

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO GABAS Y ALBARIDA, ACCUSED-APPELLANT. ANTONIO GABAS Y TULO (ALIAS TONIO) AND PEDRITO GAID (ALIAS NITTOY; AT LARGE), ACCUSED.

G.R. No. 96951. June 13, 1994

Ponente: PUNO, J.

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PUNO, J.:

Romeo Gabas and Antonio Gabas were convicted by the Regional Trial Court of Malaybalay, Bukidnon,[1] of the crime of Double Murder with Frustrated Murder for the killing of Epimaco and Estelita Verdida and the wounding of Efelito Verdida. The two (2) accused were made to suffer the penalty of reclusion perpetua for the double murder charge, and an indeterminate sentence of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum for the frustrated murder charge. The two were ordered to solidarily indemnify the heirs of Epimaco and Estelita Verdida the sum of sixty thousand pesos (P60,000.00). The other accused, Pedrito Gaid, was not apprehended and remain at large.

The prosecution established that on September 4, 1987, at around seven o'clock in the evening, Romeo Gabas, Antonio Gabas and Pedrito Gaid, all armed and wearing black masks, barged into the house of Epimaco and Estelita Verdida and announced a robbery.[2] At that time, the spouses and their six children (Miguela, Jessa, Ray, Roy, Jeson and Efelito) had just finished taking their supper.[3] Upon seeing the intruders, Estelita crawled on the floor and tried to seek shelter in another room. Antonio ran after her and started stabbing her. Estelita sustained stab wounds on the back and on the esophagus. Her hands were also severed. In the process, Antonio's mask fell off his face.[4]

In the meantime, Romeo and Pedrito ganged up on the hapless Epimaco. Romeo shot Epimaco on the chest of her brother.[5]

Consequently, an Information for Double Murder with Frustrated Murder was filed against Romeo Gabas, Antonio Gabas and Pedrito Gaid. It reads:

"That on or about the 4th day of, September, 1987, in the evening, particularly inside the house of spouses Epimaco Verdida and Estelita Verdida at Purok 6, sitio Inawaan, Malabuaya, barangay Batanagan, municipality of Valencia, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with PEDRITO GAID Alias "Nitoy", who is still at large, conspiring, confederating and mutually helping one another, with intent to kill by means of treachery and evident premeditation, armed with a knife, bolo and unidentified rifle, with which they were conveniently provided and wearing black masks, did then and there wilfully, unlawfully and criminally stab, hack and shoot Epimaco Verdida and Estelita Verdida, inflicting upon their persons, mortal wounds, which caused their instantaneous death;

"That on the occasion, the above-named accused, armed with the same weapons, with intent to kill, by means

of treachery, did then and there wilfully, unlawfully and criminally shoot Efelito Verdida, hitting both his feet, which wounds would have caused his death, but nevertheless did not produce it by reason of causes independent of the will of the accused and the timely assistance accorded the victim Efelito Verdida, to the damage and prejudice of the victims in the amount they are entitled under the law.

"The crime was committed with the aggravating circumstances of nighttime and dwelling.

"Contrary to and in violation of Article 248, in relation to Articles 48 and 6 of the Revised Penal Code, as amended."

As stated earlier, only Antonio and Romeo Gabas were apprehended and tried. Accused Pedrito Gaid remain at large.

After the prosecution established the aforementioned facts, the two (2) accused adduced their respective evidence.

Accused Romeo Gabas relied on the defense of alibi. He claimed that on said date and time, he was residing in his father's house, his father then suffering from cancer of the liver. The whole morning of September 4, 1987, he allegedly weeded out grass in their ricefield. He returned to his father's house at around 5:30 in the afternoon, washed up, took supper and went straight to bed. The next day, he followed the same schedule. In the morning, he went to the field and weeded out the grass. He went back to his father's house for lunch. At about two o'clock in the afternoon, he was apprehended by the police authorities while watching a game of cards at a neighbor's house. He admitted that he knew spouses Epimaco and Estelita Verdida. They resided in the same barrio and his father's house was just three (3) kilometers from his father's house.[6] Accused Romeo Gabas' testimony was corroborated in substance by his brother Geonilo Gabas.[7]

Accused Antonio Gabas, on the other hand, presented a different version of the incident. He claimed that on the date and time in question, he went to the Verdida's residence to pay his debt. He requested Estelita Verdida to make an accounting of his outstanding obligation. Thereafter, he handed to Estelita the sum of twenty-five pesos (P25.00) as partial payment for his debt and promised that he would make good on his entire obligation after the harvest. Estelita allegedly got mad and hurled insults against him. This resulted in a heated exchange of words. Suddenly, Epimaco came into the room and started hacking him. He used Estelita to shield himself from Epimaco's hacking blows. He, nevertheless, sustained several hacking wounds on different parts of his body. He, thus, claimed that it was Epimaco, not Miguela, who hacked him.[8]

After trial, the court a quo rendered a decision, dated April 16, 1990,[9] finding the two (2) accused guilty as charged. The dispositive portion reads:

"WHEREFORE, the Court finds the accused ROMEO GABAS y ALBARIDA and ANTONIO GABAS y TULO alias Tonio, guilty beyond reasonable doubt of the crime of Murder for the killing of Epimaco Verdida and another crime of Murder for the killing of Estelita Verdida, as defined and penalized under Article 248 of the Revised Penal Code, and the crime of Frustrated Murder for the wounding of the victims' son, Efelito Verdida, as defined under Article 248, and penalized, under Article 250, in relation to Article 50, all of the Revised Penal Code.

"Considering the presence of aggravating circumstances of dwelling and employment of disguise, nighttime being absorbed by treachery, and there being no mitigating circumstance present to affect them, the court hereby sentences the two above-named accused to a penalty of reclusion perpetua for the killing of Epimaco Verdida. For the wounding of Efelito Verdida, the victims' son, the Court hereby sentences the same two accused to an indeterminate penalty of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum.

"The two accused are hereby ordered to pay jointly and severally the amount of P60,000.00 as indemnity to the

heirs of the deceased victims, Epimaco Verdida and Estelita Verdida. The weapons and the instruments used by the accused in the commission of the crime are hereby forfeited in favor of the government.

"The accused are hereby credited in full of (sic) whatever preventive imprisonment they may have undergo(ne) in this case pursuant to Article 29 of the Revised Penal Code, as amended.

"SO ORDERED." [10]

Only accused Romeo Gabas interposed the present appeal. He contends that:

I.

THE COURT ERRED IN RULING THAT APPELLANT ROMEO GABAS WAS POSITIVELY IDENTIFIED BY THE PROSECUTION EYEWITNESS.

II.

THE COURT ERRED IN FINDING APPELLANT ROMEO GABAS GUILTY BEYOND REASONABLE DOUBT OF MURDER ON TWO COUNTS AND FRUSTRATED MURDER.

In his brief, accused-appellant impugns the identification made by eyewitness Miguela Verdida that he was the one who stabbed the deceased Estelita Verdida. He points to the alleged discrepancy in the circumstance which led her to recognize and identify the masked malefactors. It is claimed that in Miguela's sworn statement [11] she deposed that despite the masks worn by the intruders, she recognized them by their hair, voice and posture. At the trial, however, Miguela testified that she was able to recognize and identify the intruders for, during the commotion, their masks fell off. Hence, accused-appellant urges that his identification by Miguela should be rejected.

Again, we are faced with the issue involving the credibility of the testimony of a prosecution eyewitness. The issue continues to confound courts for a witness' credibility is a subjective, amorphous quality, often defined as much by the preconceptions of the trial judge who perceive the witness as the latter testifies. A witness' credibility may also be affected by such factor as the plausibility of the theory and theme the witness was meant to support. [12]

Grappling the issue at bench, it bears emphasis that a sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Affidavits, ordinarily in a question-and-answer form, are usually and routinely prepared in police precincts by police investigators. Not infrequently, the investigator/interrogator propound questions merely to elicit a general picture of the subject matter under investigation.

As a general rule, inconsistency between two statements' of a witness should be determined, not by resort to individual words or phrases alone, but by the whole impression or effect of what has been said or done. [13] Placing Miguela's allegedly inconsistent statements side by side, we do not, find any real inconsistency between her two assertions. As may be gleaned from the records, when the three intruders barged into the house of the Verdida family, Miguela was able to recognize them by their hair, voice and posture. This fact was the subject of her sworn statement. However, it was also clearly established at the trial that, during the affray, the masks of the intruders fell off. Miguela testified that Antonio's mask fell off first when he bent over to stab Estelita at the back. Then she saw Romeo's mask fall off while the latter was in the act of shooting her father Epimaco. The last mask to fall off was that of Nitoy's. [14]

Thus, we find that, in the case at bench, the inconsistency pointed out by accused-appellant as to how Miguela

was able to identify him as one of the malefactors is not sufficient to discredit her testimony in court. When Miguela was asked on cross-examination why she did not relate in her affidavit the fact that the intruders' masks fell off, she explained that she was not asked about the matter.[15] Thus, the omission of Miguela to state in her affidavit that the intruders' masks fell off does not necessarily justify the conclusion that said circumstance did not actually take place. Indeed, there is no rule of evidence to the effect that omission of certain particulars in an affidavit would estop an affiant from making an elaboration thereof during the trial. On the contrary, trial courts cannot allow admission of sworn statements without the testimony of the affiant.

All factors considered, we find Miguela's identification of accused-appellant as credible in view of the visibility coming from the light of the kerosene lamp and, more importantly, because all the accused were familiar neighbors of the Verdida family. It bears emphasis to note that Miguela Verdida is a 14-year old girl who witnessed the senseless killing of her parents. Despite the horror of witnessing such a gruesome incident, Miguela had the presence of mind to try and defend, albeit unsuccessfully, her mother from the attack of the intruders who unceremoniously barged into their house. Noticeably, no proof was adduced by the defense to show that Miguela had previously harbored any grudge or ill-feeling towards any of the accused as to falsely impute on them such a serious crime as murder. There is no reasonable basis to disbelieve the testimony of eyewitness Miguela Verdida.

Upon the other hand, accused-appellant's alibi, corroborated by a relative, does not inspire credence. Time and again, we have held that for the easily concocted defense of alibi to prosper, the requisites of time and place should concur. In the case at bench, accused-appellant did not adduce evidence to prove that it was impossible for him to be present at the scene of the crime at the time of its commission. In fact, the records will bear that the distance between the house of accused-appellant's father, where accused-appellant claims he was at that time, and the residence of the Verdida family were located in the same barrio, being only about three (3) kilometers apart.[16] Such being the case, it was not physically impossible for accused-appellant to have been present at the scene of the crime at the time of its commission.

IN VIEW WHEREOF, the appealed decision is hereby MODIFIED only with respect to the indemnity awarded to the heirs of Epimaco and Efelita Verdida. It is increased to one hundred thousand pesos (P100,000.00) consistent with the current policy of this Court. Costs against accused-appellant.

SO ORDERED.

Narvasa, C. J. (Chairman), Padilla and Regalado, JJ., concur.
Mendoza, J., did not take part in the deliberation.

[1] Branch 10, presided by Judge Alejo S. Rola.

[2] TSN, April 4, 1988, p. 5.

[3] TSN, June 1, 1988, p. 4.

[4] TSN, April 4, 1988, pp. 8 & 10; TSN, June 1, 1988, pp. 11 & 16.

[5] TSN, April 4, 1988, pp. 9-24.

[6] TSN, February 23, 1989, pp. 25-30; 35.

[7] *id.*, pp. 3-20.

[8] TSN, February 22, 1989, pp. 20-26.

- [9] Rollo, pp. 26-34.
- [10] Appellee's Brief, Rollo, pp. 120-121.
- [11] Exhibit "1-C", Original Records, p. 3.
- [12] 81 Am Jur 2d, p. 840.
- [13] Wigmore on Evidence, volume III, p. 725.
- [14] TSN, June 1, 1988, pp. 11-16.
- [15] TSN, June 1, 1988, p. 19.
- [16] TSN, February 23, 1989, p. 35.

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