

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO VILLANUEVA AND ROGINO VILLANUEVA, ALIAS
“DIGOY,” ACCUSED. ROGINO VILLANUEVA, ALIAS
“DIGOY,” ACCUSED-APPELLANT.**

G.R. No. 98468. August 17, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

In Criminal Case No. 492 of the Regional Trial Court of Kabankalan, Negros Occidental, Branch 61, Armando Villanueva and Rogino Villanueva, alias "Digoy," were charged with murder allegedly committed in this wise -

"That on or about the 15th day of November, 1986, in the Municipality of Cauayan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, armed with a homemade shotgun (pugakhang), with intent to kill, with evident premeditation and treachery, did then and there, wilfully, unlawfully and feloniously attack, assault and shoot one JOSELITO ITONA y NONATO, thereby inflicting gunshot wounds upon the body of the latter which caused the death of the said victim." [1]

to which indictment the accused pleaded not guilty when arraigned.[2]

After weighing the evidence respectively adduced by the prosecution and the defense, the trial court acquitted accused Armando Villanueva, declaring that "no evidence of conspiracy was sufficiently shown." The court a quo likewise found that no sufficient evidence had been adduced to link accused Armando Villanueva to the treacherous act of his brother, Rogino, considering that the former did nothing except to run away after the latter's commission of the crime. However, accused Rogino Villanueva was found guilty beyond reasonable doubt of the crime of murder, and the fate of both accused was accordingly adjudged as follows:

"WHEREFORE, the Court finds the accused Rogino Villanueva GUILTY beyond reasonable doubt of the crime of murder as defined in Art. 248 of the Revised Penal Code with the qualifying circumstances of treachery and use of superior strength, and is sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased Joselito Itona in the amount of Thirty Thousand Pesos (P30,000.00) without subsidiary imprisonment in case of insolvency and to pay the costs.

The accused Armando Villanueva is ACQUITTED." [3]

From the People's brief, we quote the pertinent operative facts of this case which were established by the prosecution's evidence, cited therein by way of documentation, and which we have verified from the transcripts of the notes of the proceedings:

"At around six thirty (6:30) in the evening of November 15, 1986, Venancio Tabobo and Joselito Itona were talking in front of the latter's house at Sitio Mabua, Cauayan, Negros Oriental (tsn, November 5, 1987, pp. 5-6).

"At around the same time, the brothers Rogino and Armando Villanueva, who had been drinking tuba at Armando's house since 9:00 A.M. of the same day, were seen by Ismael Banson walking toward the house of Joselito Itona (tsn, December 17, 1987, pp. 3-5, 5-6). At a certain distance from Joselito's house, Armando Villanueva stayed behind while Rogino Villanueva continued walking towards the spot where Joselito Itona and Venancio Tabobo were talking (tsn, December 17, 1987, p. 6). Ismael Banson noticed that Rogino was carrying a 'pugakhang' or home-made gun in his armpit (Ibid, p. 7).

"Rogino Villanueva suddenly appeared from behind Joselito's house and he shot Joselito once with a homemade shotgun hitting him in the back (tsn, November 6, 1987, pp. 6-8; December 17, 1987, p. 7; April 20, 1988, pp. 8-9). Upon firing the shot, Rogino ran away together with Armando (tsn, November 6, 1987, p. 8). Venancio Tabobo chased Rogino but was not able to catch up with him (Ibid, pp. 18-19). Meanwhile, Ismael Banson approached Joselito, and upon seeing the latter sprawled on the ground with his back covered with blood, Ismael lifted him with the help of Joselito's father (tsn, December 17, 1987, pp. 17-18).

"The following day, Dr. Raymundo Guerrero, medical officer of Cauayan, Negros Oriental, conducted an examination of the body of Joselito and concluded that the bodily injuries caused by the shotgun bullets were so serious that they caused the immediate death of Joselito (tsn, April 20, 1988, pp. 9-10).

"Also the following day, members of the CHDF arrested Armando Villanueva while Rogino was arrested on November 19, 1986." [4]

The autopsy conducted on the victim showed that the following injuries were sustained by him, viz.:

"SHOTGUN WOUNDS ALL POSTERIOR LEFT THORACIC NON PENETRATING.

1. POE base neck left 5 cm. level 7th spinal column at the middle part non-penetrating.
2. POE left 5 cm. medico-lateral part neck at the vertebral line level 8th cervical spinal column non-penetrating.
3. Scattered 7 bullet wounds penetrating the posterior thoracic wall with POE from the medial part of the scapular area to the lateral area of the scapular bone left 5 cm. level of the 5th, 6th, 7th and 8th thoracic ribs." [5]

Appellant Rogino Villanueva interposed the defense of alibi. He claimed that he used to climb coconut trees almost everyday, being a tuba gatherer by occupation. He testified that he was gathering tuba at Cambugsoc, Cauayan, Negros Occidental, two kilometers away from the place of the incident. He further contended that the nature of his work required him to climb the coconut trees from 7:00 A.M. up to around 12:00 noon and, in the afternoon, he again started climbing the coconut trees at 2:00 P.M. up to 6:30 P.M. He had to do this almost everyday, including Sundays, otherwise, his absence of one or more days would cause his tuba to turn sour and it would not be good for drinking. [6]

The lower court rejected appellant's defense and opined that "(i)n the present case, no clear, positive and convincing evidence was presented by the defense to show that the accused were not at the scene of the incident when the said incident happened. They relied on their mere assertions that they were somewhere else." It then sustained "the unimpeached testimonies of the two (2) prosecution witnesses that the accused Rogino Villanueva and Armando Villanueva were present at Sitio Mabua, Barangay Poblacion, Cauayan, Negros Occidental, at around 6:30 o'clock in the evening and that while there, the accused Rogino Villanueva treacherously shot Joselito Itona y Nonato at the back with a home-made shotgun (pugakhang) causing his death." [7] It accordingly concluded that, from the evidence on record, alevosia and abuse of superior strength were employed in the commission of the crime.

Before us, appellant raises a lone and general assignment of error faulting the lower court's finding that his guilt for the crime of murder had been proved beyond reasonable doubt. [8]

Appellant merely reiterated the defense of alibi in his brief, arguing that "it would be impossible for the accused?appellant to be present at Sitio Bonbon at around 6:30 in the evening when the shooting incident happened, when at this point of time, he was about to finish or had just finished gathering his tuba to be delivered to his employer at Cambugsoc, Cauayan, Negros Occidental." [9]

After a careful assessment of all the evidence on record, we hold that the foregoing pretensions of appellant do not deserve serious consideration and do not warrant a reversal of the judgment of conviction.

The disposition of his appeal basically hinges on the findings of fact of the court a quo. Corollarily, we have consistently held that the findings of the trial court as to credibility of the witnesses are to be given weight and a high degree of respect by the appellate court. [10] Unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, the appellate court will not disturb the factual findings of the lower court. [11]

Appellant invokes the discredited defense of alibi. It is his claim that at the time the crime was committed, he was gathering tuba in another place two kilometers away from Sitio Mabua, Cauayan, the place where Joselito Itona was killed. To establish alibi as a defense, however, it must be shown that it was impossible for the accused to have been at the place where the crime was committed. [12] Likewise, the defense of alibi may not be successfully invoked where the identity of the assailant has been established by the witness. [13]

Against the foregoing doctrinal criteria, appellant's alibi cannot possibly be given any weight. No clear, positive and convincing evidence was presented to show that appellant was not at the place where the shooting incident happened. The defense merely relied on the denials of appellant without presenting any other evidence to corroborate or substantiate his disclaimer. Yet, the rule is that no less than the clearest proof is required to establish the defense of alibi. [14]

Furthermore, the identities of appellant and his co-accused were established beyond question by the prosecution witnesses. As correctly held by the court below, "(a)gainst these denials of the accused were the positive testimonies of the prosecution witnesses Venancio Tabobo and Ismael Banson who identified them with certainty. In fact, prosecution witness Venancio Tabobo chased the accused after one of them fired a shot at Joselito Itona in order to be certain who they really were. (TSN, Page 19, Nov. 6, 1987). Said witness could not have been wrong in identifying both accused since he had known them for a long time. (TSN, pp. 4-5, Nov. 6, 1987). Besides, the victim was shot at close range (TSN, p. 7, Nov. 7, 1989) and the witness was sitting near the victim at the time of the shooting. (TSN, p. 7, Nov. 7, 1987)." [15]

Appellant claims that the trial court erred in finding him guilty of murder. On the basis of the facts and evidence of record, this Court, like the court below, rules that the killing was attended by treachery, hence the crime committed was definitely murder.

It is true that for treachery to be appreciated, there must be proof that at the time of the attack, the victim was not in a position to defend himself and that the offender consciously and deliberately adopted the particular means, method or form of attack which he employed to ensure the accomplishment of his purpose with impunity. [16]

In the case at bar, the killing was clearly committed in a treacherous manner. The victim, Joselito Itona, was completely taken by surprise. Appellant, armed with a home-made shotgun, came from behind the house of Joselito and, at close range, suddenly shot the victim at the back causing his instantaneous death.

There is treachery when a victim is attacked by an accused without warning and with his back turned to his assailant, or when the attack is sudden and unexpected and without the slightest provocation on the part of the victim, or is sudden and unexpected that the victim was unable to defend himself, thus insuring the execution of

the criminal act without risk to the assailant.[17]

However, the lower court erred in appreciating the aggravating circumstance of abuse of superior strength. As held in a long line of cases up to the present,[18] the circumstance of abuse of superior strength is properly deemed absorbed by the qualifying circumstance of treachery. This error of the trial court, however, will not affect the penalty imposed by it on appellant since, in the absence of any modifying circumstance, the penalty for murder is reclusion perpetua.

Finally, appellant argues that the reported act of prosecution witness Venancio Tabobo after the shooting incident contradicts normal human behavior. According to appellant, "common sense will dictate that the first tendency of a man who heard a shooting near to him is to cover himself or to run away from the scene of shooting but not chase the shooter." [19]

The said contention is utterly devoid of merit. We have ruled in a number of cases[20] that there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. Verily, it is even preposterous to say that anyone can determine exactly how a person will or should react to a given situation. The testimony of said prosecution eyewitness is evidently neither improbable nor incredible.

WHEREFORE, the decision appealed from is AFFIRMED, with the modification that the indemnity to the heirs of the victim, Joselito Itona y Nonato, is hereby increased to P50,000.00 in line with the present case law thereon.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Nocon, and Puno, JJ., concur.

[1] Original Record, 1.

[2] Ibid., 85.

[3] Ibid., 170; penned by Judge Rodolfo S. Layumas.

[4] Brief for the Plaintiff-Appellee, 2-3; Rollo, 63-64.

[5] TSN, April 20, 1988, 8; Exh. "A".

[6] Brief for Accused-Appellant, 3-4; Rollo, 35-36.

[7] Original Record, 167-168.

[8] Brief for Accused-Appellant, 1; Rollo, 33.

[9] Ibid., 4; id., 36.

[10] People vs. Toribio, 198 SCRA 529 (1991).

[11] People vs. De la Torre, 198 SCRA 663 (1991).

[12] People vs. Perante, Jr., 143 SCRA 56 (1986); People vs. Abigan, et al., 144 SCRA 130 (1986); People vs. Coronado, et al., 145 SCRA 250 (1986).

[13] People vs. Monteverde, 142 SCRA 668 (1986); People vs. Adones, et al., 144 SCRA 364 (1986).

[14] People vs. Peralta, 193 SCRA 9 (1991).

[15] Original Record, 167-168.

[16] People vs. Espera, 175 SCRA 728 (1989).

[17] People vs. Cuyo, et al., 196 SCRA 447 (1991); People vs. Lubreo, et al., 200 SCRA 11 (1991).

[18] People vs. Bueza, 188 SCRA 683 (1990); People vs. Espiritu, et al., 191 SCRA 503 (1990); People vs. Tasarra, et al., 192 SCRA 266 (1990); People vs. Dominguez, et al., G.R. No. 100199, January 18, 1993.

[19] Brief for Accused-Appellant, 6; Rollo, 38.

[20] People vs. Lagota, et al., 194 SCRA 92 (1991); People vs. Flores, et al., supra; People vs. Raptus, 198 SCRA 425 (1991).

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