

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DENNIS DE GUZMAN, ACCUSED-APPELLANT.***G.R. Nos. 125180-81. April 22, 1998*

Ponente: ROMERO, J.

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The Court is once again confronted with the dilemma of having to choose between the testimony of a mother and her teen-age son and that of the man they claim is responsible for the violent demise of their family's breadwinner and first-born son.

For the death of Ernesto Trilles and his son Edwin, accused-appellant Dennis de Guzman and two others who remain at large[1] were charged with two counts of murder[2] before the Regional Trial Court of Legazpi City on June 14, 1994, to wit:

“That on or about the 13th day of April, 1994, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all armed with handguns, conspiring, confederating and mutually helping one another for a common purpose, did then and there wilfully, unlawfully and feloniously and with treachery and abuse of superior strength, shoot with a handgun one ERNESTO TRILLES,[3] thereby inflicting upon the latter injuries which directly caused his death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.”

At the trial, the prosecution presented the testimonies of Rosita and Anthony Trilles to shed light on the incident. Their combined narration follows.

On the night of April 13, 1994, while Rosita was preparing supper in their modest home at Sitio Malangka, Taysan, Legazpi City, a young man whom she knew by face but whose name she did not know barged in through the kitchen door and shot her husband Ernesto in the head with a short firearm. As Ernesto lay sprawled on the kitchen floor, the man shot him again on the chest.[4] The man, who was later identified as accused-appellant Dennis de Guzman, then faced the horrified oldest son and asked him if he was Edwin. When the latter said “yes,” he too was shot and hit near the collar bone.[5] Before he was shot, his uncle who was Rosita's brother, Loreto Aringo, was seen near the eaves of the house. Addressing him, Edwin pleaded for his life saying, “Tio, do not shoot me. I did not do anything wrong.” Because Edwin had punched him the night before, Aringo ignored his nephew and even egged on the gunman, shouting, “Anong tio-tio gadanon an (What Tio, Tio, he should be killed).”[6] Anthony, the other son of Rosita who was hiding under the table, heard his brother pleading with de Guzman, “Don't kill me Tio.”[7]

In a short while, Rosita fled and on her way out, espied her cousin, Adriano Casiban, standing near the kitchen door.[8] Then she heard more gunshots, the same gunshots heard by Anthony who at the time was still under the table.[9] Like his mother, he, too, was allowed to escape by his uncles and the man whose name he did not know but whom he knew was staying with his uncle Adriano. Rosita sought refuge at the house of her sister, Hedelyn Bandoquillo and spent the night there. This was confirmed by the latter, who testified as a rebuttal witness for the

prosecution.[10]

In the morning, Rosita reported the incident to Barrio Captain Nelson Aringo, another cousin, who accompanied her to the police headquarters. Mother and son failed to mention the names of Aringo and Casiban to the police during the investigation, and both declared at the time that the suspect was unknown or unidentified.[11] When confronted later with these earlier statements, they explained that at the time of the incident, although they recognized the face of Dennis de Guzman, they were not aware of his identity, which is why they told the police that the suspect was unknown or unidentified.[12] In her confusion, Rosita even said that it was Casiban who shot the boy. Later, she was not even sure if Casiban fired a gun or if he had a gun at all, because she was at the moment already running away.[13]

Aringo and Casiban, having gone into hiding, only the defense of de Guzman was heard at the trial. Dennis de Guzman denied all the accusations against him and set up an alibi for his defense. He relied on the testimonies of four witnesses, all close friends of his family,[14] to support his story that on the date and time of the occurrence, he was at a party at San Jose, Maslog, Legazpi City, which is about three kilometers from Taysan.[15]

Dennis de Guzman claimed that he and his mother Adelina went to her hometown of San Jose, Maslog, Legazpi City on April 5, 1994, to visit his ailing grandmother. They stayed with his grandmother whose name he did not even know, and during his free time, he helped with some chores and played with friends like Charlie Padilla. On April 13, 1994, Charlie's mother Estelita, a childhood friend of Adelina's, celebrated her 52th birthday, and she decided to treat her town mates to a free dance. Charlie, Dennis, and her brothers, Felicito and Jerry Watiwat, helped in setting up the light and sound systems for the dance. They started at around 3:00 o'clock in the afternoon and finished by 6:30 p.m. After a dinner break at 7:00 o'clock, the two youngsters manned the music station until midnight.[16] On cross-examination, de Guzman admitted that his mothers' sister Lolita was the wife of Adriano Casiban.[17]

Hedelyn Bandoquillo was presented by the prosecution to debunk de Guzman's claim that he stayed with his grandmother when he was in the province. She said that on at least four occasions, she saw him at his uncle Adriano's house at Sitio Polot, Taysan, Legazpi City, which is about half a kilometer from Sitio Malangka and was sure he was staying there.[18]

After trial on the merits, Judge Gregorio A. Consulta of the Regional Trial Court of Legazpi City, Branch 4, rendered judgment, the decretal portion of which reads thus:

“WHEREFORE, in the light of the foregoing findings and left no choice but to follow in complete obedience the stenosis of a rigorous law that in spirit demands an eye for an eye, a tooth for a tooth, (LEX TALIONIS) after being convinced beyond a wisp of a doubt of the guilt of accused DENNIS DE GUZMAN, he is hereby sentenced to suffer in Criminal Case No. 6717 the penalty of

DEATH

and likewise to suffer in Criminal Case No. 6718 the penalty of

DEATH

and to indemnify Rosita Trilles and Anthony Trilles in the sum of P100,000.00 in each case.

With respect to Loreto Aringo and Adriano Casiban who are at large, let a complete reproduction by XEROX of the complete records of both cases be sent to the ARCHIVE, in lieu of the originals which are hereby ordered transmitted within twenty (20) days from promulgation to the Hon. Supreme Court on automatic review together with the person of DENNIS DE GUZMAN who shall be confined at the National Penitentiary in Muntinlupa, Metro Manila pending final resolution of such review.

Issue alias warrants for the arrest of Loreto Aringo and Adriano Casiban pursuant to existing circular on the matters and the cases shall be revived, insofar as they are concerned, upon their apprehension or of any of them.

The Clerk of Court is directed to provide the necessary expenses for the reproduction of the records by XEROX.

SO ORDERED.”

In this automatic review, Dennis de Guzman argues that the trial court erred in appreciating the evidence and in concluding that he was positively identified by the prosecution witnesses.

After going through the records and evidence of this case, we are convinced that Dennis de Guzman was correctly convicted by the trial court for the death of Ernesto and Edwin Trilles.

Accused-appellant makes much of the failure of the eyewitnesses to give his name or even his description during the initial police investigation of the incident. When Rosita reported the shooting of her husband and son to the police in the morning of April 14, 1994, she stated that they were shot by an “unknown suspect,” and made no mention of either her older brother Loreto Aringo or her cousin Adriano Casiban.[19] For his part, Anthony executed an affidavit dated April 19, 1994, referring to the assailant as an “unidentified man.” He also did not implicate his uncles, Aringo or Casiban.[20]

The Court believes that the eyewitnesses to the crimes did identify accused-appellant as the man who shot the victims. In the first place, when they testified at the trial they positively pointed out to de Guzman as the malefactor.[21] Any doubt cast by their earlier statements was laid to rest when they were put on the witness stand. In the case of *Jacobo v. Court of Appeals*, [22] we affirmed the doctrine that an affidavit cannot prevail over testimonial evidence uttered in open court, viz.:

“An affidavit being taken ex parte is almost always incomplete and often inaccurate, sometimes from partial suggestion, and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject.”[23]

Thus, while an affiant usually merely signs an affidavit which was prepared by another, in this case,[24] the Assistant City Prosecutor, a witness testifies in court with more spontaneity, drawing from a memory no longer befuddled by the initial shock of the occurrence, uttering his own words with minimum guidance or coaxing. If testimonial evidence is superior to an affidavit, then with more reason should it prevail over a mere police report which is not even under oath.

In the second place, in her affidavit dated April 19, 1994,[25] Rosita made a more complete narration of the incident and implicated Aringo and Casiban. She even managed to identify de Guzman by his surname.[26] Anthony, on the other hand, stated in his affidavit that although the suspect was unidentified, he could recognize the latter if spotted, and that is precisely what he did when he testified on November 8, 1995.

Finally, when confronted with their initial reports, both witnesses explained that although they said the suspect was unknown or unidentified, they were merely referring to his name. As far as physical attributes were concerned, they had no doubt that they could recognize the man who snuffed out the life of their loved ones in the blink of an eye.

Through all these, de Guzman could only deny the charges and come up with an alibi which falls short of the standards set through time for its acceptability as a foolproof defense.

He was allegedly at the dance held at San Jose, Maslog, Legazpi City when the crime was being committed at Sitio Malangka, Taysan. Yet, the records show that Maslog is a mere three kilometers from Taysan and there are even well-trodden shortcuts which could drastically reduce travel time from one town to the other. If anything, it signifies that it was still possible for him to have been at the crime scene even as he claims that he was elsewhere at the time. In this regard, his defense of alibi must fail.[27]

Furthermore, the positive identification of de Guzman as the man who shot the victims cannot be overcome by his denial and alibi. The fact that he was not immediately named by the eyewitnesses when they reported the incident to the police is likewise of no moment considering that they knew him by face and even identified him in open court. As we reiterated in the recent case of *Bautista v. Court of Appeals*:[28]

“Positive identification, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law.”[29]

In view of these disquisitions, the Court agrees with the court a quo that the guilt of Dennis de Guzman in the slaying of Ernesto and Edwin Trilles on the night of April 13, 1994, has been proved by the prosecution beyond any reasonable doubt.

The Court, however, differs with the trial court in its imposition of the death penalty in the two cases under review. It must be noted that this penalty was decreed because “(f)irearms were used, as alleged in the (i)nfornation.”[30] It is undeniable that an accused cannot be held liable for a crime not alleged in the information, and the information filed by the prosecution in this case was for murder qualified by treachery, not for murder with the use of an unlicensed firearm.

Under R.A. No. 7659, the crime of murder shall be punished by reclusion perpetua to death if committed with, among other circumstances, treachery, as that alleged in the information dated June 14, 1994. We agree with the court a quo that alevosia attended the commission of the crime and that this has been duly proved by the People’s evidence. The Trilles family was preparing to sup on the night of April 13, 1994, when de Guzman suddenly barged into their house from the kitchen door and, without uttering a word, shot Ernesto, not once, but twice. With the same coldbloodedness, he shot Edwin even after the boy pleaded for his life. Neither of the victims was armed at the time, and they could not have resisted the attack even if they wanted to because of its suddenness and precision. At no time was de Guzman open to retaliation by his victims. As we held in *Bautista*:

“An unexpected and sudden attack under circumstances which render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack constitutes alevosia, and the fact that the attack was frontal does not preclude the presence of treachery.”[31]

Apart from treachery, we find no other circumstance, aggravating or mitigating, which would affect the imposition of the appropriate penalty in the case at bar. Under these premises, therefore, the punishment that may be properly meted out against the accused-appellant is the lesser penalty of reclusion perpetua because “(w)hen there are (as in this case) neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.”[32]

WHEREFORE, the assailed decision dated June 6, 1996, in Criminal Case No. 6717 and No. 6718 is hereby **AFFIRMED** with the **MODIFICATION** that the penalty is reduced from death to reclusion perpetua in both cases for the reasons aforestated and the indemnity to Rosita Trilles and Anthony Trilles reduced to P 50,000.00 each Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.

[1] Adriano Casiban and Loreto Aringo.

[2] Criminal Case No. 6717 and No. 6718.

[3] Edwin Trilles in Criminal Case No. 6718.

[4] T.S.N., October 17, 1995, pp. 7-9; November 7, 1995, pp. 3-5; November 8, 1995, pp. 8-10.

[5] T.S.N., October 17, 1995, p. 10; November 8, 1995, p. 11.

[6] T.S.N., October 17, 1995, p. 10; November 7, 1995, p. 10.

[7] T.S.N., November 8, 1995, p. 11.

[8] T.S.N., October 17, 1995, p. 11; November 8, 1995, p. 14.

[9] Ibid., at pp. 13 and 12 -13, respectively.

[10] T.S.N., April 11, 1996, pp. 8, 10.

[11] Exhibits "2" and "3," Records (Folder I), pp. 10 and 18.

[12] T.S.N., October 17, 1995, p. 12; November 7, 1995, p. 18; November 8, 1995, p. 22.

[13] T.S.N., November 7, 1995, pp. 9-10.

[14] T.S.N., March 14, 1996, p. 23.

[15] T.S.N., December 6, 1995, p. 14.

[16] T.S.N., December 6, 1995, pp. 2-6, 18-21, 25, 33-35; February 6, 1996, pp. 4-10; March 14, 1996, pp. 8-13.

[17] T.S.N., March 14, 1996, pp. 15 -18.

[18] T.S.N., April 11, 1996, pp. 4-9.

[19] Exhibit "2," Records (Folder I), p. 10.

[20] Exhibit "3," Records (Folder I), p. 18.

[21] T.S.N., October 17, 1995, pp. 6-8; November 8, 1995, pp. 6-7.

[22] 270 SCRA 270 (1997).

[23] Citing *People v. Molina*, 213 SCRA 64 (1992); *People v. Alcantara*, 151 SCRA 327 (1987); *People v. Pacala*, 58 SCRA 370 (1974).

[24] In fact, Rosita cannot even read. (T.S.N., November 7, 1995, p. 6.).

[25] Exhibit "1," Records (Folder 1), p. 17.

[26] She learned this only one week after the burial of her husband Ernesto. (T.S.N., October 17, 1995, p. 7).

[27] *People v. Henson*, 270 SCRA 634 (1997).

[28] G.R. No. 121683, March 26, 1998.

[29] Citing *People v. Dinglasan*, 267 SCRA 26 (1997) and *People v. Amania*, 248 SCRA 286 (1995).

[30] Decision, p. 10; Rollo, p. 31.

[31] *Supra*.

[32] Article 63 (2), Revised Penal Code.

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