

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CENON BRIOSO, SEVERINO BRIOSO, AND MONICO VITAMOG, ACCUSED-APPELLANTS.

G.R. Nos. 72028-31. November 09, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In four (4) separate Informations (in Crim. Cases Nos. 876-K, 891-K, 892-K and 893-K) filed before Branch XXIV of the Regional Trial Court of Cabugao, Ilocos Sur, the accused-appellants CENON Brioso, SEVERINO Brioso and MONICO Vitamog were charged with Murder for the clubbing to death of the spouses Cresencio Vitamog and Erlinda Vitamog, and with Frustrated Murder for the serious head injuries sustained by the couple's two (2) children, KENNEDY Vitamog and Presley Vitamog, committed at around midnight of 15 March 1983 in the Municipality of San Juan, Province of Ilocos Sur.

All three accused entered pleas of Not Guilty to the four charges. After a joint trial, the Trial Court rendered verdicts of guilty and decreed:

"WHEREFORE, finding the accused Cenon Brioso, Severino Brioso and Monico Vitamog, GUILTY beyond reasonable doubt of the crimes charged in the four (4) informations filed in these cases, judgment is hereby rendered against them, as follows:

"(1) In Criminal Case No. 876-K, each is hereby sentenced to suffer the penalty of Reclusion Perpetua, with all the accessories of the law; to indemnify, jointly and severally, the heirs of Cresencio Vitamog in the amount of P30,000.00; and to pay one-third of the costs;

"(2) In Criminal Case No. 893-K, each is hereby sentenced to suffer the penalty of Reclusion Perpetua, with all the accessories of the law; to indemnify, jointly and severally, the heirs of Erlinda Vitamog in the amount of P30,000.00; and to pay one-third of the costs;

"(3) In Criminal Case No. 891-K, each is hereby sentenced to a prison term ranging from SIX (6) YEARS and ONE (1) DAY of Prison Mayor as minimum, to TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal, as maximum, with all the accessories of the law; to indemnify, jointly and severally, the victim Presley Vitamog in the amount of P12,000.00; and to pay one-third of the costs;

"(4) In Criminal Case No. 892-K, each is hereby sentenced to a prison term ranging from SIX (6) YEARS and ONE (1) DAY of Prison Mayor, as minimum, to TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal, as maximum, with all the accessories of the law; to indemnify, jointly and severally, the victim Kennedy Vitamog in the amount of P12,000.00; and to pay one-third of the costs.[1]

Thus, this appeal.

The prosecution has narrated the tragedy as follows:

"At the time of the incident, which took place in the evening of March 15, 1983, the spouses Cresencio

Vitamog and Erlinda Vitamog, together with their two children, Kennedy and Presley, were temporarily staying in a make-shift shed as their old house was just demolished to give way for the construction of a new one in Barangay Resurreccion, San Juan, Ilocos Sur (pp. 5-6, tsn, Sept. 1, 1983; pp. 6-7, tsn, April 16, 1984; p. 5, tsn, Sept. 3, 1984). That evening, while the couple and their two children were fast asleep, three persons entered their make-shift shed and started to beat them with bamboo stumps. The elder of the two children, Kennedy Vitamog, who was awakened by the scream of his mother, started to run as he saw his parents and brother being clubbed by the intruders, whom he positively identified as the accused-appellants Cenon Briosio, Severino Briosio and Monico Vitamog. But Kennedy was chased and overtaken by Cenon Briosio who also clubbed him until he lost consciousness (pp. 4-13, 21-25, tsn, Sept. 1, 1983; pp. 6-7, tsn, Sept. 19, 1983).

"It was only early the following morning that the lifeless bodies of the spouses were found smeared with blood inside their makeshift shed by the carpenters who came to construct their house. Forthwith, two of the carpenters rode on their bicycles to report the incident to the police authorities. On the way, they met Pat. Necie Ubaldo, who advised them to inform Pat. Benedicto Ventiro who was also residing in Barangay Resurreccion. From there, the two proceeded to the house of Sub-station Commander Alexander Ayuyang of San Juan, Ilocos Sur (pp. 4-8, tsn, July 2, 1984).

"Immediately upon receiving the report, Pat. Ventiro passed for Pat. Ubaldo and proceeded to the crime scene. Meanwhile, Commander Ayuyang, along with other policemen, likewise went to the scene of the crime. When they arrived thereat, they saw the lifeless bodies of the spouses lying prostate on the ground. They also saw Presley Vitamog lying unconscious between his parents covered by a blanket; while the elder brother, Kennedy Vitamog laid unconscious on top of a pile of sawn lumber. A broken chair was also found at the crime scene, indicating that a struggle took place. Two bamboo stumps stained with blood (Exhibits "H-2" and "H-3") were recovered, one beside the body of Erlinda Vitamog and the other near the head of Cresencio Vitamog (pp. 5-10, 16-18, tsn, Sept. 27, 1983; pp. 3-5, tsn, Feb. 20, 1984).

"As the two children were still breathing, they were rushed to the Pira Clinic for treatment. Thereafter, a photographer was summoned by the police to take pictures where the incident took place (Exhibits "C", "D", "E", and "F") before taking the dead bodies of the spouses to the health center for autopsy (pp. 10-15, tsn, Sept. 27, 1983; pp. 5-6, 9, tsn, Feb. 20, 1984).

"The autopsy of the deceased spouses was conducted by Dr. Loreto Damian, the Municipal Health Officer of San Juan and Magsingal, Ilocos Sur, who reduced in writing his findings on the cadavers of Cresencio Vitamog and Erlinda Vitamog (Exhibits "A" and "B", respectively). In both findings, Dr. Damian enumerated and described the seven (7) wounds sustained by each one of them, and stated therein the causes of death of Cresencio Vitamog as lacerated wound of the brain and that of Erlinda Vitamog as laceration of the brain. That of the seven (7) wounds sustained by each of the spouses, Dr. Damian considered as fatal wounds Nos. 5 and 6, in the case of Cresencio Vitamog, and wounds Nos. 2 and 3, in the case of Erlinda Vitamog. It was the opinion of the doctor that all the wounds inflicted on both spouses were caused by a blunt instrument, possibly a bamboo; save for wound No. 5 sustained by Erlinda Vitamog, which was an incised wound, 1 inch long and 3/4 inch deep, on the right palm over the distal thirds of the 2nd and 3rd metacarpal bones. This incised wound, according to the doctor, could have been caused by a sharp-edge instrument like the sharp edge of a bamboo. The doctor also observed that at the time he conducted the examination at about 10:00 o'clock in the morning of March 16, 1983, both cadavers were already in a state of rigor mortis, indicating that the subjects could have died already about ten (10) hours prior to the time of examination (pp. 3-20, tsn, Aug. 12, 1983).

"During the course of the autopsy, strands of hair were found in the hand-grip of Erlinda Vitamog, which were ordered by Sub-station Commander Ayuyang to be preserved for comparison with samples of hair to be taken from the suspects. Pursuant thereto, Police Investigator Dominador Sandi placed the same inside an envelope and labeled it accordingly (Exh. "M-15"). Then all known police characters and those who in one way or another were known to have a grudge against either of the deceased spouses during their lifetime, were summoned to the police headquarters for a sample of their hair. Among them were those of the three

accused-appellants for having allegedly previous grudges and/or misunderstanding with the deceased spouses. Said hair samples and those taken from the hand-grip of the deceased Erlinda Vitamog, which were separately placed inside twelve (12) duly sealed and labeled envelopes (Exhibits "M-13", "M-14", "M-15", "M-16", "M-17", "M-18", "M-19", "M-20", "M-21", "M-22", "M-23", and "M-24"), were transmitted (Exhibit "M-25") to the NBI main office in Manila for comparison (pp. 30-33, tsn, Oct. 25, 1983; pp. 8-15, tsn, Feb. 3, 1984; pp. 4, 6, 9, tsn, Feb. 20, 1984).

"The NBI senior analyst, Carolyn U. Custodio, who examined said hair specimens, made a series of twelve (12) biology reports of hair findings (Exhibits "M-1", "M-2", "M-3", "M-4", "M-5", "M-6", "M-7", "M-8", "M-9", "M-10", "M-11", and "M-12"), indicating that only the hair samples taken from the accused-appellant Severino Brioso (Exh. "M-1") and those of his brother Antonio Brioso (Exh. "M-2") resembled the hair strands taken from the hand-grip of the deceased Erlinda Vitamog. According to Custodio, it is possible that hair of persons closely related to each other like brothers would resemble one another by reason of the law on heredity (pp. 33-38, tsn, Oct. 25, 1983; pp. 8-9, 16-33, tsn, Feb. 3, 1984).

"Upon the other hand, the deceased spouses' two children were treated by Dr. Romeo Pira, who issued separate medical certificates (Exhs. "I" and "J") of his findings on the examination he conducted on Kennedy Vitamog and Presley Vitamog, respectively. In both medical certificates, it was stated that the patients suffered cerebral concussion, caused by the injuries inflicted on their heads. Said injuries, according to the doctor, could have been caused by a blunt instrument like a bamboo. The doctor stated that both patients were semi-conscious when admitted to his clinic at about 8:00 o'clock in the morning of March 16, 1983, and remained so for two days. So that, based on the nature and extent of the injuries sustained by both patients, they could have died as a consequence thereof without the proper and immediate medical attendance (pp. 3-10, tsn, Sept. 2, 1983).

"After their confinement, the two brothers were brought to the residence of the Mayor of San Juan, Ilocos Sur, who took them into custody for fear that they would be liquidated by their assailants. Then, as soon as Kennedy Vitamog regained full possession of his faculties, he was summoned to the police headquarters for questioning regarding the incident. Thus, in his written statement taken by police investigator Dominador Sandi on May 16, 1983 (Exh. "G"), Kennedy mentioned the accused-appellants as the ones who entered their make-shift shed in the evening of March 15, 1983 and started beating them. And when accused-appellants were brought to the police headquarters for confrontation, Kennedy positively identified them to be the very persons he mentioned as their assailants (pp. 13-22, Oct. 25, 1983; pp. 6-9, tsn, Nov. 18, 1983; pp. 11-12, 17-18, tsn, Dec. 12, 1983)."[2]

The accused, on the other hand, interposed defenses of denial and alibi and presented their own version of the occurrence in the following manner:

"On March 13, 1983, Cresencio Vitamog and Erlinda Vitamog almost died because Cornelia Vitamog, alias 'Icco' went to attack them. There was a misunderstanding between them about the carabao of Cresencio Vitamog covered by Certificate of Large Cattle (Exh. 3). Cresencio Vitamog and Cornelio Vitamog are brothers. On March 14, 1983, Cresencio Vitamog told Leonora Gascon to come and supervise the construction of their house because he has an inkling that his brother Cornelio Vitamog has the intention to harm them. In the morning of March 15, 1983, Leonora Gascon received an information that Cresencio Vitamog and Erlinda Vitamog died. When asked by Onofre Vivangco who killed them, Leonora Gascon answered that nobody would kill them except their adversary and she was referring to Cornelio Vitamog alias 'Icco'. The latter started residing in Manila the day following the funeral of Cresencio Vitamog and Erlinda Vitamog. (Testimony of Leonora Gascon, TSN, April 16, 1984, p. 4-9).

"Monico Vitamog helped in making the hammock for loading the bodies of Cresencio Vitamog and Erlinda Vitamog. He also attended the wake of these two victims. He likewise helped Cenon Brioso in making the tomb for burial of said victims (Testimony of Pedro Peneyra, TSN, July 6, 1984, p. 5 and 13).

"On the night of March 15, 1983, Monico Vitamog and his wife Carmen Vitamog went to the house of Silvestra Vitamog at Barangay Resurrection, San Juan, Ilocos Sur and weaved buri hats and they stayed there up to 10:00 o'clock in the evening. Monico Vitamog and his wife then went to sleep in their house up to 4:00 o'clock the following morning. Monico Vitamog prepared breakfast and at 6:00 o'clock in the morning, March 16, 1983, he left home to construct the house of Cresencio Vitamog and Erlinda Vitamog (Testimony of Carmen Vitamog, TSN, July 6, 1984, p. 16-21).

"At 12:00 o'clock midnight, March 15, 1983, while Cenon Brioso was sleeping in their flue-curing barn with his wife Maria Brioso tending to said flue-curing barn, the latter heard the scream of Erlinda Vitamog. Thinking that there was fire in the flue-curing barn, Maria Brioso awakened Cenon Brioso. They both went to sleep at past 1:00 o'clock and woke up at 4:00 o'clock, the following morning. They learned later on that spouses Cresencio Vitamog and Erlinda Vitamog and their children were clubbed. On the night of March 15, 1983, also, Severino Brioso fetched his sister Emilia Brioso at Brgy. Resurrection, San Juan, Ilocos Sur and they proceeded to Brgy. Laping, San Juan, Ilocos Sur where the wife of Severino was sick (Testimony of Maria Brioso, TSN, Aug. 17, 1984, p. 4-6).

"xxx xxx xxx

"Severino Brioso arrived with his sister Amelia Brioso at Brgy. Laping, San Juan, Ilocos Sur at 7:25 P.M. March 15, 1983. After taking his supper, he went to sleep. He woke up at 5:00 A.M., the following morning. While the spouses Cresencio Vitamog and Erlinda Vitamog were lying in state, Severino Brioso went to attend the wake for four (4) times. Severino Brioso does not know anything about the death of spouses Cresencio Vitamog and Erlinda Vitamog. When asked by the police to give sample of his hair, Severino Brioso voluntarily pulled his hair because he does not know of any fault. There is no truth to the testimony of Kennedy Vitamog that he saw Severino Brioso entered the makeshift shed where they were sleeping on the night of March 15, 1983 and that is a complete falsehood. Kennedy Vitamog might have been coached by Pfc. Benedicto Vintero. Severino Brioso did not have any misunderstanding with deceased spouses Cresencio Vitamog and Erlinda Vitamog (Testimony of Severino Brioso, TSN, Oct. 19, 1984, p. 6-13).[3]

In this appeal, the accused contend that the Trial Court erred: (1) "in finding that the testimony of the lone prosecution eye-witness, Kennedy Vitamog is credible and sufficient to support a judgment of conviction"; (2) "in not giving faith and credence to the testimonies of the accused as corroborated by credible witnesses"; (3) "in considering the defense of the accused as a mere alibi which according to the same court should not be given credence"; and (4) "in convicting the accused despite the failure of the prosecution to prove their guilt beyond reasonable doubt".

In the light of the evidence, we find the foregoing contentions, centering mainly on the issue of credibility of conflicting versions of the prosecution and the defense, unavailing.

In no uncertain terms, 9-year-old eyewitness, KENNEDY Vitamog, identified the three accused as the very persons who entered their make-shift shed in the evening of 15 March 1983, clubbed his parents and then his younger brother and himself. Thus:

"Fiscal Campos:

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"Q By the way, on March 15, 1983, where was your house then located?

"A Near a flue-curing barn at Resurreccion San Juan, Ilocos Sur, Sir.

"Q Please tell the court what happened in your house at the time.

"A Three men entered our make-shift shed, Sir.

"Q What time of the day when three men entered that make-shift shed?

"A At nighttime, Sir.

"Q And how about you? Where were you at the time when three men entered that make-shift shed?

"A I was lying down under the make-shift shed, Sir.

"Q How about your father and your mother? What were they doing at the time when three men entered this make-shift shed?

"A They were lying down, Sir.

"Q Do you have a sister?

"A None, Sir.

"Q How about a younger brother?

"A There is, Sir.

"Q What is the name of your younger brother?

"A Presley Vitamog, Sir.

"Q Where was your younger brother, Presley, at the time when these three men entered that make-shift shed?

"A He was lying down, Sir.

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"Q Now, when these three men that you said entered that make-shift shed on the night of March 15, 1983, were you able to recognize them?

"A Yes, Sir.

"Q Now, please tell the court the respective names of these three men who entered that make-shift shed.

"A Cenon, Moning and Vering, Sir.

"Q Now, are these three men that you named namely: Cenon, Vering and Moning are in the courtroom now?

"A Yes, Sir.

"Q Please point at them.

"A They are there, Sir.

"Q Now, please go down from the witness stand and go to the place where these three persons are and point to them one by one.

"COURT

Witness is allowed to go down from the witness stand.

"WITNESS

"A This is Cenon, Sir (witness pointing to one who is in court, and when asked, he gave his name as Cenon Briosos).

"FISCAL CAMPOS:

How about the other person named Moning? Please point at him.

"WITNESS

"A This one, Sir (witness pointing to a person who is in court and when his name was asked he answered Monico Vitamog).

"Q How about the person you named Vering? Please point to him.

"A This one, Sir (witness pointing to one and when asked he gave his name as Severino Brioso).

"Q From where is Cenon?

"A He is from Barangay Resurreccion, San Juan, Ilocos Sur, Sir.

"Q How about Vering? From where is he?

"A Barangay Resurreccion, San Juan, Ilocos Sur, Sir.

"Q How long have you known these three persons?

"A For quite a long time already, Sir.

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"Q How often do you see these three men in your town?

"A Very frequent, Sir.

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"Q And what did these three men do when they entered that make-shift shed?

"A They clubbed us several times, Sir.

(pp. 4-9, tsn, Sept. 1, 1983)." [4]

KENNEDY could also vividly recall who, among the accused, clubbed them successively, as he declared:

"Q Could you tell the court who among the accused clubbed your mother if you still can remember?

"A Moning, Sir.

"Q How about your father, who clubbed him?

"A Cenon, Sir.

"Q And how about you? Who clubbed you also?

"A Cenon, Sir.

"Q And how about your younger brother? Who clubbed him?

"A Vering, Sir. (pp. 9-10 *ibid.*)."[5]

The accused maintain, however, that KENNEDY was incompetent to testify on the facts and circumstances surrounding the incident as he was already sleeping when the whole family was clubbed. That is farthest from the facts. As he testified, he was awakened by his mother's screams and saw his parents and brother being clubbed by the accused with bamboo stumps, which he identified in open Court.[6] He could see clearly because a lighted kerosene lamp was hanging only about 2-1/2 meters away from where they were attacked.[7] Witnessing the

brutal assault, he ran out only to be chased by accused CENON Brioso, who also clubbed him and, together with SEVERINO, carried him to the top of the pile of sawn lumber at a distance of about 3-1/2 meters from where his parents were attacked. There he lay until the next morning where he was found "still breathing".

There should be no question about KENNEDY's competence and credibility as a witness. At the inception of his testimony, he stated in all innocent candor:

"Fiscal Campos

"Q Now, Kennedy, you were required a while ago to raise your right hand and swear to the truth of all the things you would say before this court. Do you know the significance of an oath?

"A Yes, Sir.

"Q What is the meaning then of your taking an oath?

"A That I would tell the truth, Sir.

"Q And if you would not tell the truth what will be the consequence of your not telling the truth?

"A I would be punished if I am not telling the truth, Sir. I would go to hell, Sir.

"Q Is it bad to tell a lie?

"A Yes, Sir. It is bad to tell a lie.

"Q Why do you say that it is bad to tell a lie?

"A One who is telling a lie goes to hell, Sir. (p. 3, *ibid.*)."[8]

The Trial Court made certain of that competence and credibility before discharging him as a witness after the latter's rebuttal testimony in a series of questions as follows:

"COURT

Kennedy, please listen very carefully.

"Q The Court would like to inform you that your testimony is very vital in this case, do you understand that?

"A Yes, your Honor.

"Q Under your oath, do you affirm and confirm your previous testimony to the effect that three (3) accused in this case, Cenon Brioso, Severino Brioso, and Monico Vitamog are the perpetrators of the two (2) murders and two (2) frustrated murders involving your parents, you and your brother Presley Vitamog, do you affirm and confirm your previous testimony?

"A Yes, your Honor.

"Q Why do you say that they were the perpetrators of the crime?

"A I saw them, your Honor. (pp. 14-15, *tsn*, Jan. 24, 1985)"[9]

The fact that KENNEDY's statement (Exhibit "G") was taken only on 16 May 1983, or approximately two (2) months after the incident, does not militate against his credibility. It will be recalled that he suffered cerebral concussion caused by injury on his head and had to be hospitalized from March 16 to 28 (Exhibit "I"). Upon his discharge, the attending physician still observed traces of "psychological trauma" in the boy, which is understandable considering the frightening and harrowing experience that he had gone through. As soon as he

regained full possession of his faculties, however, he revealed to the investigator the names of the accused and, out of five suspects, positively identified the three accused in a confrontation with them at police headquarters.[10] Even a cursory reading of 48 pages of the transcript of his testimony on direct and cross-examination and on rebuttal, demonstrate the clarity of his recall and the positiveness of his identification of the accused. The traumatic experience was behind him. Thus it was that in evaluating his reliability and trustworthiness, the Trial Court concluded:

After carefully evaluating the testimony of the lone prosecution eyewitness, Kennedy Vitamog, the Court is of the opinion, and so holds, that it deserves full faith and credit. Despite the grueling cross-examination, he stuck to his version pointing to the three (3) accused as the persons who entered the make-shift shed where the family was temporarily staying on the night of March 15, 1983. He made the identification with certitude and without hesitancy. His demeanor on the witness stand, both on direct and cross-examinations, inspires confidence.' (p. 52, Decision)"[11]

The accused's insinuation in their testimonies that KENNEDY's testimony was merely the product of coaching either by the police investigator Benedicto Vintero, or Mayor Quilala of San Juan, Ilocos Sur, does not deserve credence. In the first place, KENNEDY's testimony in open Court on direct and cross-examination, and on rebuttal sufficiently dispels the theory of coaching. Secondly, no plausible reason has been given as to why said persons would coach the witness to testify against them. The only motive attributed to Mayor Quilala is that MONICO had voted for his opponent in the local elections of January 30, 1980.[12] As the Mayor himself testified, however, he did not even know that MONICO was not his follower.[13] In fact, SEVERINO also declared that he did not believe that Mayor Quilala would coach KENNEDY.[14]

As to the investigator Benedicto Vintero, no motive has been attributed to him either for coaching KENNEDY other than having always seen him in the company of the boy, particularly on 19 and 20 March 1983.[15] Not only has Vintero denied the accusation but it is also belied by KENNEDY'S medical certificate (Exhibit "I") showing that he was still confined at the clinic from 16 to 28 March 1983.

There is also physical evidence supporting KENNEDY's declaration that SEVERINO was among the three persons who perpetrated the crime. The hair strands found gripped in Erlinda Vitamog's hand during the autopsy is a strong indication that there was a struggle between her and at least one of her assailants as further shown by a broken chair found at the crime scene. This prompted the investigators to secure hair samples from twelve possible suspects, among them the three accused. A biological comparison of the hair specimens by an NBI Senior Analyst showed that only those taken from accused SEVERINO (Exhibit "M-1") and his brother Antonio (Exhibit "M-2") resembled the hair strands found gripped by the victim Erlinda. All the other samples did not. And although Antonio is not an accused, he was a suspect and a specimen of his hair was also received from him. As the NBI Analyst testified in respect of the hair samples from SEVERINO:

"Q Briefly speaking, what are the characteristics of the samples of hair of Severino Briosio represented in your Biology Report No. B-83-501 that resemble the specimens of hair represented in your Biology Report No. B-83-498? (referring to the hair samples taken from the deceased Erlinda Vitamog (Exh. "M-5"))

"A They almost resemble in all aspects, except for the absence of roots in the hair samples taken from the hand grip of the victim, sir."[16] (Emphasis ours)

The close resemblance in "almost all aspects" of the hair strands from Erlinda's grip and those of SEVERINO indicate, at the very least, that SEVERINO was present at the crime scene contrary to his denials. The fact that the hair specimens of the other two accused CENON and MONICO did not show such resemblance would only indicate that it was not with either of them that the victim, Erlinda Vitamog, had grappled with, but would not

negate their direct participation in the commission of the offense as testified to by KENNEDY.

The accused tried to inculcate Cornelio alias "Icco", the brother of the victim Cresencio, as the culprit on the basis of the testimony of one Leonora Gascon that Cresencio had told her to supervise the construction of their house because he had an inkling that his brother Cornelio intended to harm them. This, however, is at best hearsay. And, contrary to Leonora Gascon's testimony, the brother Cornelio attended the wake and the funeral of the deceased couple. That he left the day after the funeral to reside in Caloocan City is not an act synonymous with guilt since he is employed in a lumber farm thereat and was afraid that he might suffer the same fate.

The denials made and the alibis advanced by the accused cannot prevail over their positive identification by eyewitness KENNEDY. As has been consistently held, alibi is the weakest of all defenses specially where it has not been shown that it was not physically impossible for the accused to have been present at the place where the crime was committed at the time it was perpetrated. CENON's flue-curing barn was so close to the place of the incident that his wife heard the victim Erlinda scream; while the houses of SEVERINO and MONICO were just a few hundred meters from the crime scene.

The acts of commiseration shown by the accused in that MONICO helped in making the hammock on which was loaded the bodies of the deceased; that he and CENON helped in constructing the tombs for the victims; that SEVERINO had attended the wake four (4) times, do not militate against a finding of guilt. They were a convenient ploy to detract suspicion away from them.

In the final analysis, it is settled doctrine that with respect to the issue of credibility of witnesses, we have always accorded the highest degree of respect to the findings of the trial Court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless the Court has plainly overlooked certain facts of substance and value, that if considered, might affect the result of the case.[17] The Trial Court cannot be faulted for any such misapprehension of factual findings in the case at bar.

By reason of the positive identification of the accused by a credible prosecution witness as the perpetrators of the crimes charged, neither can KENNEDY's testimony be discredited by them by invoking lack of sufficient motive on their part to commit the offenses attributed to them. For, it is basic that motive assumes importance only when there is doubt as to the identity of the culprit,[18] which doubt is inexistent herein.

There is another significant aspect in this case. Defense witness Leonor Gascon disclosed on cross-examination the offer of the accused through the Barangay Captain of Banuar, to settle for P2,000.00 each. She declared:

"Q You would want the Honorable Court to understand that not any one of the relatives of the accused came to you and requested you to come and testify?

"A The Bgy. Captain of Banuar, Sir.

"Q By the way, where is Brgy. Banuar in relation to Bgy. Resurreccion?

"A Bgy. Banuar is north of Bgy. Resurreccion, Sir.

"Q What is the name of the barangay captain of Bgy. Banuar?

"A I have forgotten the first name but his family name is Corpus, Sir.

"Q You would say this barangay captain of Banuar is a relative of one of the accused in this case?

"A Yes, Sir.

"Q Will you kindly mention the name of the accused who is in any way related to the barangay captain of Bgy. Banuar?

"A Severino Brioso, he being the uncle of his wife, Sir.

"Q Now, did the Barangay Captain of Banuar, San Juan, Ilocos Sur tell you at the time he came to your house that you would testify in favor of the accused, Cenon Brioso in this case?

"A Not with respect to being a witness, Sir.

"Q Kindly tell us what the barangay captain told you.

"A Since they knew that I was the one who cared Erlinda he wanted to tell me that the suspects wanted to have a settlement of the case, Sir.

"Q Will you kindly quote the exact words of the barangay captain of Banuar, San Juan, Ilocos Sur when he came to you to tell you that the suspects would be willing to have a settlement of the case?

"A 'Manang, I came here to tell you that they would like us to settle the case because I know that you were the one who cared for Erlinda', he said, Sir.

"Q Whom did the barangay captain refer to when he said that?

"A Avelina Vitamog, Sir.

"Q That person who would pay would be the accused in this case?

"A Yes, Sir.

"COURT

"Q And what was your reaction to that information furnished you by the barangay captain of Banuar?

"A I asked him how much they would pay and they said P2,000.00 each, Sir. (pp. 11-13, tsn, April 16, 1984)"[19]

The foregoing was confirmed by Avelina Vitamog, mother of the victim Cresencio Vitamog, who rejected the offer because as she said "I am not after the money".[20] The defense did not present Barangay Captain Corpus to deny the offer. Neither did any one of the accused deny the same. As has been held, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.[21]

With the positive identification of the accused as the perpetrators of the crimes charged by the eyewitness KENNEDY, the physical evidence corroborating KENNEDY's testimony that SEVERINO was among the three persons who committed the offenses in question, and the offer of compromise by the accused themselves testified to by no less than one of their witnesses, the guilt of the accused has been established to a legal and moral certainty.

Treachery undoubtedly attended the commission of the two offenses because of the sudden attack while the victims were asleep.[22] Its attendance elevates the crime to Murder (on two counts) and Frustrated Murder (also on two counts). Frustrated, because the accused had performed all the acts of execution, which would have produced the felony as a consequence but which nevertheless did not produce it by reason of the prompt medical attention given the two boys, a cause independent of the will of the accused.[23] Nighttime is inherent in treachery and is not to be separately considered. Dwelling, however, should be appreciated as the crimes were committed inside the victim's make-shift shed without the offended parties having given provocation therefor.

With no mitigating circumstance to offset this aggravating circumstance, the maximum penalty of reclusion perpetua is imposable in the two (2) criminal cases involving the deaths of Cresencio Vitamog and Erlinda Vitamog in view of the elimination of the death penalty in the 1987 Constitution. Two penalties of reclusion perpetua were, in fact, imposed by the Trial Court but upon the mistaken assumption that dwelling could not be appreciated since the victims were just residing in a make-shift shed.

In so far as the two crimes of Frustrated Murder are concerned, and considering the aggravating circumstance of dwelling, which is not offset by any mitigating circumstance, the penalty should be imposed in its maximum period or reclusion temporal in its medium period, that is, fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

WHEREFORE, finding that the guilt of all three (3) accused has been proven beyond reasonable doubt, the respective judgments in Criminal Cases Nos. 876-K and 893-K for Murder, are hereby affirmed and each accused shall suffer the penalty of reclusion perpetua in each case.

In Criminal Cases Nos. 891-K and 892-K for Frustrated Murder, the judgments are modified in that, in each of them, the accused shall suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

The appealed judgments are affirmed in all other respects.

With proportionate costs in each of the four criminal cases.

SO ORDERED.

Yap, (Chairman), Paras, and Padilla, JJ., concur.

Sarmiento, J., dissents in a separate opinion.

[1] Judgment, pp. 60-61, Rollo, pp. 132-133.

[2] Brief for the Appellee, pp. 4-11, Rollo, p. 172.

[3] Appellants' Brief, pp. 9-11, Rollo, p. 151.

[4] Appellee's Brief, pp. 13-16.

[5] Ibid., pp. 16-17.

[6] T.s.n., Sept. 1, 1983, pp. 23-24.

[7] Ibid., p. 12.

[8] Ibid., pp. 17-18.

[9] Ibid., pp. 18-19.

[10] T.s.n., December 14, 1984, p. 603.

[11] Appellee's Brief, p. 19.

[12] T.s.n., September 21, 1984, p. 12.

[13] T.s.n., January 18, 1985, p. 5.

[14] T.s.n., October 19, 1984, p. 13.

- [15] Ibid.; October 29, 1984, pp. 11-13
- [16] T.s.n., February 3, 1984, p. 280.
- [17] People vs. Pelias Jones, No. L-61165, June 24, 1985, 137 SCRA 166.
- [18] People vs. Salas, L-29340, April 27, 1972, 44 SCRA 489.
- [19] Appellee's Brief, pp. 20-22.
- [20] T.s.n., January 11, 1985, p. 5.
- [21] Section 24, Rule 130, Rules of Court.
- [22] People vs. Manimtim, L-56261, January 27, 1983, 120 SCRA 324.
- [23] Article 6, Revised Penal Code.

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Dissenting Opinion

SARMIENTO, J.:

I vote to grant the appeal. I am not morally convinced that the guilt of the three accused has been shown beyond reasonable doubt. Hence, they are entitled to an acquittal.

I entertain serious doubts on the reliability of the testimony of nine-year old Kennedy Vitamog, a son of the victims. While the young boy is not a disqualified witness by reason of his tender age alone,[1] there are enough circumstances that, to my mind, cast upon his testimony such a taint of unreliability.

I find that the young boy had not been placed on voir dire. To be sure, there is an indication on record that he was made to "affirm and confirm [his] previous testimony"[2] "under [his] oath,"[3] but I do not deem such a prodding sufficient to satisfy the painstaking demands of a preliminary oath-taking procedure, if only to provide the Court some amount of certainty that the very young witness was competent enough to give evidence. If anything else, the trial court's inquiry was an effort to lead Kennedy, a taboo, generally, in the process of courtroom examination.[4]

My apprehensions center on the fact that Kennedy had suffered severe head injuries as a consequence of which he underwent "psychological trauma"[5] and for which he, in fact, nearly perished. His wounds were indeed so grave that it took him two months to recover and take the witness stand.[6]

Yet, I cannot be entirely content that Kennedy Vitamog had indeed fully recovered, that is, restored of his normal rational faculties to enable him to identify all three accused as the attackers of his family, much less, recall the tragedy in detail. As I said, he had suffered trauma -- a serious one arising not only from the physical beating inflicted on him, but likewise from the fact that the tragedy had led to his early orphanhood -- and this, I submit, puts to question the reliability of his testimony at the stand. This is in addition to the fact that his very youthful

years makes him receptive to suggestions and conditioning. Indeed, there are claims on record that he had been in fact coached "either by the police investigator or Mayor Quilala of San Juan, Ilocos Sur." [7]

In so holding, I am not ignoring our ruling in *People v. Bustos* [8] wherein we held that "an intelligent boy is as a rule the best witness in the world." [9] The circumstances here differ from *Bustos*. Here, the boy had undergone the pain of trauma that in my understanding, influences the longevity of memory and the power of recall.

Neither am I convinced that the identity of the accused has been shown by mere hair samples (furnished by the brothers Severino and Cenon Briosos that allegedly matched the shreds of hair found on the grips of the victim, Erlinda Vitamog). To begin with, assuming that such hair samples are trustworthy pieces of evidence, it should bind the accused Severino Briosos alone. But insofar as the other accused, Cenon Briosos and Monico Vitamog, are concerned, the hair samples are no evidence at all of their participation. On the other hand, Antonio Briosos, whose hair samples resembled some of the hair specimens submitted to the NBI, is not an accused in the case.

It should be noted, furthermore, that the NBI analyst, Carolyn Custodio, who examined such hair specimens was expressing but a bare possibility that the hair-like strands found on Erlinda Vitamog's grip were Severino Briosos's. The appealed decision thus states: "According to Custodio, it is possible that hair of persons closely related to each other like brothers would resemble one another by reason of the law on heredity x x x." [10] In short, strands of hair are not as reliable as say, a fingerprint.

It should likewise be observed that, apart from the young Kennedy, the prosecution did not produce any other eyewitness, assuming Kennedy was an eyewitness. It is in such a case, I submit, that an inquiry into the possible motive of the accused is essential. While motive is not, as a rule, indispensable in the light of "positive identification," I am skeptical whether or not Kennedy Vitamog's identification may be said to be "positive," as discussed earlier.

That credibility of witnesses is a matter addressed to the sound discretion of the trial court is not an absolute precept. This Court, as the highest tribunal of the land, will not hesitate to overturn the lower court's findings of fact whenever proper. We have done so in many cases.

While the accused's defense, that is, alibi, has been universally discredited for its infirmity, it is just as a familiar rule that the prosecution cannot rely on such an infirmity, but must satisfy the court of the accused's liability upon proof beyond reasonable doubt. [11] I hold that the prosecution has not succeeded in presenting that kind of a proof. At the very least, my mind cannot rest easy on the substantial character of its evidence, to justify damning the accused to life imprisonment.

I therefore vote to acquit the three accused.

[1] But see RULES OF COURT, Rule 130, sec. 19(b).

[2] 2 *People v. Briosos*, G.R. Nos. 72028-31, 10.

[3] *Supra*.

[4] RULES OF COURT, Rule 132, sec. 5.

[5] *People v. Briosos*, *supra*, at 11.

[6] *Supra*, 10.

[7] *Supra*, 9.

[8] 45 Phil. 9 (1923).

[9] Supra, 36.

[10] Supra, 5.

[11] People v. Saavedra, G.R. No. L-48738, May 18, 1987.

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