

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR ESCANDOR AND FIDEL ESCANDOR, ACCUSED-APPELLANTS.

*G.R. No. 95049. December 09, 1996*

Ponente: FRANCISCO, J.

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### FRANCISCO, J.:

NESTOR ESCANDOR and FIDEL ESCANDOR appeal from the decision of the Regional Trial Court of Masbate[1] finding them guilty beyond reasonable doubt of the crime of murder and sentencing them to suffer "imprisonment of TWELVE (12) YEARS, FIVE (5) MONTHS and TEN (10) DAYS of prision mayor as minimum, to TWENTY (20) YEARS of Reclusion Temporal as maximum" and "RECLUSION PERPETUA", respectively, and "to pay jointly and severally the heirs of the victim Sabino Huelva the amount of Thirty Thousand Pesos (P30,000.00), and to pay the costs." [2] They impute to the trial court four alleged errors, substantially reduced as follows: (1) insufficiency of the prosecution's evidence to sustain conviction; (2) disregard of appellants' respective defenses of self-defense and alibi; (3) failure to appreciate the testimony of Sgt. Arturo Aparejado; and (4) misappreciation of material facts.

The facts as borne out by the evidence on record and succinctly summarized in the appellee's brief, are as follows:

"On 02 December 1988, at about 7:00 o'clock in the morning (TSN, 27 June 1989, p. 1), the victim Sabino Huelva y Maglente and his three (3) children Glenn, Madelyn and Gil were walking along a trail in Cagara, Baleno, Masbate from their house towards their farm located in Sitio Banayong, Baleno, Masbate (Id., pp. 1-3). Gil and Madelyn were walking ahead followed by Glenn who was then trailed by the victim (Id., p. 5). They met appellants, father and son Fidel and Nestor Escandor, who were walking towards the opposite direction.

"As the two groups passed each other, appellant Nestor Escandor suddenly and without any warning shot the victim in the back (Id., p. 3). x x x.

"When the victim tried to get up, he was again shot at, this time by the other appellant, Fidel, hitting the victim in the upper right breast and causing him to slump to the ground (Id.). As soon as they heard the first shot, Madelyn and Gil Huelva, two of the victim's children, scampered away (Id., p. 7). After the incident, Glenn Huelva immediately rushed home to inform his mother, Erlinda Huelva, that his father was killed by appellants (Id., p. 9). Without wasting time, Erlinda and Glenn went to seek the help of a barangay councilman of Cagara, Ernesto Rapsing, who accompanied them to the scene of the crime (Id., pp. 9-10). On their way, Erlinda, Glenn, Rapsing, Roque Hermina and Marcelita Caballero, met appellant Fidel Escandor who came from the direction of the crime scene and apparently was then on his way home (Id., p. 10). Upon arrival at the scene of the crime, they found the victim already dead.

"At about 9:00 o'clock a.m. of the same day, after having been informed of the shooting incident, Pat. Jesus Huelba, Jr. together with P/Sgt. Arturo Aparejado, Pfc. Oscar Rejuso, Pfc. Jesus Esquilona and Pat. Santiago Aguilar, Jr. proceeded to the crime scene to investigate (TSN, 04 August 1989, pp. 2-3).

"The police investigators found the victim lying face down and bearing gunshot wounds (Id., pp. 3-4; Exhs. "A-2" & A-3, Records, p. 72. Pat Huelva, no relation to the victim (Id., p. 7), proceeded to do a sketch of the crime scene (Id., p. 4; Records, p. 72)."[3]

Initially, appellants assail the credibility of Glenn Huelva, the prosecution's lone witness, by pointing out his relationship with the victim and as such his testimony is tainted with bias. Aside from this general averment in their brief, however, not an iota of evidence was ever presented at the trial to prove this charge. Relationship with the victim per se is not proof of prejudice.[4] Nor is it a sufficient motive to testify falsely.[5] At any rate, the issue hinges on the trial court's assessment of the witness' credibility. Factual findings of the lower court especially on the credibility of the witnesses is generally accorded great weight and respect on appeal,[6] as the trial court is in the best position to make an honest determination of the witnesses' deportment during trial.[7] In this case, the trial court, in giving full faith and credence to the testimony of Glenn, observed that he "testified in a straight forward manner". We find no cogent reason to hold otherwise.

Appellants additionally impugn Glenn's credibility by citing what they call "marked inconsistencies" in certain portions the latter's testimony which is hereunder reproduced:

"x x x x x x x x

Q:

You said you shouted after your father was killed. You mean also that your brother and sister shouted?

A:

They ran away.

Q:

They ran away before the actual shooting?

A:

Yes sir.

Q:

That would be all your honor.

COURT:

Q:

Why did they run before the shooting?

A:

They ran away after my father was shot.

Q:

You mean to say, they ran away after your father was shot?

A:

Yes your honor."[8](Underscoring supplied).

We find the purported inconsistencies more apparent than real. As correctly averred by the appellee in its brief,

Glenn's answers to the questions propounded by the trial court should be considered as a clarification or rectification of his earlier answer to appellants' counsel that his brother and sister ran away before the shooting.[9] Besides, the alleged inconsistencies do not affect the substance of Glenn's testimony. It refers only to minor and insignificant details of the incident and not to the established fact that Glenn was then present at the place of the commission of the crime and actually witnessed the appellants' assault on Sabino. It, thus, reinforces rather than weakens Glenn's credibility as "minor inaccuracies suggest that the witness is telling the truth.[10]

Appellants also characterize as unbelievable Glenn's steadfast assertion that the killing of Sabino was not preceded by any exchange of words the latter and the appellants. They likewise assail as contrary to human experience the conduct of Glenn, his brother Gil and sister Madelyn in failing to warn, aid or defend their father from the assaults.

We are not persuaded by these arguments. There is nothing unusual in the manner of assaulting a person even if no altercation between the victim and the assailant immediately preceded the attack. In fact, judicial notice can be taken of the normal predisposition of those with criminal intent to execute their sinister plan in a way least expected in order to insure its execution. In this case, knowing that Sabino was then carrying a bolo, appellant Nestor Escandor suddenly and without any warning shot Sabino from behind. The execution of the appellants' plan was achieved with greater ease and without risk to themselves. On the other hand, it is not contrary to human experience if Glenn, his brother Gil and sister madelyn, were all dumbfounded by the event they witnessed. Neither will this fact militate against Glenn's credibility. The testimony of an eyewitness who, while the crime is taking place, made no outcry and exerted no effort in order to help the victim will not be rendered unbelievable by such fact alone.[11] Witnessing a crime is an unusual experience which elicits different reactions from the witnesses and for which no clear-cut standard form of behavior can be drawn.[12] In this case, Glenn, Gil and Madelyn must have been so shocked in witnessing the swift assault on their father that they failed to make an outcry. The failure of Glenn, on the other hand, to rush to his father's defense is understandable considering that Glenn was only seventeen years old at that time. In the face of two persons old enough to be his father[13]and who were both armed with guns Glenn could not be expected to rush to his father's rescue even if he was then armed with a bolo. Moreover, Glenn was not totally unmoved by the incident as the records disclose that after witnessing the gruesome murder of his father, he immediately ran towards their house to tell everything he saw to his mother.[14] His actuations at that time cannot be characterized, therefore, as less normal under such circumstances.

Appellants Fidel Escandor and Nestor Escandor invoke alibi and self-defense respectively.

Appellant Fidel's defense of alibi is unacceptable. He was positively identified by Glenn Huelva as the companion of Nestor in the morning of December 2, 1988,[15] and the one who fired the shot that hit Sabino on his right breast.[16] Against positive identification, alibi cannot prevail.[17] But even granting that he was at his house in the morning of the incident, this alone in the absence of other substantial evidence, is insufficient to remove the cloud of guilt, for by his own admission his house and the scene of the crime are only 60 meters apart,[18] and there is nothing to show that it was physically impossible for him to be at the place of the commission of the crime.

Nor will Nestor's contention that he merely acted in self-defense prosper. One who sets up self-defense "must rely on the strength of his own evidence."[19] Hence, if the evidence for the defense is of doubtful veracity, "conviction is imperative",[20] the accused having admitted the killing. Here, Nestor claims that Sabino was the aggressor. He shot Sabino twice, first on his hip when the latter was about to hack him (Nestor) with a bolo, and the second on his right chest.[21] Be that as it may, the physical evidence however runs roughshod over Nestor's claim of self-defense. Dr. Conchita Ulanday, the Medical health officer of Aroroy, Masbate, who conducted the

post mortem on the body of Sabino[22] testified thus:

"x x x x x x x x

Q:

The number one wound, where was the point of entry?

A:

It is on this portion, the point of entry (witness pointing the upper portion of her right chest).

Q:

No. 2, where was the point of entry?

A:

Still in the chest 2-3 inches a distance.

Q:

No. 3?

A:

The point of entry was at the back, lower part of the back (witness pointing [sic] the side of her back)

Q:

No. 4?

A:

All point (sic) of entry No. 4 to 9 (sic) at the back.

Q:

It is only wound (sic) 4-9 at the back?

A:

Yes, sir.

Q:

Now in conducting Dr. this post (sic) mortem examination, did you probe the wounds?

A:

Yes, sir, as I said I was able to determine the location of the wounds.

Q:

You did not specifically states (sic) in your report the depth of the wound?

A:

I did not sir.

Q:

Why?

A:

It was all penetrating wounds.

COURT:

Q:

2 to 7, 4 to 9 are all penetrating wounds?

A:

Yes, Your Honor.

FISCAL:

Q:

Any of these wounds could cause death even rendering (sic) a medical assistance?

A:

Yes, sir."[23]

Sabino sustained no less than nine (9) wounds, most of which were located at the back portion of his body. Their number, not to mention their location, indeed disproves self-defense.[24]

Finally, we are in agreement with the trial court in disregarding the testimony of Sgt. Arturo Aparejado, one of the police officers who attempted to corroborate Nestor's claim of self-defense to the effect that when he arrived at scene of the crime he found the lifeless body of Sabino with a bolo on his hand.[25] Evidently, this is belied by the sketch (Exhibit "A") [26] of the crime scene prepared by Patrolman Jesus Huelva, Jr. upon Sgt. Aparejado's instruction himself which showed otherwise.[27] Absent any clear showing that Patrolman Huelva, Jr. deliberately omitted in Exhibit "A" some material facts, the presumption of regularity in the performance of his duty stands with full force.[28]

From the foregoing, it is beyond doubt that appellant are guilty of murder. We agree with the trial court's appreciation of the qualifying circumstance of treachery in view of the fact that the initial assault on Sabino was made from behind and was unexpected.[29] Appellants undoubtedly employed a method in the execution of the crime which tend directly and specially to insure its execution without risk to themselves arising from the defense which Sabino might make.[30] However, we can not stamp with approval the trial court's imposition of the penalty of reclusion perpetua on Nestor Escandor in view of the presence of the mitigating circumstance of voluntary surrender, which should instead be in its minimum period, that is, reclusion temporal maximum.[31] Applying the provisions of the Indeterminate Sentence Law, appellant Nestor is entitled to a minimum penalty of prision mayor maximum to reclusion temporal medium, the range of the penalty next lower to that prescribed by Article 248 of the Revised Penal Code.[32]

WHEREFORE, premises considered, the decision appealed from is AFFIRMED with MODIFICATIONS. Appellant Nestor Escandor is hereby sentenced to suffer the indeterminate sentence of ten (10) years and one (1) day of prision mayor maximum as the minimum penalty, to twenty years (20) of reclusion temporal maximum as the maximum penalty, together with all the accessory penalties provided by law. The penalty of reclusion perpetua meted to appellant Fidel is AFFIRMED. The award of indemnity in favor of the heirs of Sabino Huelva is hereby raised to FIFTY THOUSAND PESOS (P50,000.00) in line with the current jurisprudence.[33]

**SO ORDERED.**

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

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[1] Branch 45, Penned by Judge Gil P. Fernandez

[2] RTC Decision dated June 5, 1990, p. 7; Rollo, p. 19.

[3] Appellee's Brief, pp. 5-7; Rollo, pp. 69-71.

[4] People v. Campana, 24 SCRA 271.

[5] People v. Ibanan, G.R. No. 61652, June 22, 1984.

[6] People v. Estenzo, 72 SCRA 428.

[7] People v. Flores, 313 Phil. 227.

[8] TSN, Glenn Huelva, June 27, 1989, p. 7.

[9] Brief for the Appellee, p. 19; Rollo, p. 83.

[10] See People v. Ocampo, 218 SCRA 609 (1993).

[11] People v. Rafols, 228 SCRA 351, 356 (1993).

[12] See People v. Radomes, 141 SCRA 548 (1986), citing People v. Amoncio, 122 SCRA 686 (1983).

[13] Appellant Fidel was then 64 years old, while Nestor was already 35; See Record, p. 127, p. 89 and p. 14.

[14] TSN, Glenn Huelva, June 27, 1989, p. 3 TSN, Erlinda Huelva, June 27, 1989, p. 9.

[15] TSN, Glenn Huelva, June 27, 1989, p. 4.

[16] TSN, Glenn Huelva, June 27, 1989, p. 3.

[17] People v. Miranday, 242 SCRA 620 (1995) citing People v. Cabuang, 217 SCRA 675 (1993); People v. Yadao, 216 SCRA 1 (1992); People v. Claudio, 216 SCRA 647 (1992).

[18] TSN, Fidel Escandor, October 19, 1989, p. 6.

[19] See People v. Decena, 235 SCRA 67 (1994).

[20] People v. Villaruel, 51 O.G. 242 [No. 10930-R, July 30, 1954] citing People v. Salahuddin, 51 Phil. 840, 842; People v. Cruz, 53 Phil. 635, 637; People v. Apolinario, 58 Phil. 586, 588; People v. Berio, 59 Phil. 533, 536; People v. Bauden 43 O.G. 2020, 2022; People v. Bakil, 44 O.G. 102, 107-108.

[21] TSN, Nestor Escandor, November 15, 1989, pp. 3-4.

[22] Exhibit "B" and Exhibit "B-1, Record, p. 73; Exhibit "C-1", Record, p. 75.

[23] TSN, Dr. Conchita Ulanday, September 11, 1989, pp. 4-5.

[24] People v. Amaro, 235 SCRA 8, 16 (1994) citing People v. Sarense, 214 SCRA 780 (1992) and people v. Sagadsad, 215 SCRA 641 (1992).

[25] TSN, Sgt. Arturo Aparejado, November 15, 1989, pp. 1-2.

[26] Record, p. 72.

[27] TSN, Jesus Huelva, Jr., September 11, 1989, p. 3.

[28] Rule 131, Section 3, paragraph (m), Rules of Court.

[29] *People v. Bello*, 237 SCRA 347 (1994); *People v. Muyano*, 235 SCRA 184 (1994); *People v. Asil*, 141 SCRA 286 (1986).

[30] See Art. 14 paragraph (16), Revised Penal Code.

[31] Article 64, paragraph 2, Revised Penal Code.

[32] Article 61, paragraph 3, Revised Penal Code; *People v. Manguikay*, 237 SCRA 587 (1994) citing *People v. Ocaña*, 229 SCRA 341 (1994).

[33] *People v. Maturgo, Sr.*, 248 SCRA 519 (1995); *People v. Ocaña*, 229 SCRA 341, 349 (1994).

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