

THIRD DIVISION

[G.R. No. 124135, September 15, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANNY QUELIZA, ACCUSED-APPELLANT.**

DECISION

MELO, J.:

Accused-appellant Danny Queliza seeks reversal of the judgment rendered by Branch 54 of the Regional Trial Court of the First Judicial Region, stationed in Alaminos, Pangasinan, which found him guilty of the crime of murder under Article 248 of the Revised Penal Code, and consequently sentenced him as follows:

WHEREFORE, in accordance with the evidence adduced and law applicable hereof, and finding that moral certainty has been reached as to find the accused guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code, it is now the painful duty of this court to impose on the accused the single indivisible sentence of Death but as since this sentence is proscribed at the time of the commission of the crime by the 1987 Constitution, the medium degree of Reclusion Perpetua is imposed and to pay to the heirs of the victim civil damages in the following amounts:

- A. P9,500.00 - for compensatory damages
- B. P100,000.00 - for loss of earnings
- C. P100,000.00 - for moral damages
- D. P50,000.00 - for indemnification awarded to heirs in accordance with law.

(pp. 38-39, *Rollo.*)

Accused-appellant Danny Queliza was charged under an Information docketed as Criminal Case no. 2596-A, for the crime of murder, reading as follows:

That on or about October 30, 1992, in the evening in Barangay Aporao, Municipality of Bani, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot VICTORIANO CABANGON with a short firearm, inflicting him injuries to wit:

- Point of entry: frontal area skull, right side, 1 cm., rough edges, (positive powder [sic] burns, with minimal amount of brain tissue at the surface.
- Right eye bulging. Linear fracture 6 cm. Length traversing the frontal area of the skull.

- Brain tissue is lacerated with moderate amount of clotted blood at the cranial area.

Which cause the instantaneous death of Victoriano Cabangon as a consequence, to the damage and prejudice of the heirs of the victim.”

CONTRARY to Art. 248 of the Revised Penal Code.

(p. 8, *Rollo*.)

Upon arraignment, accused-appellant pleaded not guilty and following trial, the judgment, now under review, was rendered. Hence, the instant appeal premised on the following assigned errors:

1

THE LOWER COURT GRIEVOUSLY ERRED IN INTERPRETING THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION TO BE AFFIRMATIVE IN NATURE AND THEREFORE MORE CREDIBLE THAN THOSE OF THE WITNESSES FOR THE DEFENSE WHICH THE LOWER COURT HELD TO BE NEGATIVE.

2

THE LOWER COURT GRAVELY ERRED IN OVERLOOKING AND DISREGARDING FACTS AND CIRCUMSTANCE OF GREAT AND SIGNIFICANT WEIGHT AND IMPORTANCE WHICH, IF PROPERLY CONSIDERED, WOULD HAVE RESULTED TO THE ACQUITTAL OF THE ACCUSED-APPELLANT

3

THE LOWER COURT OBVIOUSLY ERRED IN HOLDING THAT THE PROSECUTION WAS ABLE TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.

4

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIME ON GROUND OF REASONABLE DOUBT.

(*Rollo*, p. 57)

Based on the record, the undisputed facts of the case are the following:

At around 8 o'clock on the night of October 30, 1992, as Victoriano Aguilar Cabangon, 26 years old, Teresita Cabangon, 22 years old, husband and wife, together with their 5-year-old son, were resting in their bamboo hut at Barangay Apurao, Bani, Pangasinan, Victoriano, who was already asleep, was suddenly killed by a gunshot directed at the frontal area of his skull.

The prosecution's version is based on the testimony of its witnesses, Victoriano's widow, Teresita, who positively identified accuses-appellant Danny Queliza, as the culprit; Loreta Aguilar Cabangon, mother of the deceased; Restituto Rivera, the embalmer; and Dr. Vicente C. Tongson,

the Rural Health Doctor. The Office of the Solicitor General summarized the events as follows:

Appellant Danny Queliza, victim Victoriano Cabangon and his mother Loreta were neighbors at Barangay Apurao, Bani, Pangasinan. Five days before the fateful night of October 30, 1992, appellant had a quarrel with victim's cousin, Ruben Ardesani. In that incident, the victim had made manifestations siding with his cousin whom he felt was aggrieved. Appellant resented this and threatened the victim saying that the latter's life was only worth P12,000.00 (Records, p. 55).

At about 8 o'clock in the evening of October 30, 1992, his wife Teresita and their 5-year old son were peacefully lying down for the night in their house (bamboo hut) illuminated by an electric bulb. Father and son had already fallen asleep while Teresita was still awake listening to the program "Mr. Lonely" (TSN, Sept. 9, 1993, pp. 4-7). All of a sudden, appellant pushed the door open and forthwith fired a gun at the victim's head. Appellant glanced at Teresita and fled. The victim died on the spot. Horrified by the scene, Teresita cried for help (TSN, Sept. 9, 1993, pp. 4-12).

Moments before the gruesome murder, the victim's mother, Loreta Cabangon, was in her yard (about five meters away from the victim's house) to answer a call of nature. She saw appellant and two others arrive at the victim's porch then illuminated by an electric lamp. Appellant went up alone at the victim's balcony. Not long after, she heard a gun report coming from the victim's house and thereafter saw appellant jump out of the victim's house holding a gun and sped away (TSN, Sept. 15, 1993, pp. 5-18; Sept. 13, 1993, p.15).

Loreta shouted for help and dashed to the victim's house where she met Teresita at the porch crying and shouting, "Nay awan ni Victoriano pinatay ni Danny Queliza" ("Mother, Victoriano is already gone, he was killed by Danny Queliza") [TSN, Sept. 15, 1993, pp. 11-12; Sept. 13, 1993, p. 15].

On the same night, the incident reached the barangay and police authorities. Pat. Cecilio Dollaga was one of the policemen who responded and investigated the case. When he interviewed Teresita, the latter named appellant as her husband's assailant (Id., pp. 14-15; TSN, Sept. 9, 1993, p. 15; TSN, May 19, 1994, pp. 3-4).

The post-mortem examination on the cadaver of the victim shows that he died of "Intracranial Hemorrhage, secondary to Brain Tissue Injury secondary to Gunshot wound (Exh. "A", Records, p. 6). After the victim's burial, Teresita gave her sworn statement at the Police Station, Bani, Pangasinan (Exh. "B" and "B-1"; TSN, Sept. 9, 1993, p. 16).

(*Rollo*, p. 83.)

Accused-appellant, on the other hand, presented the defense of alibi, Corroborated by witnesses William Raboy and Cornelia Romero, accused-appellant's defense is to the effect that at the time of the incident he was in Arnedo, Bolinao to go swimming at the sea with his cousins; and that he returned to his hometown only on December 21, 1992 when he voluntarily surrendered to the police authorities of Bani, Pangasinan to deny any knowledge of the incident.

The defense also clings to the testimony of Pat. Cecilio Dollaga to the effect that when he interrogated Teresita Cabangon, she declared that she did not know the killer of her husband (tsn, pp. 17, 19, 21, Oct. 28, 1993).

Lastly, the defense notes that the trial in this case was conducted before Judge Segundo Paz who passed away before he could decide the case, and that the decision was penned by Judge Jules A. Mejia, who did not have the opportunity of observing the demeanor of the witnesses for both the prosecution and the defense.

In giving credence to the prosecution's evidence, the trial court noted the opposing contentions of Teresita Cabangon, as corroborated by Loreta Cabangon, and that of Patrolman Dollaga. Teresita Cabangon testified that when she was asked by Dollaga who killed her husband, she identified the accused-appellant. This was corroborated by Loreta Cabangon, who testified that she heard her daughter-in-law reveal to Dollaga the identity of the assailant. On the other hand, Dollaga said that for three times during his interrogation on the very night of the incident, he asked the widow who killed her husband and she disclaimed knowledge thereof. Faced with these contradictory contentions, the trial court preferred the affirmative over the negative testimony.

Nevertheless, the trial court held that even assuming that Teresita Cabangon indeed did not, on the initial investigation, identify the author of the crime, such failure, "lacks spontaneity because of the condition of the declarant, surrounding circumstances such as fright, tension, stress, instability under an atmosphere of serious or continuing fear specially since it was nighttime, just a few hours after her husband was murdered" and that the "diversion of her thoughts may be the result of attention to other matters, more importantly her own safety which is in fact the first law of nature..."

Further, the trial court did not give credence to the insistence of accused-appellant that he was not the assailant because he was not at the place of the crime at the time of its occurrence. The court said that "alibi cannot stand to exculpate him as he was positively identified by Teresita as the very person who shot her sleeping husband, coupled by the testimony of the mother of the deceased that after the shot was heard, she saw the accused jump from the porch carrying a hand gun in his right hand." The trial court ruled out the reliability of alibi as a defense since "it was not physically impossible for the accused to proceed to Arnedo, Bolinao from Apurao, Bani on the night of October 30, 1992", a distance which would not take more than two hours to traverse.

The trial court also did not see any personal reason on the part of the widow and the mother of the deceased nor any grudge that may push them to falsely testify against accused-appellant, unlike the witnesses for the defense, who were perceived to be biased in favor of accused-appellant.

Lastly, the trial court appreciated against accused-appellant the qualifying/aggravating circumstances of treachery, evident premeditation, and nocturnity, it being undisputed that the deceased was asleep with his family when he was shot, that the attack was so sudden and that the victim could not have been given even the slightest opportunity to prepare for or repel or avoid the attack, even if he were awake. Evident premeditation is said to have been present since minutes before the gunshot was heard, three persons, one of whom was identified as accused-appellant, were seen only six meters away from the house of the victim. The trial court concluded that the mode of attack was purposely sought to facilitate the commission of the crime and to facilitate accused-appellant's escape.

We sustain the conviction of accused-appellant.

Under his assignment of errors, which he discussed jointly, accused-appellant questions the finding of the trial court that the testimony of the witnesses for the prosecution is affirmative in nature and that of the witnesses for the defense is negative. He likewise assails the trial court for overlooking and disregarding what he says are certain facts and circumstances which, if properly considered, would have resulted in his acquittal. Lastly, he objects to the trial court's finding that the prosecution was able to prove his guilt beyond reasonable doubt.

At the outset, it is significant to note that the circumstance that Judge Jules Mejia, the one who penned the assailed decision, is not the one who heard the witnesses, a fact which Judge Mejia honestly admitted in his decision, will not automatically warrant a reversal of the decision. In the recent case of *People v. Rabutin* (G.R. Nos. 118131-32, May 5, 1997) we held:

This Court had ruled that while the trial judge who presided at the trial of the case would be in a better position to ascertain the truth or falsity of the testimony of the witnesses, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision this is the main reason why all trial courts are mandatorily required to be courts of record. Whoever is tasked to render judgment in every case can rely on the transcribed stenographic notes taken during the trial as basis for his decision. (*People v. Peralta*, 237 SCRA 220 [1994]).

(pp. 10-11)

We agree with the finding of the court *a quo* that based on jurisprudence, affirmative testimony has greater value than a negative one (*People v. Salazar*, 248 SCRA 157 [1995]) since the defense of denial crumbles in the face of the complainant's positive identification of the culprit (*People v. Balsacao*, 241 SCRA 309 [1995]). However, we rule that the distinction between affirmative and negative testimony is not applicable to the opposing contentions of Teresita Cabangon and Patrolman Dollaga.

In *Revilla v. Court of Appeals* (217 SCRA 583 [1993]), negative and positive testimony were distinguished as follows:

...Evidence is negative when the witnesses states that he did not see or know the occurrence of a fact, and positive when the witness affirms that a fact did or did not occur (2 Moore on Facts, p. 1338)

(p. 592)

Based on the above distinction, it is plain that the declarations of Teresita Cabangon and Patrolman Dollaga are both positive in nature. Teresita said that she identified her killer when she was interrogated by Dollaga. Patrolman Dollaga, on the other hand, testified to something known to himself, namely, that Teresita did not divulge the identity of the assailant.

However, taken in its totality, in contrast to the defense denial made by accused-appellant, which is indeed negative testimony, we give greater weight to Teresita's positive identification of the culprit and her testimony on the circumstances of the murder. This was corroborated by Loreta Cabangon that (a) she saw accused-appellant enter the balcony of the house of the deceased moments before the fatal