither can there be evident premeditation as it was not established beyond reasonable doubt that the appellants deliberately planned and carried out their decision to kill Mariano.[24]

In the absence of any aggravating or mitigating circumstances in the commission of the crime, the correct penalty is reclusion perpetua, the medium period[25] of the penalty of reclusion temporal maximum to death imposed for murder under Art. 248 of the Revised Penal Code. We find, moreover, that the heirs of Tranquilino Mariano are entitled to civil indemnity which, pursuant to jurisprudential pronouncements,[26] shall be in the amount of P50,000.00.

WHEREFORE, the herein questioned Decision convicting appellants Jesus Ramos and Antonio Dionisio of the

crime of murder for the killing of Tranquilino Mariano and imposing on them the penalty of reclusion perpetua.is hereby AFFIRMED. In addition, appellants shall solidarily indemnify the heirs of Tranquilino Mariano in the amount of P50,000.00. Costs against the appellants.

**SO ORDERED.**

Feliciano, (Chairman), and Vitug, JJ., concur.  
Melo, J., on leave.

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[1]. Presided by Judge Amante M. Laforteza.

[2]. Record, p. 119.

[3]. TSN, May 17, 1989, pp. 9-12.

[4]. Exh. "C."

[5]. TSN, July 17, 1989, pp. 7-9; Exhs. "D" & "F."

[6]. People v. Lorenzo, G.R. No. 110107, January 26, 1995, 240 SCRA 624; People v. Carpio, G.R. Nos. 82815-16, October 31, 1990, 191 SCRA 108.

[7]. TSN, May 3, 1989, pp. 9-10.

[8]. Ibid., p. 4.

[9]. People v. Nitcha, G.R. No. 113517, January 19, 1995, 240 SCRA 283, 292 citing People v. De la Cruz, G.R. No. 68319, March 31, 1992, 207 SCRA 632.

[10]. People v. Belibet, G.R. No. 91260, July 25, 1991, 199 SCRA 587.

[11]. TSN, May 3, 1989, pp. 2-3; See: People v. Baduya, G.R. No. 84448, February 7, 1990, 182 SCRA 57.

[12]. People v. Villaruel, G.R. Nos. 110803-04, November 25, 1994, 238 SCRA 408; People v. Israel, G.R. No. 97027, March 11, 1994, 231 SCRA 155; People v. Fuertes, G.R. No. 104067, January 17, 1994, 229 SCRA 289; People v. Osias, G.R. No. 88872, July 25, 1991, 199 SCRA 574; People v. Martinada, G.R. Nos. 66401-03, February 13, 1991, 194 SCRA 36.

[13]. People v. Abapo, G.R. Nos. 93632-33, December 28, 1994, 239 SCRA 469, 479.

[14]. TSN, April 24, 1989, p. 28.

[15]. TSN, May 17, 1989, pp. 20-21.

[16]. People v. Gamboa, G.R. No. 91374, February 25, 1991, 194 SCRA 372.

[17]. People v. Cajambab, G.R. No. 111805, January 26, 1995, 240 SCRA 643; People v. Fernandez, G.R. No. 86495, May 13, 1992, 209 SCRA 1.

[18]. People v. Dela Torre, G.R. Nos. 90804-05, July 1, 1991, 198 SCRA 663.

[19]. People v. Mendoza, G.R. No. 109783, September 22, 1994, 236 SCRA 666, 673 citing People v. Mendoza, G.R. No. 97430, June 26, 1992, 210 SCRA 517.

[20]. People v. Comia, G.R. No. 109761, September 1, 1994, 236 SCRA 185; People v. Genobia, G.R. No.

110058, August 3, 1994, 234 SCRA 699.

[21]. People v. Daquipil, G.R. Nos. 86305-06, January 20, 1995, 240 SCRA 314, 332-333.

[22]. TSN, May 3, 1989, p. 3.

[23]. People v. Cedenio, G.R. No. 93485, June 27, 1994, 233 SCRA 356.

[24]. People v. Cascalla, G.R. No. 96652, January 25, 1995, 240 SCRA 482.

[25]. Art. 64 (1), Revised Penal Code.

[26]. People v. Saulo, G.R. No. 94547, July 29, 1992, 211 SCRA 888.

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