

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PERFECTO BRIONES, ACCUSED-APPELLANT.

G.R. No. 97610. February 19, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The accused, Perfecto Briones, was found guilty beyond reasonable doubt of the crime of murder for killing Nida Romano. The information against him in Criminal Case No. CBU-13932 of the Regional Trial Court of Cebu (Branch 16) reads as follows:

"That on or about the 28th day of March, 1988 at about 7:00 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a deadly weapon, with deliberate intent, with intent to kill, and with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and stab one Nida Romano with said deadly weapon, thereby inflicting upon her the following physical injuries:

"severe hemorrhage due to multiple stab and incised wounds."

and as a consequence of said in-juries, said Nida Romano died few minutes later.

"NO BAIL RECOMMENDED." (p. 1, Records.)

Upon arraignment on November 23, 1988, the accused pleaded not guilty.

After trial, a decision was rendered by the court a quo convicting him of the crime charged. The dispositive portion of the decision reads:

"WHEREFORE, in the context of the evidence on record, the Court finds the accused Perfecto Briones guilty beyond reasonable doubt of the crime of murder, for which he is hereby sentenced to suffer the penalty of reclusion perpetua, and to further indemnify the heirs of Nida Romano in the tune of P30,000.00.

"The accused is entitled to full credit for his preventive imprisonment if he agrees in writing to abide by the rules promulgated for convicted prisoners, otherwise, he shall be credited with only 4/5s thereof." (p. 238, Records.)

The facts established by the evidence in the records are the following:

Twelve-year old Marilyn Merced had been living in the house of her Aunt, Mrs. Ampalayo, at the St. Jude Subdivision, Phase 111, Bulacao, Pardo, Cebu City.

On March 28, 1988, at around seven o'clock in the evening, Marilyn was in Mrs. Ampalayo's house with Nida Romano, their househelper, and the accused who had come at six o'clock to visit. The other members of the household, namely, the spouses Ampalayo and their two children, Gina and Jessica, had not yet come home. A nephew, Erasmo Riquilino, was watching television in the house of their neighbor, the Rizzari's.

Nida Romano was cooking supper, while Marilyn and the accused watched television. The accused asked Nida to buy coke, so Nida requested Marilyn to go to her (Nida's) room to get money for that purpose. Marilyn got P2.25 from Nida's room, then proceeded to the dirty kitchen at the back of the house to get an empty coke bottle. The "dirty kitchen" was a separate structure from the house, and Marilyn had to pass through the back door of the house to get to the "dirty" kitchen (pp. 8--9, tsn, Feb. 1, 1989). Nida was not cooking in the "dirty" kitchen, but in the "clean" kitchen in the main house.

After getting a coke bottle, Marilyn returned to the house through the same back door, closing it behind her. The door was fitted with an automatic lock which could only be opened from the inside, but could not be opened from the outside without a key.

From the kitchen, Marilyn then passed through the dining and living rooms, and left through the front door, then out by the main (and only) gate of the compound. She intended to buy coke at the Pascua store about 40 meters from the Ampalayo residence. Only the accused and Nida were left in the house. Marilyn took only two minutes to buy a bottle of coke.

Upon entering the yard of their house, Marilyn saw no one, but she heard a woman screaming inside the house. She quickened her steps, proceeded to the dining room and placed the bottle of coke on the dining table. The dining area was well-lit by an overhead circular fluorescent lamp.

Looking toward the toilet, which was only about seven (7) meters from where she stood, Marilyn saw Nida lying on her back on the toilet floor kicking her legs and struggling while a half-naked man clad only in shorts, was stabbing her repeatedly, using both hands and stooping over her body.

Marilyn was able to witness quite clearly what was happening for the toilet door was open, and she had an unobstructed view of the toilet, which was only two steps up from the dining room. She could not see the faces of both Nida and her assailant, as the upper portion of their bodies was partly hidden by the wall of the toilet. She, however, recognized Nida because of the white pedal pushers she was wearing at the time. Marilyn noticed that the kitchen door was still closed, and so was the window near the kitchen door, which had protective iron grills.

Suddenly terrified by the grisly scene she was witnessing, Marilyn ran out of the house to look for help.

She ran toward the house of their neighbor, Quintin Rizzari, but before she reached the gate thereof, she was suddenly grabbed from behind by a person who pulled her by her hair and the collar of her T-shirt. Marilyn clung to the Rizzari's iron gate even after she had fallen down. At this point, she recognized the man who was pulling her as the accused.

The Rizarri brothers, Ramil and Ruel, upon hearing Marilyn's shouts that Nida was covered with blood, came out of their house. Erasmo Riquilino was with them. They saw the accused chasing Marilyn and pulling her by the hair and collar of her T-shirt. After Marilyn fell beside the gate, the accused left her and returned to the Ampalayo house. He was half-naked and wore blood-stained shorts. There was blood also on his face, body, arms and legs. The Rizarri asked him, "what is that?" but he did not answer (p. 15, tsn., March 1, 1989).

The Rizarri took Marilyn into their house, where she recounted to Aiding Rizarri what she had seen.

After a few minutes, the appellant, still half-naked and bloody, returned to the Rizarri's house. He stood beside the gate and stared at Marilyn, who was seated on a chair near the open door. He ignored the Rizarri's questions then went back to the Ampalayo house. After a while, he again returned to the house of the Rizarri. When queried, he replied that he suspected Marilyn of having killed Nida. He still wore his shorts, but had donned a blood-stained T-shirt.

Later, the Rizarris together with Erasmo and Mrs. Ampalayo, who had arrived in the meantime together with a certain Ernesto Tolosa, went inside the Ampalayo house and saw Nida's body on the toilet floor. They took Nida in Ernesto Tolosa's car to the hospital. While this was taking place, the accused stood at the back door of the Ampalayo house, not saying a word and doing nothing to help.

Nida Romano suffered forty-two (42) stab wounds, nineteen of which were fatal, according to Dr. Crisosto-mo Abbu, the physician who conducted the post-mortem examination. The cause of her death was hypovolemic shock secondary to massive hemorrhage due to multiple stab wounds. Dr. Abbu opined that two different weapons were used by her assailant.

The light green T-shirt which Marilyn was wearing during the incident was stained with blood on the right shoulder and on the back, after the accused grabbed her. Upon submission of the T-shirt to the National Bureau of Investigation (NBI) for examination, it was ascertained that the stains were human blood.

The next morning, Cresencio Ampalayo, on a hunch that the murder weapons must be somewhere around his premises, went out of the compound to look for it outside their fence. He found a screwdriver which was stained with dried blood. He recognized the screwdriver as his own which he often used in fixing his car and normally kept in a drawer in the sala of his house. After bringing the screwdriver inside the house, accompanied by a friend, Cresencio returned to the same place where he found it. There he found a knife which did not belong to them. It was also stained with dried blood.

Both the screwdriver and the knife were later sent to the NBI, where it was ascertained that the dried blood on both implements was of human origin. On the witness stand, Dr. Abbu confirmed that the wounds sustained by Nida must have been caused by two (2) different weapons, such as the knife and the screwdriver which Cresencio Ampalayo found outside the fence of the compound. The doctor admitted that possibly only one person, using both hands, inflicted all the wounds sustained by Nida.

The accused admitted that he was in the Ampalayo house in the early evening of March 28, 1988; that Nida Romano and Marilyn Merced were the only persons in the house; that shortly after he arrived, he asked Nida for a bottle of coke; that Nida asked Marilyn to get money from her (Nida's) room to buy coke; that Marilyn, after getting the money, went to a nearby store; that he tried to ask Marilyn to buy cigarettes also, but the girl had already left, so he decided to wait for her in front of the house. While waiting there, he allegedly heard Mr. Ampalayo's dog bark followed by the sound of a fall and what seemed to him as Nida's muffled shouts. A minute later, he went inside and saw two persons near the restroom taking turns in stabbing Nida Romano. One of the assailants, on noticing him, charged at him and thrust a knife at him. He parried it with his left hand but his thumb was wounded. He shouted for help and rushed to the door but when he glanced back, he saw that the intruders had escaped through an opening in the fence. He went back and tried to carry Nida out of the toilet, but he found her too heavy. He took off his shirt and used it to wipe Nida's face and neck. While he was wiping Nida, he noticed that Marilyn had arrived. He called Marilyn but the girl ran out. He ran after her so she could help him carry Nida. He overtook Marilyn at the Rizarris' gate and tried to pull her back to the house. Marilyn held on to the gate so the collar of her shirt was ripped. He told Quintin Rizarri about the armed men. Ramil and Ruel Rizarri and Erasmo Riqui-lino accompanied him to the Ampalayo house where he saw Mrs. Ampalayo who had arrived in the meantime. He related the incident to her, Ramil, Ruel, Erasmo and Danny Estinozo carried Nida to the car of Mr. Tolosa. Some policemen arrived shortly.

Defense witnesses Amadeo Abaquita and Eduardo Briones, the father of the accused, testified that when they went to Mr. Ampalayo's house the next morning, he showed them the screwdriver and the knife which he had found outside the fence (Exhs. G and H). They observed that a portion of Mr. Ampalayo's fence at the back was

destroyed, leaving a hole through which a person could easily pass. They stated that they noticed drops of blood near the fence.

Julius Decena, another defense witness, told the court that while he was standing near the house of Mr. Ampalayo, at about 7:00 o'clock in the evening of March 28, 1988, he noticed two persons pass through an opening in the fence. He looked at them when they passed by but their heads were bowed and they walked very fast. He followed them for about 15 to 20 meters. The taller person proceeded to the highway, and the other went toward Inayawan, Pardo. Suspecting that they were thieves, he returned to the Ampalayo house. He asked Ruel Rizarri and Erasmo Riquilino what had happened but they did not know. When he entered the Ampalayo house, he saw bloodstains in the dining room. Later, he saw Nida Romano being carried by Danding Estinozo, Ramil and Ruel Rizarri to the car of Mr. Tolosa.

The lower court gave full faith and credit to the prosecution's version and rendered the aforequoted decision convicting, the accused of murder.

The accused has appealed.

After a careful examination of the evidence in record, we affirm the appealed judgment of the trial court. The prosecution's evidence, consisting mainly of the testimonies of Marilyn Merced, as corroborated by Ramil Rizarri and Salvador Divinagracia, plus the testimonies of Dr. Crisostomo Abbu and Mr. Ampalayo, convinces this Court, with moral certainty, that the accused-appellant, and no one else, killed Nida Romano. Marilyn's testimony, in particular, was credible and reliable. The trial court observed:

"The Court has studied at length the testimony of 13-year old Marilyn Merced and it has not found any material flaw therein which would provoke the slightest doubt either in its truth or as to her credibility. Her account of the incident she had witnessed is both logical and probable and more importantly, she gave it in straightforward fashion. She could not have been wrong in what she said the half-naked man who turned out to be the accused was doing to Nida Romano in the restroom. There was spontaneity in the way she demonstrated to the Court how the man had stabbed the victim successively with the use of both hands. She even described the position of the victim and how she had struggled and kicked as she was being attacked. Certainly, the act of pulling Nida out or of wiping her face and neck, which is what the accused said he was doing when Marilyn arrived, is so different from or disassociated with the stabbing strokes that the latter had illustrated, such that she could not have mistaken and confused one for the other. At the very least, the witness appears to be of sufficient age and reason as to be able to distinguish one act from the other. It is also very unlikely that Marilyn had hereby imagined the kicking motions that she said Nida Romano did at the time. It is significant to take note of Marilyn's spontaneous reaction to the restroom scene which was one of fright. As admitted by the accused, Marilyn ran out of the house and he had to pursue her up to the gate of Quintin Rizarri. This is strongly suggestive of the fact that what she saw was something that was frightening. Her kind of response is more compatible with the stabbing incident that she described to the Court than the accused's story that he was merely wiping Nida's face and neck, which would not have presented as a terrifying sight to the girl. In sum, since there is no trace of vacillation, equivocation or exaggeration in the way the young girl had testified, the Court finds her testimony worthy of credence." (pp. 32-33, Rollo.)

The trial court's assessment of Marilyn's credibility deserves the highest respect, because the trial judge had the advantage of observing her demeanor and could thereby easily discern if she was telling the truth (People vs. Ornoza, 151 SCRA 495; People vs. Abaya, 170 SCRA 691; People vs. Madrid, G.R. No. 94298, June 22, 1992).

Appellant faults the trial court for convicting him despite lack of sufficient evidence to overcome the constitutional presumption of innocence in his favor and for "giving more weight to the testimony of Marilyn Merced, Salvador Divinagracia and Ramil Rizarri" (p. 1, Appellant's Brief, p. 40, Rollo).

The submission is not well founded. It is true that the prosecution has the onus probandi of establishing the guilt of the accused and the weakness of the defense does not relieve it of its responsibility (People vs. Cruz, 32 SCRA 181; People vs. Pecato, 151 SCRA 14). In the case at bar, the circumstances relied upon by the trial court formed one unbroken chain which leads to one fair and reasonable conclusion pointing to the appellant, to the exclusion of all others, as the guilty person (People vs. Lingao, 75 SCRA 130; People vs. Colinares, 163 SCRA 313).

Appellant's allegation that the lower court merely provided a hypothesis which is more conjectural than factual to take the place of absent evidence, does not merit this Court's attention.

While it is true that the testimony of Marilyn Merced dwells on circumstantial facts which tend to prove appellant's guilt, the same does not weaken her testimony. For guilt may be established through circumstantial evidence, provided the requisites set out in Section 4, Rule 133 of the Rules of Court are present, namely: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt (People vs. Alcantara, 163 SCRA 783; People vs. Fule, 206 SCRA 652).

Applying the above requisites, the circumstances established by the prosecution's evidence and relied upon by the trial court in arriving at its conclusion were as follows:

1. Only Nida and appellant were left in the Ampalayo house when Marilyn left to buy coke at a nearby store.
2. There is a tall hollow block fence topped with barbed wire surrounding the Ampalayo compound and only one main gate through which entry may be made. The gate was not used for entry when Marilyn left. Therefore, no other person had access to the house during the time Marilyn was out. Appellant's claim that there was a hole in the back portion of the fence which was big enough for a person to enter, was belied by the prosecution witnesses who denied there was such a hole. The variance between the testimonies of the appellant and his witnesses vis-a-vis, those of Marilyn and Mr. Ampalayo regarding the presence or absence of a hole in the hollow block fence was correctly ruled upon by the trial court, thus:

"10. The defense has harped on the alleged presence of a big hole in the Ampalayo fence. Amadeo Abaquita, Eduardo Briones, Decena and the accused said that a person could easily pass thru it. Marilyn Merced, Cresencio Ampalayo and Salvador Divinagracia, however, denied any such breach in the fence. As the defense witnesses could not have been more familiar with the condition of that fence than Mr. Ampalayo and Marilyn Merced, their testimony about that fence cannot be more accurate than the latter's." (p. 35, Rollo.)

3. No outsiders could have entered the house through the back door for it was closed and fitted with an automatic lock which could only be opened from inside the house. And no one could have entered the house through the kitchen windows for they were secured with iron grills.
4. After a lapse of only about two (2) minutes from the time she left to buy a bottle of coke, Marilyn returned and heard a woman screaming in agony inside the Ampalayo house. When she went inside, she saw a half-naked man clad only in shorts, stabbing Nida Romano inside the toilet.
5. When Marilyn ran out of the house, terrified by the scene she had witnessed, appellant, half-naked and bloody, chased her up to the gate of their next-door neighbor, the Rizzaris.
6. Appellant's shifting tales about the identity of Nida's killer exposed the falsity of his defense. At first, he said he chased Marilyn because he suspected her of killing Nida. Later he alleged that he chased Marilyn because he wanted her to help Nida. Still later, appellant alleged that two unidentified men stabbed Nida inside the toilet.
7. Appellant's admission that he did not help Estinozo and the others carry Nida into the car of Ernesto Tolosa was

a clear manifestation of his guilty feelings. His explanation that he did not like the smell of blood does not inspire belief for, according to him, he even used his own T-shirt to wipe off the blood on Nida's face and neck.

8. The murder weapons - a screwdriver and knife - were found outside the fence of the Ampalayo house. Their presence at or near the crime scene is incongruous with the appellant's theory that two intruders committed the crime for it would have been the height of folly for such outsiders to leave their weapons behind to provide a clue to their identities.

9. The screwdriver was identified by Mr. Ampalayo as his own tool, which he kept in the sala of his house. If two intruders killed Nida they would have been armed with their own weapons. The use of Mr. Ampalayo's screwdriver proves that it was used by someone who was already inside the house, i.e., the accused. Since he could not flee to avert suspicion, he got rid of both instruments of death by throwing them over the fence.

10. The appellant's two-intruder story conflicts with his initial yarn that the reason why he chased and tried to drag Marilyn into the house was because he believed she killed Nida.

The above circumstances were consistent with the conclusion that it was the appellant who killed the hapless househelp (*Dela Concepcion vs. People*, 173 SCRA 253; *People vs. Alcantara*, 163 SCRA 783).

Most of appellant's assignments of error focus on the credibility of the prosecution witnesses. It is however "the province of the trial judge to rule on matters involving the credibility of witnesses. His findings thereon are entitled to the highest respect" (*People vs. Abaya*, 170 SCRA 691; *People vs. Liston*, 179 SCRA 415). The trial court noted that the defense version of the incident lacked corroboration, was ab-surd, illogical, incredible and improbable, hence, it could not prevail over the straightforward testimonies of the prosecution witnesses (*People vs. Lamog*, 172 SCRA 342).

The alleged absence of motive on the part of the appellant does not preclude the commission of the crime for we may take judicial notice of the fact that persons have been killed or assaulted for less or no reason at all (*People vs. Laureta, Jr.*, 159 SCRA 256).

On the other hand, the absence of any improper motive on the part of the prosecution witnesses to testify against the appellant (*People vs. Datahan*, 157 SCRA 215), justified the trial court's reliance on their evidence.

Since there is no showing of improper motive on the part of Marilyn to testify against appellant, the fact that she is a niece of the victim's employer does not render her clear and positive testimony less worthy of credit (*People vs. Abonada*, 169 SCRA 530). Her testimony was replete with details and she was totally coherent on the witness stand.

However, the Court does not agree with the trial court's finding that the crime committed by the accused-appellant was murder, as charged in the information, for there is no proof that treachery and/or evident premeditation, the qualifying circumstances alleged in the information, attended its commission. It is a settled rule that the circumstances that would qualify a killing to murder must be proven as indubitably as the crime itself (*People vs. Vicente*, 141 SCRA 347; citing *U.S. vs. Sellano*, 10 Phil. 498 and *U.S. vs. Bisandre*, 40 Phil. 78).

"x x x. It is needless to add that treachery cannot be deduced from mere presumption, much less from sheer speculation. The same degree of proof to dispel reasonable doubt is required before any conclusion may be reached respecting the attendance of alevosia." (*People vs. Duero*, 136 SCRA 515, 520.)

Neither can evident premeditation be considered, absent a clear showing of:

"1. The time when the offender determined to commit the crime;

"2. an act manifestly indicating that the culprit had clung to its determination; and

"3. sufficient time elapsed between the determination and the execution to allow him to reflect upon the consequences of his act." (People vs. Pacada, 142 SCRA 427, 428.)

Absent treachery and/or evident premeditation in the killing of the victim, the crime committed was only homicide, not murder. Since neither mitigating or aggravating circumstance was alleged and proven, the penalty for homicide, which is reclusion temporal, should be imposed its medium period. Applying the Indeterminate Sentence Law, the imposable penalty should range from eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

The indemnity for the death of Nida Romano should be increased to Fifty Thousand (P50,000.00) Pesos in accordance with current jurisprudence (People vs. Sison, 189 SCRA 643; People vs. Baguio, 196 SCRA 459; People vs. Buka, 205 SCRA 567).

WHEREFORE, the appealed decision is MODIFIED by finding the appellant, Perfecto Briones, guilty beyond reasonable doubt of the crime of Homicide. He is sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, and to indemnify the heirs of Nida Romano in the amount of P50,000.00. Costs against the appellant.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quiason, JJ., concur.

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