

THE PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. JOEL ALIPOSA Y TONOG @ NONOY AND CRISPIN VELARDE Y ESPELIMBERGO. CRISPIN VELARDE Y ESPELIMBERGO, ACCUSED-APPELLANT.

G.R. No. 97935. October 23, 1996

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

Joel Aliposa is at present serving a life term (reclusion perpetua) for the murder of one Sonny Tonog, committed during the celebration of the town fiesta at Catarman, Northern Samar in the evening of August 20, 1990. Together with Crispin Velarde, he was adjudged guilty of the crime by Judge Cesar Cinco of the Regional Trial Court of Catarman (Branch 19), whose verdict was promulgated on November 15, 1990. From that judgment only Crispin Velarde took an appeal, now before this Court.

The information against Aliposa and Velarde alleged that then and there being respectively "armed with a small bolo and a fan knife locally known as 'Batangas'" and "with deliberate intent to kill thru treachery and evident premeditation, conspiring with, confederating together and mutually helping each other," they "did ** wilfully, unlawfully and feloniously attack, assault and stab one Sonny Tonog with the use of said knife (with) which accused had provided themselves for the purpose, thereby inflicting upon said Sonny Tonog ** (stab) wounds which directly caused ** (his) instant death." [1]

The evidence of the prosecution -- consisting chiefly of the testimony of Enrique Saludario, Pedro Jumadiao and Lt. Isaias Tonog -- purports to establish the facts now to be narrated.

On August 20, 1990, at about 9 o'clock in the evening, while Sonny Tonog, Pedro Jumadiao and Enrique Saludario were watching a "twirling roosters game" being held on Banifacio Street as part of the town fiesta celebrations; they were approached by Joel Aliposa and Crispin Velarde. Aliposa wrapped his left arm about Sonny's shoulders, pulled him aside, and began to talk to him, Crispin Velarde stood beside them, approximately "6 inches to 1 foot to the left of (Sonny) Tonog," [2] while Saludario and Jumadiao were about a meter in front of and to the right of Aliposa. Suddenly and without warning, Aliposa drew from the right side of his waist a small bolo locally known as depang (Exh. "A") and with it stabbed the unsuspecting Sonny twice in the chest near the left nipple. [3] "Velarde ** followed with a stabbed (sic) blow with the use of the fan knife (Exh. "B") ** hitting the victim somewhere on his left side just as Aliposa released his hold on (Sonny) Tonog's shoulders." [4] Sonny fell on his back.

On witnessing these sudden acts of violence, Sonny's companions scampered away, with Aliposa and Velarde in pursuit. Jumadiao and Saludario ran to the house of the victim's first cousin, Lt. Isaias Tonog, the Catarman Police Station Commander. They called out frantically to Lt. Tonog (who looked out into the street from the window of his house), and told him that Sonny had been stabbed. Lt. Tonog forthwith rushed out of his house, armed with his service armalite rifle. When Aliposa and Crispin Velarde saw Lt. Tonog, they abandoned the chase

and took flight.

Lt. Tonog followed them to the house of Crispin Velarde where he was met at the door and admitted inside by Crispin's father, Lt. Amado Velarde, a police lieutenant detailed at the Philippine Constabulary headquarters.[5] Lt. Tonog approached Aliposa and Crispin Velarde who were seated beside each other and declared: "I am apprehending you for having committed the crime of stabbing Sonny Tonog." [6] As he did so, his attention was drawn to the daughter of Lt. Velarde who was washing a depang and a batangas fan knife. He went to the girl and asked for the blades. Lt. Velarde took the weapons from the girl; the depang he handed over to Lt. Tonog; but the knife, he gave to his son who tucked it at his waist,[7] but offered no resistance when Lt. Tonog took it from him.[8] Aliposa and Crispin Velarde were then brought to the police station and charged with Sonny's murder.

Sonny Tonog had died from three (3) stab wounds described in the autopsy report of Dr. Carlos Gorre as follows: "(1) wound no. 1 - 3 cm. (L) mid-clavicular line, level of 4th ICS, penetrating thoracic cavity, perforating pericardial cavity; (2) wound no. 2 - 2 cm. (L) paravertebral line level of 4th ICS, penetrating thoracic cavity, perforating the pericardium; and (3) wound no. (3) - 3 cm. (L) mid-clavicular line, level of umbilicus, penetrating peritoneal cavity, with omental and intestinal evisceration, descending colon partially transected;" cause of death being ascribed to "cardiopulmonary arrest, hypovolemic massive hemorrhage due to multiple stab wounds," in the autopsy report.[9] At the trial, Dr. Gorre gave evidence of his forensic findings and corroborated the testimony of prosecution witnesses Saludario and Jumadiao. He testified that (1) the narration of these witnesses as to the manner by which the victim was assaulted and slain was compatible with the nature and location of injuries on the victim's corpse disclosed by his autopsy; (2) it was possible that more than one person inflicted the injuries; and (3) it was probable that a small bolo and a fan knife were used to inflict the injuries.

The victim's father, Rosendo Tonog, testified to the expenses incurred for his son's funeral, and to the fact that the latter had been supporting him from wages earned as a mason in Manila.

The defense presented a different version of the event. Aliposa asserted on the witness stand that it was he alone who had stabbed Sonny; that he had done so in self-defense, and that Crispin Velarde was not with him at the time. He declared that although he and his friends (i.e., Crispin Velarde, Paterno Gallano and Gader Delorino) arrived at the fair at almost the same time, they had immediately gone their separate ways to watch their favorite games and activities.

Aliposa claims he was alone, watching one of the games, when a commotion occurred about nine (9) meters away. He saw people scurrying out of the way of Sonny Tonog, who was chasing one PC Maizo. Later, as he was about to leave the fair grounds, Sonny Tonog confronted him, and asked him if he was PC Maizo's companion, which he denied, whereupon Sonny had attacked him with a batangas "29" (presented by the prosecution as Exh. "B"). He had been hit "on the left side of his chest towards the armpit," the thrust tearing the blue jacket he was wearing. Then, backing away from his attacker, Sonny had tripped on a low wooden fence and fallen to the ground face up.

Sonny tried to stab him again, but he managed to evade the lunging thrust and pin Sonny's arm with his left. On gaining this momentary advantage, he had quickly pulled out with his right hand a small bolo or depang (which the prosecution presented as Exhibit A) and thrust it thrice into Sonny's body. He had then pushed Sonny away and run to the house of his friend. Crispin Velarde, who let him in. The Velarde family was then having dinner. Aliposa told them he wanted to surrender to Police Lt. Velarde because he had stabbed someone at the fair. Lt. Velarde replied, "Wait; after the show in the Betamax (in his house) I will ask somebody to accompany you for your surrender at the police headquarters. However, Lt. Isaias Tonog arrived at the house shortly afterwards, accompanied by Saludario and Jumadiao. Lt. Tonog told the Velardes that his cousin's killer was in the house, at

the same time keeping a rifle trained at Aliposa. Lt. Velarde handed over the small bolo to Lt. Tonog, and allowed the latter to take Aliposa into custody.

Continuing, Aliposa says that he had been taken to different places and repeatedly hit with the butts of the armalites of Lt. Tonog and his companions to force him to point to Crispin Velarde as his accomplice in the stabbing of Sonny. Unable to bear the maltreatment, he was eventually constrained to admit that Crispin was involved in the stabbing incident. Tonog's group then returned to the Velarde residence, took Crispin into custody and brought the latter to the police headquarters.

In his turn, Crispin Velarde disclaimed any participation in the killing of Sonny Tonog. He testified that when he noticed the disturbance in the fair he immediately ran home, watched a betamax film with Emma Barredo (another defense witness), and had supper with his family, at which time Aliposa appeared at their kitchen door, an account essentially corroborated by Barredo.

As earlier stated, the Trial Court adjudged both accused guilty of murder beyond reasonable doubt and sentence each accordingly, the dispositive portion of the judgment reading:

"WHEREFORE, the Court, hereby finds Joel Aliposa y Tonog also known as Nonoy, and Crispin Velarde y Espelimerbo GUILTY beyond reasonable doubt of the crime of murder and, with neither mitigating nor aggravating circumstances to appreciate, sentences each to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of Sonny Tonog in the amount of P30,000.00, to pay jointly and severally Rosendo Tonog by way of reimbursement for funeral expenses P7,000.00 and to pay the costs."

Contesting his conviction, Velarde ascribes to the Court a quo the following errors, viz.: (1) its judgment of conviction was based on the contradictory, inconsistent and improbable testimonies of witnesses Saludario and Jumadiao, as well as of Lt. Tonog, a biased witness; and (2) it unwarrantedly disregarded Aliposa's admission that he alone stabbed and killed Sonny Tonog.

Velarde dismisses as unlikely Saludario's account of the relative positions of the protagonists and the prosecution witnesses when the stabbing occurred. He argues that if Saludario were to be believed it would have been physically impossible for him (Velarde) to stab the victim since he was practically sandwiched between Saludario and the victim. This misconstrues the evidence, which shows that it was Velarde alone who stood on the left side of the Sonny Tonog, Aliposa being at the latter's right, and Saludario and Jumadiao being approximately a meter in front and to the right of Sonny. It was rather the victim, Sonny, who was sandwiched between Aliposa and Velarde; and there was nothing to obstruct Velarde's thrust with his knife so as to cause wound No. 3 so-called and described in the autopsy report, at the victim's left side torso. In fact, the medico-legal officer who conducted the autopsy testified that the trajectory of said wound No. 3 indicated that the victim's assailant could have come from his left side.[10]

Second, Velarde posits the unlikelihood of his and Aliposa's having -- as deposed by Saludario -- placed themselves in front of Tonog, Saludario and Jumadiao while these three were watching the "twirling roosters games," because this implies that they (Aliposa and Velarde) would have had to force their way through the people along the cockpit perimeter and thus cause no small disturbance. This is pure speculation. No evidence supports this claim that Sonny and his two companions were in the middle of a dense crowd of people at the cockpit arena, indeed of a crowd of any size that would have prevented them from entering the cockpit with more than the minor jostlings, not unusual in such gatherings.

Velarde also impugns Jumadiao's testimonial integrity, claiming that Jumadiao cannot be believed because of discrepancies between what he deposed in his affidavit, on the one hand, and on the witness stand, on the other, citing as example that while in his affidavit, Jumadiao stated that Aliposa and Velarde approached Sonny Tonog

in front of the DAR Building, he had in court, testified that this took place in the cockpit.

The imputed conflict in Jumadiao's statement is more apparent than real. Jumadiao satisfactorily explained in court that the DAR office and the cockpit arena are but two meters apart, such that for all intents and purposes, the killing of Sonny Tonog may not inaccurately be said to have occurred either in front of the DAR Building or in front of, or in the cockpit.[11] It is settled that a variance in a previously executed sworn statement and subsequent testimony does not necessarily discredit the witness unless the discrepant accounts are irreconcilable or the variance cannot satisfactorily be explained.[12] And even assuming the existence of the posited inconsistency, the same refers to a minor detail that cannot override the witness' overall credibility.[13] Moreover, it is a matter of judicial experience that affidavits taken ex parte are invariably incomplete and often inaccurate,[14] whereas testimonial declarations, such as those of Jumadiao, command greater weight.[15]

Velarde also attacks Juamdiao's credibility by pointing out that there were tents all over the fair area, which must have obstructed Jumadiao's view of what had transpired. This, again, is pure speculation. Jumadiao did not say that the tents prevented him from witnessing Sonny Tonog's killing. The record simply does not support any supposition that the prosecution witnesses had other than an unobstructed view of the attack on Sonny Tonog. Saludario and Jumadiao positively testified that they clearly saw the attack, being only a few steps away from Sonny, Velarde and Aliposa when it occurred.

As for Lt. Tonog, the fact that he was Sonny Tonog's first cousin does not, without more, make him a biased witness and affect his credibility.[16] In point of fact, Aliposa, Velarde and the latter's mother are themselves relatives of Lt. Tonog. There is no indication whatever that Lt. Tonog favored one relative over another, and no proof at all that he harbored any improper motive to testify against the accused. The presumption is that he was not so actuated, and his testimony cannot be stripped of full faith and credit simply on account of his relationship to the parties.[17]

Velarde finally faults the Trial Court for disregarding Aliposa's admission that he alone stabbed the deceased. He would have the Court believe that he was already at his home viewing a Betamax tape when the killing of Sonny Tonog took place; that he does not own a batangas knife, the weapon he reportedly used to stab Sonny; that actually, this was the weapon used by Sonny Tonog to attack Aliposa.

Velarde's alibi -- that he was at home when Sonny Tonog was stabbed and killed at around 9 o'clock in the evening -- must be rejected. It rests solely on his word. Neither of the other witnesses presented by the defense on this point could state with certainty the actual time that Velarde came home. Lt. Velarde did not see his son arrive, hence his estimation of "9 o'clock more or less" is sheer guesswork;[18] and defense witness Emma Barredo declared on cross-examination that she first saw Crispin at past 9 o'clock in the evening.[19]

The proffered defense of alibi cannot therefore be sustained; not only is it without credible corroboration, it does not on its face demonstrate the physical impossibility of Velarde's presence at the place and time of the commission of the crime;[20] moreover Velarde had been positively identified as one of the assailants by eyewitnesses who had no motive to give false testimony against him.[21]

It bears stressing that the testimonies of eyewitnesses Saludario and Jumadiao -- lucid on direct examination and unshaken by rigorous cross-examination -- agree with corroborate each other on all material points, viz: (1) that Velarde and Aliposa approached the victim; (2) that Aliposa placed his left arm around Sonny's shoulders as he took the latter aside; (3) that Velarde positioned himself on the other side of the victim; (4) that Saludario and Jumadiao were in front of the victim when the attack took place; (5) that Aliposa stabbed the victim twice in the chest with a depang; (6) that just as Aliposa released Sonny, Velarde stabbed him with a batangas knife; (7) that Sonny had then fallen on his back; and (8) that both Velarde and Aliposa chased them (Saludario and Jumadiao)

from the scene of the crime to the house of Lt. Tonog. The post-mortem examination of the victim conducted by Dr. Gorre also supports their version of how said victim was assaulted and killed.

In fine, the Court considers the Trial Court's analysis of the evidence and conclusions derived therefrom to be correct, generating moral certitude respecting Velarde's guilt of the offense charged.

What has been stated makes unnecessary any extended refutation of Aliposa's own evidence which Velarde invokes, but which the Trial Court rejected as also unworthy of credence. A review of the record justifies the rejection of Aliposa's proofs for the reasons set out in the judgment of the Court a quo: deplorable inconsistencies in, and inherent incredibility of testimonial assertions of said accused.

The lower court in finding that:

"The attack showed precisely that Aliposa and Velarde devised the method [means or form in the execution thereof which tends directly and specially to insure the execution thereof, without risk to themselves] arising from the defense which Sonny Tonog might make. Arming themselves with the small bolo ([or 'depang'] as Exh. A) and the fan knife ([or batangas knife] as Exhibit B), Aliposa and Velarde approached the unwary victim with the former encircling his left hand around the shoulder of Tonog and delivering two successful stabbed (sic) blows towards the left chest. Velarde, who positioned himself just a foot away and obliquely to the left of the victim, facing him, followed suit with the fan knife with a stabbed (sic) blow directed at the left at the level of the umbilicus. The coordinated attack signifies nothing less than unity of purpose and intention (People vs. Allado, 43 O.G 1717; People vs. Manlangit, 73 SCRA 49). If evident premeditation sought to qualify the crime is not prevalent from the evidence (sic) (People vs. Torejas, 43 SCRA 158), the Provincial Prosecutor's indictment for the crime of murder finds support from the afore-described circumstance of treachery." [22]

also correctly appreciated the qualifying circumstance of treachery or alevosa as attending the commission of the crime charged.

WHEREFORE, the decision appealed from is hereby AFFIRMED, with the sole modification that in accordance with prevailing jurisprudence, the death indemnity to be paid to the heirs of Sonny Tonog is increased to P50,000.00.

SO ORDERED.

Davide, Jr., Melo, Francisco, and Panganiban, JJ., concur.

[1] Rollo, p. 6.

[2] TSN, 19 October 1990, p. 28; TSN, 17 October 1990, p. 9.

[3] TSN, 19 October 1990, p. 10; See TSN, 17 October 1990, p. 2 and TSN, 19 Oct. 1990, p. 28.

[4] Rollo, p. 93; RTC Decision, p. 2.

[5] TSN, 19 October 1990, p. 38.

[6] TSN, 19 October 1990, p. 45.

[7] Id., at p. 40; the TSN reads "who tucked it in his body."

[8] Id., at p. 41.

[9] Exh. F; Wound #2 referred in the report as located in the paravertebral was corrected by the Medico "Legal Officer as a typographical error since it was actually located in the parasternal area. Correction was made in Exh.

G.

[10] TSN, 26 October 1990, p. 36.

[11] TSN, October 17, 1990, pp. 26-27; See also Saludario's account, TSN, 17 October 1990, pp. 23-25.

[12] See *Peo. v. Cruz*, 231 SCRA 759; *Peo v. Calagen*, 233 SCRA 537.

[13] *Peo. v. Silong*, 232 SCRA 487; See *Peo v De la Pena*, 232 SCRA 72; *Peo v. Apolonia*, 235 SCRA 124

[14] *Peo v. Dabon*, 216 SCRA 558; *Peo v. Sarellana*, 233 SCRA 31; *Peo v. Calegan* 233 SCRA 537.

[15] See *Peo. v. Ponayo*, 235 SCRA 226

[16] *Peo. v. Abapo*. 239 SCRA 373; *Peo. v. Tanote*, 238 SCRA 443; *Peo v. Mendoza*, 236 SCRA 666.

[17] *Peo. v. Dela Cruz*, 229 SCRA 754; *Peo. v. Perciano*, 233 SCRA 393; *Peo. v. Genobia*, 234 SCRA 699.

[18] TSN, 7 November 1990, pp. 67-68.

[19] TSN, 5 November 1990, p. 59.

[20] See *Peo. v. Javier*, 299 SCRA 638; *Peo. v. Talaver*, 230 SCRA 401.

[21] *Peo. v. Barte*, 230 SCRA 401; *Peo. v. Dolar*, 231 SCRA 414 v. *Silong*, 232 SCRA 487.

[22] *Rollo*, p. 99.

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