

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELORDE ANTUD, ACCUSED-APPELLANT.

G.R. No. 95684. October 27, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Elorde Antud was charged on August 11, 1987 in Criminal Case No. 2011 of the Regional Trial Court of Prosperidad, Agusan del Sur, Branch 6, with the crime of murder and, on a plea of not guilty, was tried therefor upon an information which alleges –

"That on or about the 24th day of December, 1986, at about 8:10 o'clock in the evening, more or less, at Purok VI, Barangay Alegria, San Francisco, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation did then and there wilfully, unlawfully and feloniously assault, attack and stab one FERNANDO SIEGA with the use of a hunting knife, thereby inflicting upon the said victim mortal wounds which caused his instantaneous death thereafter, to the damage and prejudice of the heirs of the said victim, which damages consists of actual, compensatory and moral damages."[1]

The antecedents and pertinent facts of the instant case, with the respective evidence for the prosecution and the defense, are narrated by the court a quo as follows:

"It appears that the herein accused was a convicted (parolee) Prisoner No. 114560-P of the Court of First Instance of Agusan del Sur, for homicide.

"It appears further that accused Elorde Antud escaped from the custody of the Provincial Warden on November 22, 1987, and Honorable Carlo H. Lozada, RTC Judge, ordered the case archived as of December 11, 1987 due to the aforesaid escape of the accused.

"The escaped prisoner was recaptured on February 10, 1988. Arraignment was made upon the accused on March 22, 1988, where the accused pleaded not guilty.

x x x

"The prosecution present(ed) Fermin Siega, father of deceased Fernando Siega, to prove the civil liability. The witness point(ed) to and identified the accused Elorde Antud who (was) in the courtroom.

x x x

"Witness Fermin Siega testified that he only knew of the death of his son upon being informed by Mrs. Loling Laput at past 8:00 o'clock in the evening.

"The next prosecution witness presented was Leonisa Espera, 22 years old, married, housekeeper and resident of Alegria, San Francisco, Agusan del Sur, and she testified that in the evening of December 24, 1986, at 8:10 o'clock in the evening, she was walking towards Alegria from San Francisco, together with Fernando Siega hiking, and her other companions were Leticia Cero and Esmeralda Cabanban.

"Witness Leonisa Espera further testified that while so hiking with the companions she mentioned, there suddenly appeared a person at the back of Fernando Siega who then was stabbed at the back by the person whom she identified and pointed to be Elorde Antud, who was in the courtroom (T.S.N., July 27, 1988, Direct Examination of Leonisa Espera, pp. 2-3, Stenographer Erlinda Sumampong).

"Same witness testified that the weapon used by the accused was a hunting knife (ibid, p. 4). That after the stabbing, Elorde Antud went away, and Fernando Siega ran forward after the incident and he fell to the ground face down, about forty (40) meters farther at the shoulder of the road, and she and her companion Esmeralda Cabanban lifted him up and loaded him in the jeep of Pearson and brought him to the Provincial Hospital in Patin-ay (ibid, pp. 4-5).

"The last witness for the prosecution was called to the witness stand at 2:45 PM of November 10, 1988 and this witness, Dionesio Tagleong, under oath, testified that he is 21 years old, married and a resident of Alegria, San Francisco, Agusan del Sur, having resided thereat for twenty-five (25) (sic) years and that during the said period of time, he knew a person by the name of Fernando Siega and also a person by the name of Elorde Antud.

"The witness point(ed) to the person he knows as Elorde Antud who was inside the courtroom. Same witness testified that in the evening of December 24, 1986, particularly at 8:00 o'clock in the evening, he was in the house of his elder brother at Brgy. 5, Alegria, San Francisco, Agusan del Sur where he was just resting.

"On November 10, 1988, the prosecution formally presented their exhibits consisting of Exhibit 'A', which is the medical certificate (Page. 4, Case Records), signed by Joel L. Esparagoza, Senior Resident Physician at the Agusan del Sur Provincial Hospital in Patin-ay, Prosperidad, Agusan del Sur, and the signature marked as Exhibit A-1, which medical certificate attest to the fact that Fernando Siega, 23 years old, single, male, was examined in the hospital from '12-24-86 at 8:45 A.M., and found to be dead on arrival' with perforating stab wound gaping at the (ill[e]gible) posterior chest wall about 2 1/2 inches long.

x x x

"The defense presented its first witness Eduardo Estepano on April 11, 1989, and he testified that he knows Elorde Antud whom he pointed to in the courtroom, and witness testified that on December 24, 1986 at 4:00 o'clock in the afternoon, he was in the house of Elorde Antud situated in sitio Feeder Road, Purok No. 6, Poblacion Brgy. Alegria, San Francisco, Agusan del Sur, for he was invited to slaughter a dog and that was the eve of Christmas.

"Witness testified that the slaughtering of the dog was finished at 4:00 o'clock in the afternoon and the cooking of the dog meat by frying was finished at 7:00 o'clock, and they started to eat and drink tuba up to 9:00 o'clock in the evening, and that after 9:00 o'clock he went home and went to sleep (T.S.N., April 12, 1989, Cecilio Catingub, Stenographer - Direct Testimony of Eduardo Estepano, pp. 2-3).

"Witness Estepano testified that from 4:00 P.M., until 9:00 o'clock P.M., Elorde Antud was in his house and did not go out.

x x x

"The next witness of the defense was Leonardo Guma, who is a resident of Lapag, San Francisco, Agusan del Sur and on the witness stand, he declared that he knows Elorde Antud and witness testified that at 6:00 o'clock in the evening of December 24, 1986, he bought fish at the San Francisco Public Market and having bought fish, he went home to his house located in Alegria Witness proceeded to testify that he noticed that he was following one boy and some girls and that the boy was Siega and the name of the three girls were unknown to him.

"He testified that he saw a certain person who went near Siega whom he immediately stabbed. He said that he

saw the person who went near Siega and stabbed him and he saw the face of the assailant and even knows him. The witness was asked to go around in the courtroom and he testified that 'He is not around' (T.S.N., July 18, 1989, Elizabeth Fernandez, Stenographer - Direct Testimony of Leonardo Guma, p.3). The witness claimed that Elorde Antud is not the one who stabbed Fernando Siega (ibid)."[2]

Appellant took the stand in his behalf and his testimony was virtually a repetition of that of his witness, Eduardo Estepano, about their being in his house from 4:00 P.M. until 7:00 P.M., without leaving the place because of their preoccupation over the dog they had slaughtered and cooked. Expectedly, he contended that he did not stab and kill Fernando Siega. This brings us to the trial court's report on the evidence adduced on rebuttal.

"Prosecution presented a rebuttal witness, Dioscoro Rocacorba, who is a patrolman and resident of Alegria, San Francisco, Agusan del Sur, he having entered the police force of San Francisco since 1973 until the present time.

"He testified that in the evening of December 24, 1986, between 8:00 o'clock and 10:00 o'clock, Mr. Fermin Siega, reported to him about the incident of his son and at the same time requested him that he used (sic) his motorcycle with center-car to transport his son to the Provincial Hospital in Patin-ay, Agusan del Sur.

"Same witness testified that when he accompanied the parents of the victim to the scene of the crime and upon reaching the scene of the crime, the victim was no longer there and so they proceeded to the provincial hospital, and before they left the place, Elorde Antud appeared and he boarded in the motorcycle with center-car (T.S.N., August 9, 1985, Stenographer Cecilio Catingub - Direct Examination of Dioscoro Rocacorba, pp. 3-4).

x x x

"The witness was asked what did Elorde Antud do in the provincial hospital and witness testified that as far as he observed, he just looked at the victim who was already dead.

"In going home from the hospital, one lady by the name of Esmeralda Cabanban and another lady by the name of Leonisa Espera were among those in the motorela going home.

x x x

"x x x they passed at the municipal building to blotter the incident and Elorde Antud was still (with) them, for he only alighted in front of their house in Barangay 6, Alegria."[3]

After trial, the court below promulgated its decision[4] dated July 3, 1990, finding the accused guilty of the crime charged and sentencing him to suffer the penalty of reclusion perpetua, to pay the heirs of the victim the sum of P30,000.00 as death indemnity, P10,000.00 for funeral, embalming and burial expenses, and P15,000.00 as moral damages.[5]

Not satisfied therewith, appellant now comes to us for the reversal of the aforesaid judgment and, on a lone assignment of error, faults the trial court for convicting him although his guilt was allegedly not proven beyond reasonable doubt.[6] Unfortunately, it is clear that the cards of fate are stacked against appellant and the prosecution has almost everything working on its side.

The records show that, as noted by the trial court, after the filing of the information in this case and while awaiting trial, appellant escaped from the custody of the Provincial Warden on November 22, 1987 and was at large until February 10, 1988 when he was recaptured in Barangay Lapinigan, San Francisco, Agusan del Sur.[7] His having jumped bail is akin to flight which is an added circumstance tending to establish his guilt, though silently.[8] Aware that he has no tenable defense,[9] he thought of fleeing, his purpose being to evade responsibility for the offense committed.[10] Verily, as the Court has often quoted, the wicked flee when no man

pursueth, but the righteous are as bold as the lion.[11]

The controversy in this case is reduced to one essentially of credibility, a weighing of the evidence of the prosecution against that of the defense. It is now too well settled to require extensive documentation that where the issue is the extent of credence to be properly given to the declarations made by witnesses, the findings of the trial court are accorded great weight and respect. Trial judges are undeniably in the best position to weigh conflicting declarations of the witnesses in light of their opportunity to observe and examine the witnesses' conduct and attitude at the trial and in the witness' chair.[12] This is obviously because the appellate tribunal can only read in cold print the testimony of the witnesses which commonly is translated from the local dialect into English. In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching, and listening may escape the reader of the translated words.[13] Consequently, appellate courts will not disturb the credence (or lack of it) accorded by the trial court to the testimony of witnesses, unless it be clearly shown that the trial court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[14]

The Court finds no reason to depart from the foregoing rule. Appellant was positively identified by eyewitnesses who were just at arm's length from the victim.[15] No dubious or evil motive whatsoever has been proved which would cause or impel them to falsely testify against appellant. It is much a matter of judicial acceptance that witnesses would not falsely impute to an accused a serious criminal offense if it is not the untarnished truth.[16] The three ladies who were with the victim were not only eyewitnesses; they were even Good Samaritans who brought the former to the Provincial Hospital at Patin-ay.[17]

The categorical identification made by these eyewitnesses should be given full faith and credit, especially in the total absence of any ill motive, grudge or animosity on their part. Greater weight is given to the positive identification of the accused by the prosecution witnesses than to the accused's denial and explanation concerning the commission of the crime.[18] Besides, as between the positive declarations of prosecution witnesses and the negative statements of the accused, the former deserve more credence and weight.[19] In case of contradictory declarations and statements, greater weight is generally given to positive testimonies than to denials by the accused.[20]

Accused's defense is anchored on alibi. It is a long settled jurisprudential doctrine that alibi cannot prevail over the positive identification by the prosecution witnesses of the authors of the crime.[21] Times without number, we have stressed the decisional rules on alibi and we do so again in the hope that the dispensation of criminal justice may benefit therefrom by preventing improvident resort to such a puerile defense.

Courts have always looked upon the defense of alibi with suspicion[22] and always receive it with caution,[23] not only because it is inherently weak and unreliable, but also because of its easy fabrication.[24] For alibi to serve as a basis for acquittal, it must be established by clear and convincing evidence. The requisites of time and place must be strictly met. The accused must show that he was at some other place where the crime was committed at the time of its commission.[25] Appellant must be able to demonstrate by convincing evidence that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[26]

The foregoing judicial pronouncements appear to have been lost on herein appellant who must, therefore, submit to the consequences of his disregard thereof. Thus, his claim of alibi, being supported only by the testimony of his friends, deserves scant consideration, more so in the light of his positive identification as the assailant.[27]

It is also significant that after the stabbing incident, the accused admitted to Dionesio Tagleong that he killed the deceased as established by said witness, to wit:

"q What about Elorde Antud at the time when you were already there near the body of Fernando Siega, where

was he if you know?

a He was following me.

q How far or how close was he when he was following you?

a Around five (5) meters.

q What did he tell you if there was any?

a He said that he was the one who killed Fernando Siega.

q What did you respond or answer if there was any?

a I was not able to answer because I was afraid.

q What else did he tell you if any?

a Only that statement that he was the one who killed and at that time he was holding a knife with blood." [28]

Tagleong testified on this matter of which he has personal knowledge and which, under the rules on admissibility of evidence, may not be excluded. Such admission by appellant constitutes part of the *res gestae*, having been made immediately subsequent to a startling occurrence before the declarant had the opportunity to contrive and with respect to the circumstances thereof. [29] Evidently, the killing of Fernando Siega was a startling occurrence; accused's admission of liability, as testified to by Dionesio Tagleong, was spontaneously made; and said admission specifically referred to the killing.

The defense argues that appellant should be acquitted because the prosecution failed to present any evidence to show motive on his part to kill the deceased. [30] As correctly pointed out by the Solicitor General, [31] lack or absence of motive for committing the crime does not preclude conviction of the offense since there are reliable eyewitnesses who fully identified appellant as the perpetrator of the offense. [32]

Additionally, the defense also contends that the testimony of the prosecution's rebuttal witness would appear incredible because it would be impossible for the assailant, who hid his identity in the killing, to expose himself before a policeman. [33] This proposition cannot pass judicial muster for while in some cases this Court has ruled that assailant's decision not to flee after the crime despite an opportunity to do so is not characteristic of a guilty person, [34] the opposite has also been upheld in a host of cases.

This Court has ruled that the fact that accused did not take flight but even helped the police to locate the supposed culprits, [35] or joined the search for the victim's body or helped in buying the victim's coffin, [36] or even attended his funeral, [37] may be badges of innocence, but are not sufficient grounds to exculpate accused from the proven criminal liability. Accused may not have fled from the scene of the crime, but this is not necessarily indicative of a clear conscience. [38] The crime may have been committed with impunity and accused may have thought that the victim or his heirs would not complain, [39] or that, the eyewitnesses will not be able to identify him. [40]

The information alleges the presence of the circumstances of treachery and evident premeditation. Indubitably, treachery attended the killing in this case as the stabbing was made from behind in a sudden and unexpected manner, [41] as the testimony of witness Leonisa Espera reveals:

x x x

"a While we were walking, there suddenly appeared a person at the back of Fernando Siega and stabbed him.

q You said Fernando Siega was stabbed; what part of the body of that person was stabbed?

a Right at his back."[42]

x x x

"a I saw him while he stabbed the victim at the back and I saw him clearly."[43]

which was corroborated by Dionesio Tagleong,[44] and even thereafter reiterated by defense witness Leonardo Guma.[45]

Evident premeditation is not, however, present in this case. It is elementary but sometimes overlooked that for this circumstance to be appreciated, there must be proof of (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (c) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.[46]

Such proof is required because the essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space must be evidence showing that the accused meditated and reflected on his intention between the time when the crime was conceived by him and the time it was actually perpetrated.⁴⁸ The foregoing requisites do not obtain in the case at bar.

Accused-appellant came to court protected by the constitutionally guaranteed presumption of innocence. However, such a presumption has been overturned beyond reasonable doubt by the required quantum of evidence to the contrary. His defense is insufficient and inadequate to tilt the scales of justice in his favor. The evidence he has adduced fall far short of the oft repeated dictum that the same, to be believed, must not only proceed from the mouth of credible witnesses, but must be credible in itself.⁴⁹

WHEREFORE, with the modification that the indemnity be increased to P50,000.00 in accordance with the latest jurisprudential policy,⁵⁰ the appealed decision is hereby AFFIRMED.

SO ORDERED.

Feliciano, Nocon, and Campos, Jr., JJ., concur.

Narvasa, C.J., (Chairman), on leave.

[1] Original Record, 1.

[2] Ibid., 137-139.

[3] Ibid., 141-142.

[4] Per Judge Sergio M. Lactao.

[5] Rollo, 23.

[6] Ibid., 31.

[7] Ibid., 17; Original Record, 22, 23, 29.

[8] People vs. Tangliben, 184 SCRA 220 (1990); People vs. Balansi, 187 SCRA 566 (1990).

[9] People vs. Mercado, 190 SCRA 452 (1990).

- [10] People vs. Gonzales, G.R. No. 96928, June 16, 1992.
- [11] Proverbs, 28:1, The Holy Bible, King James Version, 569.
- [12] People vs. Salamanes, et. al., G.R. No. 80436, June 2, 1992.
- [13] People vs. Baslot, et. al., G.R. No. 59738, June 8, 1992.
- [14] People vs. Salamanes, supra.
- [15] TSN, July 27, 1988, 13.
- [16] People vs. Caraig, 202 SCRA 357 (1991).
- [17] TSN, July 27, 1988, 16.
- [18] People vs. De Mesa, 188 SCRA 48 (1990).
- [19] People vs. Mariano, 191 SCRA 136 (1990).
- [20] People vs. Clores, 184 SCRA 638 (1990).
- [21] People vs. Bocatcat, Sr., et al., 188 SCRA 175 (1990); People vs. Obando, et al., 182 SCRA 95 (1990).
- [22] People vs. Bondoc, 85 Phil. 545 (1950).
- [23] People vs. Cinco, et al., 67 Phil. 196 (1939).
- [24] People vs. Rafallo, et al., 86 Phil. 22 (1950).
- [25] People vs. Mendoza, G.R. No. 97430, June 26, 1992.
- [26] People vs. Talla, et al., 181 SCRA 133 (1990).
- [27] People vs. Lucas, 181 SCRA 316 (1990).
- [28] TSN, November 10, 1988, 48.
- [29] Section 42, Rule 130, Rules of Court; People vs. Siscar, 140 SCRA 316 (1985).
- [30] Appellant's Brief, 7; Rollo, 35.
- [31] Appellee's Brief, 7; Rollo, 70.
- [32] People vs. Lumantas, 28 SCRA 764 (1969).
- [33] Appellant's Brief, 7; Rollo, 35.
- [34] People vs. Songcuan, et al., 176 SCRA 354 (1989).
- [35] People vs. Luardo, et al., 167 SCRA 685 (1988).
- [36] People vs. Bautista, 142 SCRA 649 (1986).
- [37] People vs. Luardo, supra.
- [38] People vs. Gardon, 129 SCRA 465 (1984).
- [39] People vs. Silfavan, 151 SCRA 617 (1987).
- [40] People vs. Gardon, supra.

[41] People vs. Delgado, 182 SCRA 343 (1990).

[42] TSN, July 27, 1988, 14.

[43] Ibid., id., 31.

[44] TSN, November 10, 1988, 51.

[45] TSN, July 18, 1989, 87.

[46] People vs. Iligan, et al., 191 SCRA 643 (1990).

48 People vs. Carillo, 77 Phil. 572 (1946).

49 People vs. Baquiran, 20 SCRA 451 (1967).

50 People vs. Sison, 189 SCRA 643 (1990).

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