

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNARDO OMPAD, JR., ACCUSED-APPELLANT.

G.R. Nos. 93730-31. June 10, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

In a decision rendered after a joint trial under two (2) separate Informations, the court a quo found Bernardo Ompad, Jr., a.k.a. "Commander Brando" guilty of murder in both cases and sentenced in each to reclusion perpetua.[1] Hence, this joint appeal.

As found by the trial court, the facts of these cases are plain and simple.

On 2 June 1983, at around nine o'clock in the morning, Numeriano Pagente, a member of the Civilian Home Defense Force (CHDF), while selling fish in Bgy. Dilan, Mutia, Zamboanga del Norte, was approached by five men who suddenly drew their guns and shot him. Pagente was wounded but was able to run towards the house of one Rustico Gadayan. However, he was pursued by his five (5) attackers who continued to shoot him until he fell. The incident was witnessed by Ambrosio Barlaan who was then tending his sari-sari store some five (5) meters away from where Pagente was selling fish. Witness Barlaan, likewise a member of the CHDF, claims that he recognized one of the five (5) armed men, referring to accused-appellant Ompad, Jr., who was the first to shoot Pagente hitting him on the left breast. Barlaan explains that he kept his silence for fear of reprisal from Ompad, Jr., then already known as "Commander Brando," a hit-man of the New People's Army (NPA), the military arm of the Communist Party of the Philippines (CPP).

On 5 August 1984, or more than a year after the incident, Barlaan's son, Dionilo, a recruit of the NPA, was shot to death. Lucas Lamoste and Arsenio del Rio, former regular members of the NPA, testified that at around two-thirty that afternoon they were headed for Santa Fe with Dionilo leading the way, closely followed by Ompad, Jr. Behind Ompad, Jr., were their comrades Alex, Regie and Dino (all noms de guerre). Immediately behind them were witnesses Lamoste and del Rio. Suddenly, appellant drew his .32 cal. revolver and shot Dionilo on the nape. Dionilo was suspected of being a military informer and thus had to be liquidated. His corpse was discovered at around five o'clock that same afternoon. Since the area was rebel-infested, there were no health officers nor policemen to examine the body of Dionilo. Hence, only Barangay Captain Marcelino Samorano of Barangay Hidtipan was able to examine the deceased. Dionilo sustained a gunshot wound on the nape, a shattered skull, and two stab wounds on the chest.

Sometime in October 1984, or two (2) months later, Arsenio del Rio left the military arm of the communist movement. Lucas Lamoste followed suit after Ompad, Jr., was arrested by elements of the 51st Infantry Battalion on 5 December 1985.

On 9 December 1985, both Lamoste and del Rio gave sworn statements declaring that they witnessed the execution of Dionilo Barlaan by Ompad, Jr. Consequently, upon learning of the arrest of appellant who was reportedly responsible for the death of his son, Ambrosio Barlaan likewise gave a sworn statement narrating the

circumstances surrounding the killing of Pagente on 2 June 1983.

Thus, on 7 May 1986, accused-appellant Bernardo Ompad, Jr., was charged with the murder of Numeriano Pagente in Crim. Case No. 3829, and on 9 May 1986, with the murder of Dionilo Barlaan in Crim. Case No. 3832.

Accused-appellant now claims before us that the evidence of the prosecution is insufficient to produce his conviction. He argues that -

In the case of witness Ambrosio Barlaan, it took him more than two years (from June 2, 1983 to December 9, 1985) to reveal to the authorities what he knew about the shooting of Numeriano Pagente. Suspiciously, he failed to reveal the matter to the authorities, even secretly, inspite of his being a member of the CHDF x x x x.

In the case of witnesses Arsenio del Rio and Lucas Lamoste, it took them more than one year, from August 5, 1984 to December 5, 1985, and only after the appellant was apprehended by the military, did they volunteer to testify regarding the death of one Dionilo Barlaan against the appellant.[2]

There is merit in the contention of accused-appellant regarding the assertions of Ambrosio Barlaan which came after two years, and only after his son was shot dead. If the elder Barlaan indeed witnessed the liquidation of Pagente, he should have immediately reported the identities of those responsible therefor considering that he, as well as victim Pagente, was then a member of the CHDF. He should not have waited until his son was shot to death by accused-appellant. He should not have kept mum only to surface after more than two years, and only upon learning that appellant was responsible for the death of his son.

We cannot ignore the serious doubt that has pervaded his testimony. For, certainly, Ambrosio Barlaan has an axe to grind against accused Ompad, Jr. Thus, in *People v. Quiritan*,^[3] we ruled that the long silence (almost two years) of vital prosecution witnesses gave rise to the suspicion that they were ill-motivated and unworthy of credence. Perhaps, if the elder Barlaan was not a member of the CHDF but merely an ordinary barrio folk, then we may have considered his prolonged silence justifiable. On the other hand, the delay of one year and four months on the part of Lamoste and del Rio in implicating appellant may be excusable. Certainly, they could not be expected to report the incident to the proper authorities for they were then recruits of the NPA and already considered part of the organization. Their disclosure that they were merely forced to join the NPA because of fear is well taken. Thus, it was only after they bolted the communist movement and accused-appellant, a dreaded hit-man and head of the NPA, was arrested did they gather enough courage to come out and testify. This, in our opinion is a valid explanation. It is settled that delay in divulging the names of perpetrators of crimes, if sufficiently explained, does not impair the credibility of the witness and his testimony. The initial reluctance of a witness due to fear of reprisal is common and does not impair his credibility.^[4] In *People v. Villa*^[5] we gave credence to the accounts of witnesses who surfaced only after ten months.

The second contention of appellant that it was erroneous for the trial court to conclude that his act of hiding was an eloquent indicium of his guilt, is likewise meritorious. Obviously, we cannot consider accused-appellant's flight and his hiding as evidence of guilt. Since admittedly he was a member of the NPA, it was natural for him to be in constant hiding. Hence, the elemental principle of law that flight is evidence of guilt may not apply in the instant case.

Considering that there is no other evidence linking accused-appellant Ompad, Jr., to the killing of Pagente aside from the testimony of alleged eyewitness Ambrosio Barlaan, the veracity of which we have reservations, we acquit Ompad, Jr., for the murder of Pagente on reasonable doubt.

We however find accused-appellant guilty of the murder of Dionilo Barlaan qualified by treachery, as the killing was sudden and completely unexpected. It is settled that the testimony of one witness if credible and positive is

sufficient to convict.[6] In the instant case, accused-appellant was positively identified by two witnesses as the assailant of the young Barlaan. Accordingly, we give great weight and credence to the clear and positive identification of the accused.

The denial of accused-appellant that it was not he but his companion Alex who shot Dionilo cannot prevail over his positive identification by his former comrades. We have time and again held that denial, like an alibi, is a weak defense which becomes even weaker in the face of positive identification of the accused by prosecution witnesses.[7]

That witness Lamoste became mad at appellant for buying rice somewhere else is too trivial a motive to consider. It is difficult to believe that a person would impute a grave offense to someone merely because the latter bought rice from another.

Finally, we find too mindless to merit our attention the conclusion of the court below that accused-appellant's failure to seek refuge under a writ of habeas corpus is an indication of his guilt.

WHEREFORE, we AFFIRM the judgment of the trial court in Crim. Case No. 3832 finding accused-appellant BERNARDO OMPAD, JR., guilty of murder for the death of Dionilo Barlaan and sentencing him to reclusion perpetua. Pursuant to prevailing jurisprudence, we further AFFIRM the award of civil indemnity in favor of the heirs of the deceased except that it is increased from P30,000.00 to P50,000.00, in addition to P5,000.00 for loss of earning capacity and P20,000.00 for moral and exemplary damages as imposed by the trial court.

In Crim. Case No. 3829, however, accused-appellant BERNARDO OMPAD, JR., is ACQUITTED on reasonable doubt.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Regional Trial Court, Dipolog City, Br. 6. The twin cases were tried and heard by two (2) different judges. Four (4) prosecution witnesses testified before Judge Daniel B. Bernaldez while the last two (2) prosecution witnesses as well as accused-appellant Ompad were heard by Judge Ildefonso E. Gascon. The Decision was then penned and promulgated by Judge Jesus O. Angeles, Presiding Judge of Br. 7, then concurrently Acting Presiding Judge of Br. 6.

[2] Brief for the Accused-appellant, pp. 6-7; Rollo, pp. 39--40.

[3] *People v. Quiritan*, G.R. No. 67738, 13 May 1991, 197 SCRA 32.

[4] *People v. Pascua*, G.R. No. 100990, 27 February 1992, 206 SCRA 628.

[5] G.R. No. 94469, 11 May 1993, 221 SCRA 1993.

[6] *People v. Mendoza*, G.R. No. 97931, 3 June 1993, 223 SCRA 108; *People v. Quetua*, G.R. No. 87667, 21 May 1993, 222 SCRA 357.

[7] *People v. Aguarino*, G.R. No. 93199, 17 May 1993, 222 SCRA 102; *People v. Estrella*, G.R. Nos. 92506-07, 28 April 1993, 221 SCRA 543, among many others.

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