

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER PARANGAN @ “SEKO,”A ALBER-TO SEMIL,B LUCIANO JAMAROLIN,B SABINO ALABAN,B ZOSIMO PAGLINAWAN,C JAIME BENDANO,C AND FELIPE ...

G.R. No. 99057. April 22, 1994

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

At around nine o'clock in the evening of April 26, 1985, in Barangay Owaon, Dapitan City, Felicisimo Diniay and the rest of his household were roused from their sleep by someone calling from outside their house, urging Felicisimo to come down: "Naog diha, tiyo." (Visayan for "Come down, uncle.") When the call was repeated, Felicisimo got up, lighted a kerosene lamp and prepared to go downstairs to talk to the callers.[1]

Felicisimo Diniay's son, Bienvenido, peering through a window, saw seven (7) men in two groups. The first group, numbering four, was positioned in front of the stairs of the house. The second group, three in number, stood about five meters away from the first. By the light of the moon, Bienvenido recognized the seven persons. In the first group were Roger Parangan, Zosimo Paglinawan, Jaime Bendano, and Felipe Ponggan; in the second, Sabino Alaban, Alberto Semil and Luciano Jamarolin.[2]

Leaving the lighted kerosene lamp behind, Felicisimo proceeded to the stairs. As he emerged from the house and stood at the top of the stairway, Roger Parangan and appellant Felipe Ponggan suddenly began firing their guns at him. Felicisimo was hit in the forehead and in the right portion of the stomach just below the breast (as revealed by the post-mortem examination conducted later by the municipal health officer, Dr. Hannibal Adaza),[3] and died instantly.[4]

Bienvenido immediately reported his father's killing to the police authorities and later executed an affidavit disclosing what he had seen and heard at the time.[5]

Roger Parangan, Alberto Semil, Luciano Jamarolin, Sabino Alaban, Zosimo Paglinawan, Jaime Bendano, and Felipe Ponggan, were thereafter charged with murder under an information reading as follows:[6]

"That in the evening, on or about the 26th day of April, 1985, in Barangay Owaon, City of Dapitan, within the jurisdiction of this Honorable Court, the above-named accused, armed with handguns, conspiring together and mutually assisting one another, with intent to kill by means of treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously enter into the dwelling of FELICISIMO DINIAY two times hitting him on vital parts of his body which caused his instantaneous death.

That as a result of the criminal acts of the accused, the heirs of the deceased suffered the following damages:

1. Moral damages..... P12,000.00
2. Loss of earning capacity..... P10,000.00

3. Death indemnity..... P30,000.00

Total.....P52,000.00

CONTRARY TO LAW, with the aggravating circumstance of abuse of superior strength and nighttime which was purposely sought by the accused to facilitate the commission of the offense."

The case against accused Roger Parangan was dismissed on account of his death after the filing of the information.[7] Three (3) of his co-accused -- Luciano Jamarolin, Alberto Semil and Sabino Alaban -- were discharged to be state witnesses pursuant to Section 9, Rule 119 of the Rules of Court.[8] Two others, namely, Zosimo Paglinawan and Jaime Bendano, were never arrested and remain at large to this day. Only Felipe Ponggan thus stood trial, upon his plea of not guilty.

The Regional Trial Court[9] adjudged Ponggan guilty in a decision dated March 6, 1991,[10] the decretal portion of which reads as follows:[11]

"WHEREFORE, the court finds accused Felipe Ponggan guilty of murder with moral certainty, without mitigating or aggravating circumstances attending, and pursuant to Art. 248 of the Revised Penal Code and the 1987 Constitution (People vs. Andaya, 152 SCRA 570), he is sentenced to reclusion perpetua, including the accessory penalties, with credit of his detention to such extent as determined, and to indemnify the heirs of Felicisimo Diniay the total amount of P52,000, broken down as follows: P12,000 for moral damages; P12,000 for loss of earning capacity and P30,000 for death indemnity and costs.

"IT IS SO ORDERED."

Hence this appeal, brought to this Court by Felipe Ponggan, who assigns one error to the Court a quo, viz.:

"THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE ABSENCE OF EVIDENCE REQUIRED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."[12]

A thoroughgoing evaluation of the briefs in relation to the evidence on record convinces the Court that the trial court's judgment is in accord with the law and the proofs. The evidence of the prosecution does indeed generate the requisite moral certainty of the appellant's guilt of the crime charged.

The main defense put up is alibi. Ponggan testified that on April 25, 1985, he was in his place of residence in Canibungan, Roxas, Zamboanga del Norte, and remained there until two days later to do some farming work; and that while he used to live in Owaon, he had moved to and established residence in Canibungan in 1980 when he got married. He further declared that since 1982, until his arrest in connection with this case in 1987, he was one of the barangay councilmen of Canibungan.[13]

Corroboration of Ponggan's alibi was essayed by defense witness Geronimo Arunda, barangay captain of Canibungan since 1987. Arunda testified that Ponggan was really in Canibungan in the morning of April 26, 1985, supervising some barangay civic project, and that he (Arunda) saw him (Ponggan) in the afternoon of the same day, as well as two days afterward. Arunda further deposed that he well remembered Ponggan's participation in the civic project because he kept a log book of those who participated therein, duly signed by him.[14]

Appellant's defense of alibi cannot prevail over the positive affirmations of no less than three prosecution witnesses, namely: Bienvenido Diniay, Ernesto Saguin and Alberto Semil, all of whom pinpointed him as one of the perpetrators of the crime.[15]

The Government's principal witness, Bienvenido Diniay, the son of the victim, Felicisimo, categorically stated that he saw appellant Felipe Ponggan and Roger Parangan shoot and kill his father, with handguns.[16] He asserted that he was able to recognize his father's assailants because it was a moonlit night,[17] and he had known them long before the killing took place, they being all residents of Owaon, Dapitan City, except for Jaime Bendano.[18]

Appellant's co-accused, Alberto Semil, who was discharged to be a state witness, as above stated, also gave evidence directly linking Ponggan to the murder and belying his alibi. His testimony corroborated Bienvenido Diniay's eyewitness declarations. He testified as regards details which could have been known only to Ponggan and those actually present at the time of the slaying of Felicisimo Diniay, i.e., that he and his companions were there in the place of the incident because "they had a mission to execute;"[19] that it was Ponggan who had called out to Felicisimo, "Naog diha, tiyo" (Come down, uncle), an invitation seconded by Parangan; that at that time only Ponggan and Parangan were armed, having in their possession, respectively, a .38 caliber revolver and a .22 local magnum;[20] that when Felicisimo started to go down the stairs, he was met by a gunshot followed by another, the first being louder than the second; and that thereafter, the three men composing the second group: Alaban, Jamarolin and he (witness Alberto Semil), ran away leaving Parangan, Paglinawan, Bendano and appellant Ponggan behind.[21]

Another prosecution witness, Ernesto Saguin, gave testimony affirmatively establishing the presence of Ponggan in barangay Owaon, Dapitan City, about two hours before the commission of the crime. Saguin, a resident of Owaon, declared that on April 26, 1985, at around six o'clock in the evening, he saw Ponggan and Zosimo Paglinawan pass by the front of his house; that later that evening he heard two gunshots coming from the direction of the victim's house, a kilometer away; and that he subsequently learned that Felicisimo Diniay was killed that particular night.[22]

This Court thus sustains the following findings and conclusions of the Trial Court rejecting appellant's defense of alibi.

"The Court finds unimpressive accused's defense of alibi:

1. He claims he was in Canibungan to do some farming work, but his supposed corroborating witness, Geronimo Arunda declared he supervised and participated in the barangay civic action.
2. Arunda's claim that he kept a logbook with his signature authenticating it (in) which he listed the participants in the civic action on April 26, 1985 is undeserving of belief because at that time, he had no control, much less, power over barangay activities, having assumed as barangay captain thereof only in 1987, which was some two years later.
3. Arunda, already the barangay captain of Canibungan when he testified on December 14, 1988, declared that the keeping of a logbook showing participants in the civic action, strangers coming in, as well as barangay inhabitants who leave and return, is a regular practice. He even said it is Elisa Tobli who now takes charge of the logbook replacing Godofredo Mamanda as barangay secretary. But the defense, knowing fully well its shaky defense did not present the logbook as demonstrative evidence (Rule 130, Sec. 1(4). It could not be existing after all."

Alibi is indeed one of the weakest defense (sic) an accused can invoke. Easily lending itself to concoction it must invariably be viewed with suspicion, and may be considered only when established by positive and clear satisfactory evidence (People vs. Gapasin, 145 SCRA 178; People vs. Munoz, G.R. 61152, Jul. 29, 1988)."

The rule is that the defense of alibi, in order to be given full faith and credit, must be clearly established and must not leave any room for doubt as to its plausibility and verity.[23] Appellant Ponggan's alibi, supported as it is by

proof less than credible, cannot overturn the prosecution's positive evidence demonstrating beyond reasonable doubt that he participated in the killing of Felicisimo Diniay.

With respect to Ponggan's contention that it is the affidavit of witness Bienvenido Diniay -- containing the general and ambiguous statement that it was the "group" who killed his father -- that should be given credence rather than his testimony in open court -- mentioning for the first time that, specifically, it was Felipe Ponggan and Roger Parangan who were his father's assailants -- suffice it to say that affidavits taken ex-parte are inferior to testimony given in court, the former being almost invariably incomplete and often inaccurate.[24]

Ponggan's contention that Alberto Semil is a perjured witness and that his testimony was tailored to strengthen the weak case of the prosecution, is not well taken. It will be noted that Semil, appellant's co-accused who was discharged to be a state witness, not only withstood the test of cross-examination, but his testimony was also substantially corroborated by those of the other two prosecution witnesses, Diniay and Saguin.

Ponggan was positively identified by witnesses whose testimonies, according to the trial court,[25] were "natural and in accord with the normal course of events." [26] No ill-motive has been shown for the prosecution witnesses to give false evidence against appellant. The mere fact that witness Bievenido Diniay is a relative of the victim is not sufficient warrant to disregard his testimony nor does it render the same less worthy of credit, it being important to stress that his identification of Ponggan as one of the assailants was positive and reliable.[27]

The Court likewise agrees with the lower court's finding that the killing of Felicisimo Diniay was attended by treachery and evident premeditation.

There is treachery when the offender adopts means, methods or forms in the execution of the felony which insure its commission without risk to himself arising from any defense which the offended party might make.[28] In the present case, the victim, who was not armed, was shot and killed after he opened the door of his house and was just about to descend the stairs, without any inkling whatever that he was going to be met with bullets and in all probability not yet fully awake. The mode of attack thus appears to have been deliberately adopted by his assailants to ensure the commission of the crime without risk to themselves arising from the defense which Felicisimo might have offered. Clearly, treachery was present.

On the other hand, evident premeditation exists when the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during a space of time sufficient to arrive at a calm judgment.[29] Although there is no adequate showing of the source of the "mission" note which Efren Saguin handed to Alberto Semil, there was no refutation of his (Semil's) testimony that when he and Sabino Alaban arrived at the house of Albino Jamarolin -- uncle of discharged co-accused Juciano Jamarolin --, Roger Parangan, Zosimo Paglinawan, Jaime Bendano and appellant Felipe Ponggan, were already there, and it was appellant Ponggan who led and directed them towards the house of the victim. Thus, there is persuasive showing of evident premeditation and Ponggan's participation in the criminal "mission" or design.

However, where treachery has already been taken into account to qualify the crime as murder, evident premeditation should be considered only as a generic aggravating circumstance.[30] There being therefore one attendant aggravating circumstance attending the felony of murder, not offset by any mitigating circumstance, the proper penalty is death, which should nonetheless be modified to reclusion perpetua by virtue of the 1987 Constitution.[31]

As regards the other aggravating circumstances of use of superior strength and nighttime, the Court upholds the trial court's conclusion that these circumstances, although present, cannot be considered as separate aggravating circumstances because they are absorbed in treachery.[32]

Finally, the Court finds the trial court's award of damages justified by the facts proven by the evidence. However, conformably with prevailing jurisprudence, the amount of civil indemnity for death should be raised from P30,000.00 to P50,000.00.[33]

WHEREFORE, the Decision of the Trial Court is hereby AFFIRMED, except as to the death indemnity which is hereby raised to P50,000.00.

SO ORDERED.

Padilla, Regalado, and Puno, JJ., concur.

a Deceased

b Discharged, to be state witness

b Do

b Do

c At large

c Do

[1] TSN, Sept. 7, 1987, p. 3

[2] TSN, September 7, 1987, pp. 3-4

[3] TSN, Oct. 28, 1987, pp. 3-6

[4] Id., pp. 4-6

[5] TSN, Sept. 7, 1987, pp. 8-12

[6] Rollo, pp. 17-18

[7] Order dated June 26, 1990

[8] Original Record, p. 146

[9] Presided over by Judge Jesus O. Angeles

[10] Rollo, pp. 17-27

[11] Id., p. 27

[12] Appellant's Brief, p. 1

[13] TSN, July 10, 1989, p. 2-7

[14] TSN, Dec. 14, 1988, pp. 2-12

[15] See *People vs. Calicdan*, 165 SCRA 225 [1988]; *People vs. Pajarit*, 214 SCRA 678 [1992]; *People vs. Florida*, 214 SCRA 227 [1992] and cases cited therein

[16] TSN, September 7, 1987, pp. 4-6

[17] TSN, September 7, 1987, p. 4

[18] TSN, September 7, 1987, p. 11

[19] TSN, Sept. 15, 1988, p. 3

[20] TSN, Sept. 15, 1988, p. 6

[21] TSN, Sept. 15, 1988, p. 7

[22] TSN, Sept. 7, 1987, p. 16-17

[23] *People vs. Maravilla, Jr.*, 167 SCRA 645 [1988]; *People vs. Mangulabnan*, 200 SCRA 611 [1991]; *People vs. Lardizabal*, 204 SCRA 320 [1991]; *People vs. Simon*, 209 SCRA 148 [1992]; *People vs. Peran*, 215 SCRA 152 [1992]; *People vs. Pasilao*, 215 SCRA 163 [1992]

[24] *People vs. Avanzado*, 158 SCRA 427 [1988]

[25] RTC Decision, p. 9

[26] SEE *People vs. Aguilus*, 207 SCRA 187 [1992]; *People vs. Danico*, 208 SCRA 472 [1992]

[27] SEE *People vs. Bocatcat, Jr.*, 188 SCRA 175 [1990] citing *People vs. Castillo*, 171 SCRA 30 [1989], *People vs. Abagon*, 161 SCRA 255 [1988], and *People vs. Paras*, 147 SCRA 594 [1987]

[28] Article 14 (16), Revised Penal Code; SEE *People vs. Cempron*, 187 SCRA 248 [1990]; *People vs. Tiozon*, 198 SCRA 368 [1991]; *People vs. Balatucan*, 206 SCRA 81 [1992]; *People vs. Camaddo*, 217 SCRA 162 [1993]

[29] *People vs. Maravilla, Jr.* 167 SCRA 645 [1988]

[30] *People vs. Fabros*, 214 SCRA 694 [1992] citing *People vs. Diaz*, 55 SCRA 178 [1974]

[31] Article III, Sec. 19[1]

[32] *People vs. Bardon, et al.*, 165 SCRA 416 [1988] citing *People vs. Ramillano*, 133 SCRA 201 [1984]; *People vs. Bechayda*, 212 SCRA 336 [1992]

[33] *People vs. Sazon*, 189 SCRA 700 [1990] *People vs. Lazo*, 198 SCRA 274 [1991]; *People vs. Arevalo*, 466 [1992]; *People vs. Briones*, 219 SCRA 134 [1993]

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