

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ELPIDIO A. LOSTE, @ “PEDIO”;
DEFENDANT-APPELLANT.**

G.R. No. 94785. July 01, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

The night of the town fiesta of Maydolong, Eastern Samar, on August 15, 1980, was marred by the death of Ventura Elardo, 72-year old farmer, due to severe hemorrhage caused by deep and fatal wounds in his right nipple inflicted by accused-appellant Elpidio Loste who was found guilty of the crime of murder and sentenced to suffer reclusion perpetua.[1]

The prosecution evidence shows that on August 15, 1980, Gregorio Busa, 63 years of age and farmer, was a guest of his brother-in-law, Fausto Sanchez at Maydolong, Eastern Samar.[2] At about 8:00 o'clock in the evening, Busa walked home to Barangay Maybocog, Maydolong, Eastern Samar, with a flashlight on hand to illuminate his way. It was at Sitio Malabon, near the house of one Rafael Busa where he noticed his barriomate, Ventura Elardo, walking behind him about one meter away, and together, they proceeded to go home. After a half-hour walk, Elardo stopped to answer the call of nature. Busa continued to move on when he heard a "lagatak," slashing sound. He beamed his flashlight in the direction where the sound came from. He was petrified when he saw Elpidio Loste hacking Elardo with a sharp-edged bolo.[3] He then chased Busa but gave up after a distance of about 40 meters.[4] The beam of light from his flash-light enabled Busa to witness the stabbing of Elardo by Loste, who was known to him for years.

That same evening, Teofisto Busa, 28, farmer of Maybocog, Eastern Samar, together with Juana Borac and Carmen Cafe, were on their way home.[5] At the left side of the road going to Maybocog, they detected a fallen body and with torchlight, recognized it to be that of their barriomate, Ventura Elardo. Out of fear, they froze where they stood. Immediately thereafter, Teofisto Busa informed Bernardo Elardo, Ventura's son about the gruesome scene.

Bernardo Elardo hired his neighbor's vehicle for P500.00 and together with his sister and Teofisto, they rushed their father to Borongan Eastern Samar Provincial Hospital. While hovering between life and death, Ventura told Bernardo that he was hacked by Elpidio Loste.[6]

As a result of the mortal wounds inflicted by Loste, Ventura finally succumbed at 1:00 o'clock in the morning of August 16, 1980.

Dr. Reinerio Zamora who examined and treated the deceased, certified that the deceased sustained two (2) wounds: wound no. 1 located in the right nipple cutting the lower ribs; and wound no. 2 located two (2) inches below wound no. 1 and testified that these wounds might have been caused by a sharp-bladed instrument like a bolo.[7]

The defense had a different story to tell.

On August 15, 1980, Elpidio Loste, 34, married, farmer, and resident of Maydolong, Eastern Samar, visited his cousin, Prudencio Loste at Maydolong where they had a tuba drinking spree.[8]

It was already 7:30 in the evening when he went home very drunk. While he was approximately seven (7) meters away from his abode, he was suddenly pursued by Leo Altar, Romeo Capada, and Ernesto Dalino who were yelling and challenging him to a fight.[9] For fear that these men would make good their threat, he screamed thrice for his wife, Norma Loste, who readily came to his succor. Once inside his house, the men remained in the yard and stoned his home,[10] prompting him to go down but was timely prevented by Norma, Felisima Hugo and Engracia Obina. Having imbibed too much tuba, he fell asleep unmindful of the stone-throwing and the people in his home who stayed up the whole night to watch over him lest he might again go down.[11]

The following day, while Norma was fetching water near Malabon bridge, the news about the death of Ventura Elardo broke the tranquility of the morning. It was while she and her family were taking breakfast that Patrolman Billy Cantado came and brought her husband, Elpidio Loste, to Maydolong Municipal Building for investigation regarding the heinous killing of Elardo.

Subsequently, an information was filed stating:

"That on or about the 15th day of August, 1980 at about 10:00 o'clock in the evening, along the National Road at Malabon, Maydolong, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation and with intent to kill one, Ventura Elardo, did, then and there, wilfully, unlawfully and feloniously, attack, assault, stab and wound the latter with the use of a bolo, which the accused provided himself for the purpose, thereby inflicting wounds on the body of said Ventura Elardo and the said wounds caused the death of the latter.

CONTRARY TO LAW with the aggravating circumstance of nighttime which was sought for to better accomplish the commission of the offense."[12]

After trial, the court found Elpidio Loste guilty and imposed the penalty adverted to earlier. Hence, this appeal.

Only two (2) errors were assigned in the appellant's brief:

1. The lower court erred in convicting Elpidio A. Loste of the crime of murder without sufficient proof showing beyond reasonable doubt the guilt of said accused.
2. The lower court erred in holding that the crime committed is murder.

Decisive in this controversy is the credibility of prosecution witness Gregorio Busa.

Elpidio Loste brands as untruthful prosecution witness Busa's testimony that he was with the deceased when the macabre hacking took place because the latter had caught up with him on the way home. He avers that there was no prior agreement between Busa and the deceased to meet somewhere or near the house of one Rafael Busa on the way home. As such, the supposed rendezvous of Busa and the deceased never took place. Additionally, the deceased could not have overtaken Busa on the highway since being nine years older, he walks slower.

We cannot accept Loste's allegations. The meeting between Busa and Elardo by fluke of fate cannot be rejected simply because Elardo, being older, is slower than Busa, as argued by Loste. By Busa's account, he walked home very slowly which explains said encounter.[13]

Besides, we cannot underestimate Elardo's physical strength simply because he was in his seventies. Farmers, as a general rule, are stronger than those who live and work in the urban areas. Accustomed to tilling the fields and

loading and unloading sacks of palay, they retain their health and stamina even in their old age.

This was bolstered by Elardo's son who testified that his father was strong and not physically infirm, as Loste would have us believe.[14]

But Loste insists that on a moonless night such as when the alleged killing happened, it would have been impossible for Busa to see, much less recognize, the assailant. Based on Busa's testimony, he might have seen only the back of the perpetrator and not his face since the said perpetrator immediately chased him.[15]

It may be true that there was no moon when Elardo was killed, which was probably why Loste was so confident that his identity was safe, but by the light from his flashlight, Busa was able to clearly and positively identify the assailant. His testimony during the direct and cross examinations showed his indubitable identification of Loste, thus:

"Q. What did you do when you heard that slashing sound?

A. I turned back and focused the beam of my flashlight.

Q. What did you see when you focused your flashlight?

A. I saw Elpidio Loste.

x x x x x x x x

Q. What was in his possession if any?

x x x x x x x x

A. He was holding a bolo.

Q. And then what did Elpidio Loste do after you focused your flashlight?

x x x x x x x x

A. He started to chase me."[16]

In the barrios, like Maydolong, people generally know one another well. Hence, Busa could not have erred in identifying Loste that night as Elardo's killer.

If indeed Loste was innocent of the crime charged, he could have acted the role of a good Samaritan and come to the succor of the fallen Elardo, or brought him to the nearest hospital, or reported the incident to the victim's wife. But he did none of these things. Instead he chased Busa forthwith with his bolo and gave up only after running a distance of 40 meters which puts his claim of innocence in doubt.

Interestingly, Busa executed an affidavit on February 4, 1991, repudiating his testimony against Loste during the trial of the case.

We look with disfavor upon Busa's alleged retraction. It is too late in the day for his recantation without portraying himself as a liar. In the first place, the records show that it was executed ten years after he testified in court. In the second place, it was never presented in court. And in the third place, recantation made by a prosecution witness after conviction of the accused is unreliable and deserves scant consideration.[17]

Be that as it may, Busa's testimony remains unshaken. Bernardo Elardo, son of the deceased, corroborated Busa's testimony when he testified in court that before his father died, he (Ventura) pinpointed Loste as his attacker.

We agree with the trial court that Elardo's statement made an hour before his death and right after the hacking

incident bears all the earmarks, either of a dying declaration, or part of the *res gestae* which is an exception to the hearsay rule. Loste implicitly recognized this fact when he failed to impugn its admissibility either before the trial or in this appeal.[18]

The defense of alibi interposed by Loste miserably fails.

In a plethora of cases, we have consistently declared that for the defense of alibi to prosper, it must be established by clear and convincing evidence that the accused was at some other place for such a period of time as to negate his presence at the time and place of the crime when it was committed.[19] Loste himself admitted that he was in Maydolong, Eastern Samar when the killing happened. In a fit of drunkenness, he took the same road earlier taken by Busa and the deceased in going home to Maybocong at around 7:30 in the evening. Between the hours 8:00 and 9:00 o'clock in the evening, Elardo was hacked. Clearly then, it was physically possible for Loste to be at the time and place of the crime when it was committed.

The alibi proffered by Loste, his wife, auntie, and neighbor is hardly credible. With their testimonies, they were spinning webs of lies and prevarications.

The following are their testimonies.

Engracia Obina, 40, married, farmer, resident of Barrio Malabon, Maydolong, Eastern Samar, and neighbor of Loste testified that at around 7:00 o'clock of August 15, 1980, she ran to Loste's house to help prevent him from going downstairs.[20] She remained there till the following day when "the coast was clear," so to speak.

On the other hand, Felisima Hugo, 47, housekeeper, resident of Barangay Barobo, Llorente, Eastern Samar, and auntie of Loste narrated that Engracia went to the house of Loste at around 12:00 o'clock only after the stone-throwing incident had stopped and a policeman had come.[21]

Both Engracia and Felisima testified that Loste slept in the sala while they kept their vigil over him for fear he might confront the hostile group downstairs. On the other hand, Loste testified that all the while, he slept in his bedroom.[22]

Not much credence should be given to the testimonies of Felisima and Engracia as they are Loste's auntie and neighbor, respectively, and are naturally biased in his favor. As for Norma's testimony that Loste slept the whole night and never woke up till the following day, it is undeniably tainted with bias for it springs from the natural desire of a wife to bail out her husband from criminal liability even to the extent of lying.

During the direct examination, Loste said that three men incessantly stoned his house with rocks. It taxes credulity that Loste would sleep the whole night while his home was being pelted with rocks. Ironically, he did not file any charges against these men.

After a careful study of the case, we find the evidence presented by the prosecution, upon which the trial court in turn based its judgment of conviction, to be overwhelmingly against the pretended innocence and alibi of Loste.

However, we disagree that the element of evident pre-meditation was present as to qualify the offense committed to murder. The prosecution had failed to establish how and why the crime was planned.[23]

But treachery was, indeed, present. Under the cover of darkness, Loste suddenly and unexpectedly sprang from the darkness and attacked Elardo with a deadly weapon. Unarmed and unsuspecting, Elardo was hacked twice in his right nipple. The wounds sustained by Elardo eloquently bespeak of his unpreparedness to defend himself. He was not able to parry with his hands before the fatal blows were delivered. Obviously, Loste employed means, methods or forms in the execution of the felony which insures its commission without risk to himself arising from any defense which the offended party might take.[24]

Again, the trial court erroneously appreciated the generic aggravating circumstance of nighttime because it is already absorbed by the circumstance of treachery or alevosia.

Finally, we note that the lower court's judgment was penned by a judge who did not hear the case. However, we find no cogent reason to reverse Judge Auxencio C. Dacuycuy's judgment. As earlier stated, the verdict was fully substantiated and supported by evidence.[25]

WHEREFORE, the Decision of the court a quo dated January 12, 1989 is hereby **AFFIRMED** with the modification that the civil liability of accused-appellant is increased to P50,000.00 in line with current juris-prudence.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Regional Trial Court, 8th Judicial Region, Branch 1, Borongan, Eastern Samar, Judge Auxencio C. Dacuycuy, Presiding.

[2] T.S.N., August 4, 1981, p. 14.

[3] Id., pp. 17, 30-31.

[4] Id., p. 18.

[5] T.S.N., August 10, 1981, pp. 62-66.

[6] T.S.N., August 10, 1981, pp. 54-55.

[7] T.S.N., June 29, 1981, pp. 2-6.

[8] T.S.N., May 28, 1992, p. 144.

[9] T.S.N., March 29, 1982, p. 3.

[10] Id., p. 4.

[11] Id., p. 7.

[12] Regional Trial Court, 8th Judicial Region, Branch 1, Borongan, Eastern Samar, First Assistant Provincial Fiscal, Almario A. Montes.

[13] T.S.N., August 4, 1981.

[14] Id.

[15] T.S.N., August 24, 1981.

[16] Id., August 4, 1981, pp. 17-18.

[17] *People v. Torino*, Nos. L-18767 and L-18789-90, May 30, 1964, 11 SCRA 287.

[18] *People v. Mison*, G.R. No. 63480, February 26, 1991, 194 SCRA 432.

[19] *People v. Noriel Fule*, G.R. No. 83027, February 28, 1992.

[20] T.S.N., December 7, 1981, pp. 83-87.

[21] T.S.N., February 25, 1982, pp. 133-137.

[22] T.S.N., May 28, 1982, p. 147.

[23] *People v. Laredo*, G.R. Nos. 81249-51, May 14, 1990, 185 SCRA 383.

[24] *People v. Balatucan, et al.*, G.R. Nos. 93805-06, February 7, 1992.

[25] *People v. Buka, et al.*, G.R. Nos. 68311-13, January 30, 1992.

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