

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO WAGGAY Y WANGI, RUDY DALUWOG Y WANGI, BURTON DALUWOG AND JOHN DOE, ACCUSED. FERNANDO WAGGAY Y WANGI, ACCUSED-APPELLANT.

G.R. No. 98154. February 09, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

The death of Lito Mano soured what would otherwise have been a festive celebration at Philex Mines. For, in an information filed in Criminal Case No. 5461-R of Branch 6 of the Regional Trial Court of Baguio and Benguet, Fernando Waggay, Rudy Daluwog, Burton Daluwog and one John Doe were charged with the crime of murder for the killing of Lito Mano, to wit:

"That on or about the 20th of February, 1988 at Upper Market, Philex Mines, Municipality of Tuba, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, conspiring, confederating and mutually aiding one another, with the deliberate intent to kill and (with) abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab with bladed instruments one LITO MANO, thereby inflicting multiple wounds on the vital parts of the body of the latter which directly caused his death immediately thereafter." [1]

The records show that Rudy Daluwog was never apprehended, [2] while Burton Daluwog was granted a separate trial and subsequently acquitted by the court a quo in a decision dated January 29, 1990. [3] Accused John Doe was never identified or apprehended. Accused Fernando Waggay, on his part, pleaded not guilty when arraigned and was thereafter duly tried.

In due course, the lower court found herein accused-appellant Fernando Waggay guilty as charged and sentenced him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased in the sum of P60,000.00 as moral damages, P32,780.00 as actual damages "for expenses incurred in connection with his death," both without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs. As a detention prisoner, he was declared entitled to credit for 4/5 of his preventive imprisonment in the service of his sentence, pursuant to Article 29 of the Revised Penal Code. [4]

Hence, this appellate review, with appellant faulting the court a quo for (1) appreciating the testimony of prosecution witness Juan Mando, (2) not giving consideration to the evidence of the defense, (3) insisting that the crime is murder instead of simple homicide, and (4) not acquitting appellant on the ground of reasonable doubt. [5]

The relevant antecedents and incriminatory facts of the case, as correctly abridged and synthesized by the trial court based on the evidence of record, are as follows:

"It appears from the evidence that Juan Mano, a 23-year-old farmer from Kubikob, Barrio Ansagan, Municipality of Tuba, Province of Benguet, went to Philex Mines in the morning of February 19, 1988 to visit

his brother Angel Mano as it was the fiesta of Philex Mines. He reached the place of his brother (at) about 2:00 PM after walking for about 4 hours. He ate, then rested, and slept for about 3 hours. At about 5:00 PM of the same day of February 19, 1988, Juan Mano proceeded to the place of his uncle Leon Mano at Philex Mines to visit his cousin Lito Mano. Juan Mano and Lito Mano then went out walking, proceeding to the Philex Brookside, where they drank beer at a certain Romeo's Store, after which they proceeded to the recreation area where they watched some dancing, as it was the birthday of Mr. Henry Brimo, the president of Philex Mines, for about 4 hours.

"Meanwhile, in another place in Philex Mines Compound, at about 9:00 PM, security guard supervisor Ter(r)encio Olpindo, together with other security guards of Philex Mines, Moises Blancas and Leo Abellera, were at the plaza of Philex Mines near the pay window when they noticed a trouble in front of the store of a certain Soriano about 5 meters away from where they were because of the shouting to which they responded immediately. They were able to pacify those making trouble which involved the group of Fernando Waggay and two others which included Rudy Daluwog and another group of a certain Alexander Ventura. Since there were injuries sustained, the security guards brought the parties involved first to the Philex Hospital for treatment, then to the security guard headquarters office for investigation at about 9:30 PM, where the security guards caused to be entered in the Journal the incident which, being duly entered in the course of business and for its revealing and spontaneous character, is hereunder quoted:

'At about 9:30 PM, SGO L. Abellera, SGS T. Olpindo, SG M. Blancas brought to Security Hqs. another group identified as FERNANDO WAGGAY, CN-13534, Mine Dept. with lacerated wound upper lips, nose canal and hematoma left face, positive AB; RUDY DALUWOG, CN-13844, Mine Dept., lacerated on his head, hematoma, right eye, positive AB; ALEX MALASI, dep/son of Mariano Malasi CN-1806, Mine Dept., positive AB. ALEXANDER VENTURA was also picked-up an outsider; from Alang, Camp #3, Tuba, Benguet and during the confrontation at Security Hqs. he was pinpointed by Waggay group to have inflicted the injuries to them with the help of his unidentified companions. However, Ventura denied any participation of (sic) the incident happened (sic). It was further learned that Ventura claimed to be a native of Cagayan province and used another name, but later divulged his true identity. It was further learned that SG F. Banawan was allegedly hit by R. Daluwog and sustained hematoma right upper ribs. Subjects were later released after signing a promissory note to appear at Itogon INP for further investigation of their case.

'The incident happened near the Tennis Court in front of Engr. Ramos at about 8:55 PM. Victim sustained injuries after they were allegedly hit by broken empty beer bottle.' Exh. K., Exh. K-1, Exh. 4.).

"Apparently, from the above entries of the Journal, both Fernando Waggay and Rudy Daluwog were injured from (sic) said incident of 8:55 PM and allegedly the same were inflicted on them by a certain Alexander Ventura, an outsider from Alang, Camp 3, Tuba, Benguet and his unidentified companions. The participants, however, were later released after signing a promissory note to appear at the Itogon Police for further investigation.

"Back at the recreation hall, where there was dancing, it was already about midnight of February 19, 1988 when the cousins Juan Mano and Lito Mano decided to walk back home. Their way home was well lighted and there were street lights on.

"While on their way home, Juan Mano and Lito Mano came upon four persons. Two of said persons asked Lito Mano if they were from Alang, Camp 3, Tuba, Benguet. But Lito Mano answered that they were not as they were from Taluan, Tuba, Benguet. The four persons told them to go on home. Thus, Lito Mano and Juan Mano moved on. A few meters thereafter, however, Juan Mano noticed some persons moving behind them. And since Juan Mano was side by side with Lito Mano in moving along, as Juan Mano looked back he saw particularly accused Fernando Waggay hack Lito Mano. Thus, Juan Mano ran away as two of the four persons also chased him leaving thereby Lito Mano. Juan Mano recognized two of the four persons as Fernando Waggay and Rudy Daluwog.

"At this precise moment, when Lito Mano was left, he, too, tried to run away pleading for his life saying, 'Awan ti basul ko, Manong, awan ti basul ko' (I have no fault, Manong, I have no fault), which words and commotion outside were heard by Alejandro Bacbac who was in his bunkhouse, having arrived from his work in the 3:00 PM to 11:00 PM shift, and eating his supper. Thus, Alejandro Bacbac went to the door of his bunkhouse and opened it a little, and peeped, and saw a man, later to be identified as Lito Mano, chased by 4 persons, and when overtaken, 2 persons held him by the arms and, while one hacked him, another kept stabbing him at the back with a knife. The assailant who kept stabbing Lito Mano at the back with a knife was recognized by Alejandro Bacbac as accused Rudy Daluwog.

"Likewise, at about the same time, the commotion and the sound of footsteps outside awakened Manuel Quines who was sleeping in the bunkhouse of his uncle Leon Mano. And so he opened the door only to see Lito Mano fall down about 10 meters away with Rudy Daluwog, with a white cloth tied on his head, stabbing Lito Mano repeatedly at the back and thereafter Rudy Daluwog and companions left. Manuel Quines immediately called for his uncle Leon Mano and the latter went out and saw his son bleeding and dying.

"At this point, a Toyota Tamaraw, owned and driven by Manuel Quezon, carrying empty bottles, with a certain Catunggal, Gerry del Rosario and Marlon Aquino on board, passed by and was stopped by someone. Victim Lito Mano was loaded on board the front seat with the help of the person who stopped the vehicle, and immediately they proceeded to the Philex Mines Hospital leaving Catunggal, Marlon Aquino and Gerry del Rosario at the place where the victim fell.

"At the hospital, Dr. Emerito Arriba immediately attended to Lito Mano to no avail as the latter expired thereafter. Dr. Arriba issued a death certificate (Exh. D) showing the cause of death as massive hemorrhage due to multiple stab wounds. Dr. Arriba explained, however, in his testimony that he was not able to conduct an autopsy as the father of the victim objected to it and it is probable one of the less than 10 wounds was a hacking wound."[6]

For his part, appellant interjected the defense of alibi and denied authorship of the offense charged. Arthur Waggay, father of appellant, took the witness stand and testified that on the night of the incident, his son, appellant Fernando Waggay, was all the time at their house sleeping soundly.[7]

The dual issues to be resolved in the case at bar are whether or not the guilt of appellant for the crime charged has been proven beyond reasonable doubt, and whether or not the qualifying circumstance of abuse of superior strength has been clearly established and substantiated. After a painstaking and thorough scrutiny of the records, the Court finds no basis to set aside the judgment of conviction handed down by the lower court.

By and large, the prosecution's case rests on Juan Mano's testimony wherein he positively identified Fernando Waggay as the one who hacked Lito Mano. Contrary to the stance of the defense, we find the testimony of witness Juan Mano credible and tenable. It was he who was with victim Lito Mano immediately before the latter was killed. Visibility was favorable because the route was well lighted. Immediately prior to the hacking incident, victim Lito Mano and witness Juan Mano came upon four persons who inquired if they were from Alang.[8] This afforded witness Juan Mano the opportunity to see and observe the faces of these persons, thus enabling him to pinpoint at least Fernando Waggay as one of the assailants.

Where considerations of visibility are favorable and the witness does not appear to be biased against the accused, his or her assertions as to the identity of the malefactor should normally be accepted. This is more so when the witness is the victim or his close relative because such witness usually strives to remember the faces of the assailants.[9] As between positive and categorical testimony which has a ring of truth on the one hand and a bare denial on the other, the former is generally held to prevail.[10]

We agree with the finding of the trial court that what Juan Mano saw was the onset of the attack, while both

Alejandro Bacbac and Manuel Quines who identified Rudy Daluwog as the person who stabbed the victim, saw the subsequent portion of the same continuous attack.[11] This is the reason why Lito Mano's body was sprawled on the street about six meters away from the place of the initial assault when Juan Mano came back to the scene of the crime with his brother, Angel Mano.[12] Furthermore, neither Alejandro Bacbac nor Manuel Quines averred that they both saw the initial part of the attack nor was it physically probable for them to have witnessed it. The sound of a voice pleading "I have no fault" was what prompted Alejandro Bacbac to peep from the door of his bunkhouse, allowing him to view the fracas.[13] Manuel Quines, on the other hand, heard a commotion which prodded him to go out of the bunkhouse.[14] Therefore, the attack against Lito Mano had already commenced when Alejandro Bacbac and Manuel Quines espied the disturbance.

The defense cites certain inconsistencies in the various stages of Juan Mano's testimony before the court and which it alleges erodes his "credibility. The defense bases its claim of inconsistency on the testimonies of Juan Mano before the lower court on two different occasions. On direct examination, he testified:

"Q

Now, while you were on your way, what happened?

A

I noticed people behind me.

Q

And when you noticed people behind you, what did you do?

A

I looked back and I saw Fernando Waggay hack Lito Mano.

Q

And when you saw Fernando Waggay hack Lito Mano, what did you do?

A

I ran away, sir." [15]

In the preliminary hearing on a motion for bail, Juan Mano testified as follows:

"Q

And when you saw Fernando Waggay behind you, what did you do with Lito Mano?

A

We ran, sir.

Q

And were you able to run away?

A

Only me, sir.

Q

How come that you were the only one who ran away?

A

Because they were holding him.

Q

Who were holding him?

A

The companions of Rudy Daluwog."[16]

Appellant contends that the aforequoted testimonies clearly show an outright contradiction. He asserts that on the prior testimony, witness Juan Mano declared that he saw that Fernando Waggay immediately hacked Lito Mano while, in the later testimony, Lito Mano was first held by the assailants before he was hacked. A close analysis of the aforequoted testimonies, however, shows that there is no contrariety. Witness Juan Mano replied to two entirely different questions. In the prior testimony, he was asked on what he did when he noticed that there were persons behind them while, in the later one, he was queried as to why he was the only one who was able to run away.

Assuming that there are indeed discrepancies, such minor disparities actually boost the credibility of the witness, rather than abrade it. The niceties of expression cited by the defense are too inconsequential and trifling as to affect the veracity of his narration. A witness is not expected to remember an incident with perfect recollection down to the insignificant and smallest details.[17] Testimonial discrepancies could be caused by the natural fickleness of memory which tend to strengthen rather than weaken credibility as they erase any suspicion of rehearsed testimony.[18]

Besides, the later quoted testimony was given only in a preliminary hearing on a motion for bail whose main purpose was to ascertain whether the accused is charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by reclusion perpetua, and whether or not the evidence of guilt is strong,[19] to thereby determine whether or not the accused may be granted provisional liberty during the pendency of the case.

Appellant further professes that Juan Mano's testimony is not worthy of belief because he assumed an alias, "Alex Ventura," when he was investigated about a disturbance that happened prior to the assault against victim Mano. Said contention is without merit. Nowhere in the records is there any explicit statement that Juan Mano and Alex Ventura, the name that appears on the journal of the Philex Mines Security Office, is one and the same person. Although security guard Terrencio Olpindo testified that Alex Ventura and Juan Mano "have a similarity, only that he has a shorter hair," said witness also admitted that he did not actually see Alexander Ventura, thus:

"Q

And who is this Alexander Ventura?

A

I do not know this person because he is an outsider and I think he is from Alang.

Q

You answer the question. Is it not that Alexander Ventura mentioned in said entry is actually Juan Mano?

A

I do not know if this is his alias.

Q

All right. During that occasion, did you actually see the Alexander Ventura mentioned in that entry in your journal?

A

No, sir, because what I can remember when we brought them, there was Fernando Waggay and the two others." [20] (Underscoring ours.)

In addition, the defense failed to disclose any dubious motive on the part of witness Juan Mano to falsely testify against appellant and cause the damnation of one who had neither brought him harm nor injury. [21] Such absence of contrary evidence convinces this court that witness Juan Mano's testimony is worthy of belief and credit.

Besides, the prosecution has established the existence of a sufficient motive for the murderous onslaught. Prior to the incident, the group of Fernando Waggay and another group of Alexander Ventura had an altercation. This spurred the group of Fernando Waggay to wait for the group of Alexander Ventura along the way to avenge the grudge they harbored against the latter. Hence, on the mistaken assumption that Juan Mano was Alexander Ventura because of their similar features, [22] Fernando Waggay hacked the victim, Lito Mano, whom the former further presumed to belong to the group of Alexander Ventura.

In any event, findings of fact of the trial court are conclusive upon this Court, except in certain instances which do not obtain here, since the former is afforded the opportunity to observe the demeanor of the witnesses. It is not our function to analyze or weigh such evidence all over again, our jurisdiction being generally limited to reviewing errors of law that might have been committed by the court below. [23]

The acts of appellant subsequent to the incident do not speak well of his claim of innocence. He left for Kalinga Apayao on March 2, 1988 and returned only on September 21, 1989. Appellant was discharged from work due to his absence without leave (AWOL). His father knew he was a suspect in the case at least two weeks after the incident. [24] The common reaction of a person or his family when confronted with such knowledge would be to immediately go to the authorities to explain his side and clear his name. Yet, neither he nor his father made any move to exonerate him from any tinge of suspicion. Such fact gives the Court basis for the deduction that he fled to avoid judicial processes. The flight of an accused discloses a guilty conscience. [25]

The trial court fittingly rejected the defense of alibi interposed by appellant. For alibi to prosper, the requisites of time and place must be strictly met. [26] Times without number, we have stressed that it must not only appear that the accused interposing such defense was at some other place but also that it was physically impossible for him to be at the scene of the crime at the time of its commission. [27] The bunkhouse where appellant supposedly stayed and slept from 10:00 PM of February 19 until the morning of February 20, 1980 is merely a few minutes' walk from the place where the hacking incident occurred. It was, therefore, not physically improbable for appellant to be at the locus criminis at the time the crime was committed.

Alibi is admittedly and consistently considered the weakest defense an accused can concoct. [28] To be plausible, it must be validated and corroborated by impartial and unbiased eyewitnesses. Where nothing supports the alibi except the testimony of a relative, it deserves but scant consideration. [29] Appellant himself did not testify in his behalf. Neither did he introduce any other witness, except his own father, to bolster his defense of alibi.

Anent the second issue, the defense contends that the lower court blundered when it held that the crime committed is murder, when it should be homicide because the qualifying circumstance of abuse of superior strength was not indubitably proven. On the contrary, the records show that indeed such abuse of superior strength was clearly established. Alejandro Bacbac took the witness stand and testified without contradiction on direct examination as follows:

"Q

And what did you see when you peeped again for the second time after hearing someone pleading 'I have no fault I have no fault'

A

I saw Rudy Daluwog and his three companions running after someone and attacking him.

x x x

Q

In relation to this person who was being attacked, where was Rudy Daluwog?

A

He was below trying to prevent the victim from moving down.

Q

Now you kept talking about attacking or 'tirtiraenda'. What exactly were they actually doing?

A

Rudy Daluwog was stabbing the victim while the victim was trying to extricate himself from the three persons holding him.

Q

How long, more or less, did the stabbing happen?

A

From the time of the stabbing up to the time the victim died is around five minutes.

x x x

Q

From whom did you hear that it was Lito Mano who was the victim?

A

From his father, Leon Mano."[30] (Under-scoring supplied.)

x x x

His testimony on cross-examination likewise stands unassailed:

"Q

With what did these three persons stab the alleged person?

A

A knife, sir.

Q

All of these three persons?

A

The companions of Rudy Daluwog were holding the person and I saw Rudy Daluwog stabbing the person with a knife. This person could not extricate himself from the hold of the persons because he was already weak as he was being stabbed.[31] (Emphases supplied.)

x x x

There is no rigid or established rule as to whether there is abuse of superior strength, which qualifies the crime to murder, if two or more assailants attack a single person. If the felons take advantage of their collective strength to overwhelm their comparatively defenseless victim, the qualifying circumstance of taking advantage of superior strength is present. Here, the four culprits used their dominance in number to overpower the deceased. They also used excessive force entirely out of proportion to the means of defense available to the victim who was unarmed,[32] unsuspecting of his impending fate and left alone at the mercy of his tormentors after Juan Mano was able to extricate himself from the situation.

Accordingly in *People vs. Baluyot*,[33] this Court held:

"It was established that the assailants ganged up on Ricardo Patiag and while his four companions were holding the restraining the victim, Mariano Baluyot stabbed him three times causing his death. There was a clear and notorious disparity of force between the victim and the aggressors as the former was unarmed and alone. The attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity. Thus, the crime committed is not homicide as found by the trial court, but murder qualified by abuse of superior strength."

Although no autopsy was conducted on Lito Mano mainly due to the objections of his father,[34] the certificate of death reflects that the cause of death was massive hemorrhage, secondary to multiple stab wounds on the posterior upper chest wall. Dr. Emeritu Arriba, the attending physician, testified that there were less than ten wounds,[35] but the number of lacerations sustained by the victim is incontrovertible physical evidence that the combined strength of the four malefactors was too overwhelming for the defenseless Lito Mano to even make a token resistance.

Although the trial court is convinced that the witnesses saw the commission, of the same felony, the possibility exists that they saw different aspects thereof. This is the reason why Manuel Quines testified that he saw only one person stabbing Lito Mano and the former's companions were fifteen meters away from the scene of the crime. The Court is persuaded of the possibility that what Manuel Quines witnessed was the concluding part of the felony. The three companions of appellant, feeling the need to desert the scene of the crime because Juan Mano was able to escape and might seek assistance, immediately left the place.

Seeing that appellant Waggay was still with the victim, they called him, as testified to by Manuel Quines:

x x x

"Q

Who was shouting calling for his companions?

A

The one who was stabbing was called by his companions.

Q

Who was calling him shouting?

A

His companions whose names I do not know.

Q

When he was called by his companions, what did this person do?

A

He ran away, sir.

Q

How do you know that he ran away?

x x x

A

I saw him, sir.

x x x

Q

And who was this person who ran away who you saw stabbing the person lying down?

A

Rudy Daluwog, sir."^[36]

On the foregoing premises, we find no cogent reason to disturb the findings of fact and conclusions of the trial court. However, in line with the current jurisprudential policy,^[37] the Court hereby further awards P50,000.00 to the heirs of Lito Mano by way of civil indemnity under Article 2206 of the Civil Code for the death of said victim.

WHEREFORE, except for the aforementioned additional award of death indemnity in the amount of P50,000.00 which accused-appellant Fernando Waggay is ordered to pay to the heirs of his victim, the judgment appealed from is hereby AFFIRMED in all other respects.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Nocon, and Campos Jr., JJ., concur.

[1] Original Record, 1.

[2] Ibid., 206.

[3] Ibid., 185.

- [4] Ibid., 294; per Judge Ruben C. Ayson.
- [5] Brief for Appellant, 8.
- [6] Original Record, 286-289.
- [7] TSN, May 8, 1990, 8-9.
- [8] Ibid., March 9, 1990, 6-7.
- [9] *People vs. Santito, Jr., et al.*, 201 SCRA 87 (1991).
- [10] *People vs. Caballes*, 199 SCRA 152 (1991).
- [11] Original Record, 289-290.
- [12] TSN, December 12, 1988, 40.
- [13] Ibid., June 28, 1988, 8.
- [14] Ibid., November 8, 1988, 22.
- [15] Ibid., December 12, 1988, 39.
- [16] Ibid., October 27, 1989, 6.
- [17] *People vs. Placido*, 199 SCRA 410 (1991).
- [18] *People vs. Santito, Jr., et al.*, *supra*, Fn 9.
- [19] Sec. 3, Rule 114, 1985 Rules of Criminal Procedure.
- [20] TSN, October 22, 1990, 12-13.
- [21] *People vs. Ecal*, 199 SCRA 366 (1991).
- [22] TSN, October 22, 1990, 14.
- [23] *Lanzona vs. Intermediate Appellate Court, et al.*, 187 SCRA 33 (1990).
- [24] TSN, May 15, 1990, 7-8.
- [25] *People vs. Dalinog*, 183 SCRA 88 (1990).
- [26] *People vs. Arroyo, et al.*, 201 SCRA 616 (1991).
- [27] *People vs. Pasco, et al.*, 181 SCRA 233 (1990).
- [28] *People vs. Santito, Jr., et al.*, *supra*, Fn 9.
- [29] *People vs. Rio*, 201 SCRA 702 (1991).
- [30] TSN, June 28, 1988, 8-9.
- [31] TSN, September 19, 1988, 14.
- [32] *People vs. Dumpe, et al.*, 183 SCRA 547 (1990).

[33] 170 SCRA 569 (1989).

[34] TSN, February 20, 1990, 3.

[35] Ibid., id., 4.

[36] Ibid., November 8, 1988, 24.

[37] People vs. Catua, et al., 207 SCRA 542 (1991); People vs. Sazon, 189 SCRA 700 (1990).

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