

EN BANC

[G.R. No. 146189, February 24, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARTEMIO GARILLO, JOHN DOE (AT LARGE), AND PETER DOE (AT
LARGE), ACCUSED,**

ARTEMIO GARILLO, ACCUSED-APPELLANT.

DECISION

QUISUMBING, J.:

In its decision^[1] promulgated on September 19, 2000, the Regional Trial Court of Naval, Biliran, Branch 37, found appellant Artemio Garillo y Temblor guilty in Criminal Case No. CB-97-019 of piracy, as defined and penalized under Presidential Decree No. 532,^[2] and sentenced him to suffer the penalty of death.

The information indicting appellant Garillo and his unnamed co-accused reads:

That on or about the 17th day of August 1995, in the seawater of Caibiran, Biliran Province, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring, confederating, and mutually helping one another, with treachery and with intent to kill, did then and there wilfully (sic), unlawfully and feloniously hogtie with a nylon rope, attack, stab and hack Melchor Beltran and Eddie Tenolete, with the use of a deadly weapons (sic) which the accused have provided themselves for the purpose, thereby inflicting them mortal wounds which caused their death shortly thereafter; and on the occasion thereof take and carry away the engine of the pumpboat owned by Melchor Beltran amounted (sic) to P15,000.00 to their damage and prejudice.

In violation of 3rd sentence of Sec. 3 (a) of P.D. 532 of the Revised Penal Code (sic).^[3]

On arraignment, Garillo pleaded not guilty. Thereafter, the case proceeded to trial.

The prosecution presented the following witnesses: Wenifredo Nazareno, a resident of San Miguel, Daram, Samar; Bautista Hayahay, a farmer and resident of Tomalistis, Caibiran, Biliran; and Leodegario Torlao, member of the Philippine National Police (PNP) and resident of Caibiran, Biliran.

BAUTISTA HAYAHAY testified that late in the afternoon of August 17, 1995, he went out to sea to buy the catch of his brother-in-law, Melchor Beltran. Melchor and his companion, Eddie Tenolete, were on board Melchor's pumpboat off the coast of Sitio Tanghay, Tomalistis catching fish.^[4]

Hayahay narrated in court that at around 7 P.M. of said date, another pumpboat carrying three (3) persons boarded Melchor's pumpboat. One of the trio was appellant, who is the nephew of Hayahay's wife. Hayahay easily recognized Garillo as his boat was only ten (10) meters away from Melchor's boat, which was brightly lit by a "Petromax" lamp.^[5] Soon after, the intruders proceeded to attack and stab Melchor and Eddie.^[6] Hayahay heard Melchor shout for help, while Eddie screamed, "Do not kill me *Mano* Artem, I am an orphan. I have no mother."^[7] It took the assailants about twenty-five (25) minutes to commit their dastardly act, after which, they left Melchor's boat and fled in the direction of Samar.^[8]

Hayahay recalled, on cross-examination, that there were about seven (7) other fishermen fishing in the area on board their respective *banca* located alongside that of Melchor.^[9] Some were as close as 10 arm's length away from Melchor's pumpboat, but none went to the aid of the victims. Neither did Hayahay render help to the victims as he was shocked by the brutality he witnessed and was fearful for his life. Even after the marauders have left, Hayahay did not dare to approach Melchor's vessel as he was afraid of the cadavers.^[10] He went home afterwards and told no one about the incident.^[11]

WENIFREDO^[12] NAZARENO testified that sometime in August 1995, he bought from appellant Garillo, a red 10 h.p. "Briggs & Stratton" boat engine for P8,000.^[13] Nazareno then modified the motor by installing an exhaust pipe on the muffler.^[14] A few days later, Nazareno heard rumors that Garillo was a suspect in a robbery case. As a result, he immediately left for Catbalogan, Samar and surrendered the engine to a certain SPO4 Jun Alonzo of the Philippine National Police (PNP).^[15]

On October 6, 1995, a group of policemen from Caibiran arrived at Nazareno's place. With them were Sally Beltran, the widow of Melchor and appellant Garillo who said: "This is the house, the owner of which was the one who bought the engine."^[16] The police asked Nazareno to surrender the boat motor to them, but he told them that he had turned it over to SPO4 Alonzo at Camp Lukban, Catbalogan, Samar. He accompanied the group to Camp Lukban where the engine was recovered.^[17]

SPO3 LEODEGARIO TORLAO declared in court that after appellant was arrested and brought to Caibiran, appellant divulged the whereabouts of the missing boat.^[18] Torlao corroborated the testimony of Nazareno as to how the missing motor engine was recovered.

On cross-examination, Torlao admitted that appellant was without the assistance of counsel when he made the confession.^[19]

Also presented in court was a *post mortem* examination result conducted by Dr. Zelda Trinidad R. Nicdao, Municipal Health Officer of Caibiran which showed that Melchor sustained 23 stab wounds, 3 hacking wounds, and 1 incised wound.^[20] The autopsy report of Eddie revealed that he suffered 12 stab wounds, 1 hacking wound, and his scalp was flapping.^[21] Further, both cadavers had knot marks at their hands and feet, indicating that they had been tied up before being killed and the cause of

death in both instances was "cardio-pulmonary arrest secondary to hemorrhage from multiple stab wounds."^[22]

For the defense, appellant Artemio Garillo, his mother Luciana Temblor, and Anselmo Lierma, a resident of Tomalistis, Caibiran, testified.

Twenty-five-year-old ARTEMIO GARILLO interposed the defense of alibi. He claimed that he had left for Manila on May 27, 1994 to look for his father, after his parents separated.^[23] He then lived with his mother in Malabon until 1995.^[24] He was in Malabon at the time of the incident, working as a construction worker. Garillo claimed that he never returned to Caibiran until October 1995 when he was picked up by the operatives of the Caibiran PNP Station at the Malabon City Jail, where he was first detained.

According to Garillo, after he was brought back to Caibiran, the police together with Sally Beltran brought him to Samar. Upon reaching Samar, two of the policemen disembarked and later they came back with another person whom he did not know. Afterwards, they proceeded to Catbalogan. Once again, two policemen disembarked along with the person he could not identify. When they returned to the pumpboat, they were carrying a boat engine.^[25] Appellant denied knowing witness Wenifredo Nazareno.

Appellant's mother, LUCIANA TEMBLOR, corroborated the material aspects of his alibi, mainly that appellant was in Manila and Malabon area from 1994 to 1995, and only returned to Caibiran, Biliran when he was arrested pursuant to a warrant issued by the trial court in Criminal Case No. CB-97-019.^[26]

ANSELMO LIERMA, a fisherman from Tomalistis, Caibiran, testified that he was fishing at sea off the coast of Tomalistis, when a pumpboat with three (3) males on board, approached his boat. He could clearly see the faces of the three, as he had just lighted his "Petromax" lamp and saw that all were strangers to him. According to Lierma, none of them was appellant.^[27] Lierma and the three men conversed about the fish he was catching. When asked by the three about the boat of Melchor Beltran, Lierma answered that Melchor was catching the species of fish locally known as "*buraw*", and pointed to that part of the sea where Melchor was to be found. After hearing him out, the pumpboat with the trio on board sped off in the direction he had pointed to.^[28] After that, he saw and heard nothing. Later, when he was already at another part of the sea, he learned that Melchor Beltran and Eddie Tenolete were dead. ^[29]

Lierma recalled that on August 21, 1995, or four (4) days after the incident, he executed an affidavit before the police of Caibiran to the effect that he was out at sea fishing on the night of the crime, when a pumpboat with 3 persons came alongside his boat. He stated that he saw their faces clearly because of the boat lights, but could not recognize any of them. He claimed, however, that he could identify them if he saw those persons again.^[30] In his second affidavit December 4, 1995, Anselmo declared that he did not mention the name of Artemio Garillo as among the three persons he saw on the other pumpboat on the night of August 17, 1995.^[31]

On cross-examination, Lierma declared that a certain Vidal Garillo, a soldier assigned to Samar as part of a "Bantay Dagat" team investigated him regarding the persons on board the fast craft across the farther part of the sea.^[32]

The trial court found the prosecution's version worthy of belief and accordingly convicted Garillo as follows:

WHEREFORE, judgment is hereby rendered finding the accused ARTEMIO GARILLO y TEMBLOR guilty beyond reasonable doubt of the crime of violation of P.D. No. 532, otherwise known as the Anti-Piracy and Anti-Highway Robbery Law of 1974. Considering that on the occasion thereof, homicide was committed, the mandatory penalty of death is hereby imposed with the accessory penalties provided for by law, to indemnify the heirs of the victims Melchor Beltran and Eddie Tenolet, the amount of Fifty Thousand Pesos (P50,000.00) each, and to pay the costs.

SO ORDERED.^[33]

Hence, this automatic review of his conviction and sentence.

Before this Court, appellant Garillo assigns the following errors:

I

THE TRIAL COURT ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE TESTIMONIES OF WINEFREDO NAZARENO AND BAUTISTA HAYAHAY DESPITE ITS (sic) INHERENT INCREDIBILITY AND INCONSISTENCIES.

II

THE TRIAL COURT ERRED IN NOT UPHOLDING THE DEFENSE OF ALIBI INTERPOSED BY ACCUSED-APPELLANT DESPITE THE FACT THAT IT WAS CORROBORATED BY AN IMPARTIAL WITNESS.

III

THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF P. D. 532 OTHERWISE KNOWN AS ANTI-PIRACY AND ANTI-ROBBERY LAW OF 1974.^[34]

The main issues in this case are: (1) Whether the trial court erred in giving credence to the testimony of prosecution witnesses Bautista Hayahay, Wenifredo Nazareno, and Leodegario Torlao, on which appellant's identification was based; and (2) Whether the trial court erred in holding that appellant failed to establish his defense of alibi. On these two issues depends the resolution of whether appellant was properly found guilty of piracy as defined by P.D. 532 beyond reasonable doubt.

Appellant, represented by the Public Attorney's Office (PAO), argues that the trial court erred in giving weight and credence to the declarations of Nazareno, Hayahay and Torlao on the witness stand, as these are tainted with inconsistencies and are of a highly incredible character. The PAO prays in its brief for the acquittal of appellant,

primarily on the ground that the prosecution failed to positively identify appellant as the perpetrator of the heist.

On appellee's behalf, the Office of the Solicitor General (OSG) retorts that appellant is seeing ghosts where there are none. The OSG stresses that none of the prosecution witnesses had any ill motive to testify falsely against appellant. Hence, no error was committed by the trial court in giving their testimonies full faith and credit.

After a meticulous review of the records of this case and the evidence presented by the parties, we are convinced that the prosecution, indeed, failed to prove by the required quantum of evidence the guilt of appellant. Thus, we reverse the challenged judgment and accordingly acquit him.

In assessing the credibility of witnesses, this Court gives great respect to the evaluation of the trial court for it had the unique opportunity to observe the demeanor of witnesses and their deportment on the witness stand, an opportunity denied the appellate courts, which merely rely on the records of the case.^[35] This rule, however, admits of exceptions, such as when the evaluation was reached arbitrarily or when the trial court ignored or failed to appreciate certain facts or circumstances of weight and substance which could affect the result of the case. ^[36]

The exception exists in this case, and a scrutiny of Hayahay's testimony easily confirms it. There are several inconsistencies pertaining to the events before and after the alleged killing that taint his credibility as a witness.

First, he declared, during cross-examination, that at the time of the heist, there were about seven other fishermen aboard their fishing vessels which were just 10-15 arm's length away from the victims' boat. ^[37] Despite their proximity, neither he nor any of said fishermen rendered help to the victims who were shouting for help. We find it highly implausible and contrary to ordinary human experience that in the span of 25 minutes from the time the malefactors boarded the victims' boat up to the time they departed, Hayahay as well as the alleged bystanders merely watched the carnage. Likewise perplexing to this Court is Hayahay's testimony that even after the perpetrators already fled the scene, he did not bother to approach the victims, one of whom was the brother-in-law of his wife, because he was afraid of the dead.

Second, we find Hayahay's prolonged silence about the incident unusual. While it is true that there is no standard behavior for persons confronted with a shocking incident and that the workings of the human mind when placed under emotional stress are unpredictable and cause different reactions, still, the relationship of the witness to the victim will logically impel him to spill the truth ^[38] for the sake of his wife's sister whose husband was brutally slain. The fear he wants this Court to believe was not sufficiently established to convince us of his long silence from the day of the incident. He did not even inform his wife that her own brother-in-law was killed.

While we take judicial notice that eyewitnesses to a crime are often reluctant to report the incident, the Court finds the response of Hayahay to the occurrence contrary to ordinary human experience. ^[39]