

## SECOND DIVISION

[ G.R. No. 140217, February 21, 2003 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DOMINGO PATOC, ALIAS "DOMING" AND JOHN DOE, ACCUSED-  
APPELLANT.**

### **D E C I S I O N**

**CALLEJO, SR., J.:**

This is an appeal from the Decision<sup>[1]</sup> of Branch 60 of the Regional Trial Court of Barili, Cebu, convicting accused-appellant of murder and sentencing him to *reclusion perpetua* with the aggravating circumstances of use of an unlicensed firearm in the commission of the crime, treachery and evident premeditation.

#### **The Charge**

On September 16, 1998, Domingo Patoc and a certain John Doe were charged with murder before the Regional Trial Court of Barili, Cebu in an Information which reads:

That on or about the 24<sup>th</sup> day of August, 1996 at the Municipality of Moalboal, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, with intent to kill, armed with a firearm of unknown caliber, and by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack and shoot BASILIO MALABAGO, hitting the latter at the different parts of his body which caused his instantaneous death.

CONTRARY TO LAW.<sup>[2]</sup>

Upon his arraignment on October 13, 1998,<sup>[3]</sup> Domingo, assisted by counsel, entered a plea of not guilty to the charge. Trial of the case ensued following the termination of the pre-trial. The prosecution presented three witnesses, namely: (1) Dr. Urduja Espiritu, a medico-legal expert; (2) Rufina Malabago, the wife of the victim; and (3) Christopher Malabago, grandson of the victim.

#### **The Antecedent Facts**

Domingo, a resident of Barangay Batadbatad was not a stranger to the spouses Basilio Malabago and Rufina Malabago. In fact, they were residents of the same barangay. There were occasions that Domingo and Basilio went to the market together. At about noontime on August 24, 1996, Basilio went to the marketplace (*tabo*) of Canduhong, Bala, Moalboal, Cebu, to watch a cockfight.<sup>[4]</sup> He was followed shortly thereafter in the afternoon of that same day by his wife Rufina and their twelve year-old grandson Christopher Malabago.<sup>[5]</sup> Rufina fetched water from a well

and at about 6:00 p.m., the three of them left the marketplace and proceeded to their home in Barangay Batadbatad.<sup>[6]</sup> They were already near the house of their daughter Bibiana, when Domingo and another male person who were positioned amidst the queue of banana plants beside the road, approached the couple and said, "We will just go ahead, Noy," to which Basilio retorted, "Just go ahead." However, Domingo and his companion suddenly shot Basilio in cold blood. The latter could only utter, "Lord," and fell to the ground.<sup>[7]</sup> Domingo pointed his gun at Rufina who shouted at Domingo and his cohort and then said: "That's enough!" She then scurried from the scene to the house of her children Bibiana and Arcadio and reported the incident. She also met Isabelo Barredo, a Barangay Tanod to whom she reported the incident. When asked by Isabelo who shot her husband, she told him that she will reveal the names of the perpetrators when the policemen arrived. Rufina rushed to the barangay authorities and reported the incident. Christopher ran towards the house of his Aunt Nida for refuge.<sup>[8]</sup>

On August 25, 1996, Dr. Urduja Espiritu, Municipal Health Officer of Badian, Cebu, conducted a post-mortem examination on Basilio Malabago and made the following findings : eileen

Face :     - hematoma at supraorbital area, right.  
              - blood clots noted on both nostrils  
              - Wounds found on the following sites :  
              1.) Chin – lacerated wound measuring about 0.5 X 0.5 inches piercing  
              2.) Lacerated wound located about 1 inch from the angle of the mouth on the left side measuring about 0.5 inches in length piercing thru the buccal mucosa. The wound is surrounded with black skin discoloration.

Neck :     Semicircular wound measuring about 0.5 inches in diameter located 1 inch lateral to the suprasternal notch on the left side, surrounded with blackish skin discoloration.

Shoulder :     lacerated wound located 1 inch from the left shoulder joint measuring 1 inch in length and 1 inch in width, with black skin discoloration.

Abdomen :     Oval wounds 2 inches in number located 1 below each other lying obliquely about 0.5 inch in length, ¼ inch in width at a level 2 inches below the xiphoid process and 0.5 inches to the left of the midline. No blackish skin discoloration.

Back :     Right side – circular wound measuring about 1 inch in diameter located deep and lying 8 inches below and 6 inches medial to the level of the posterior axillary line.

Probable Cause of Death :  
              Hypovolemic Shock, Irreversible due to Hemorrhage, Internal & external due to Multiple gunshot wounds.<sup>[9]</sup>

Dr. Espiritu testified that Basilio sustained a total of seven wounds, five of which were entrance wounds. She concluded that the victim was shot at a distance of one foot considering the black skin discoloration found on the wounds located on the chin and angle of the mouth and at the neck and also in the shoulder of the victim.  
[10]

### **The Defense and Evidence of Domingo**

Domingo denied the charge and claimed that at the time of the killing, he was at Opon, Cebu. He testified that at about 11:00 a.m. of August 24, 1996, he arrived at Lapu-Lapu City to apply for a job as laborer at TPI Homes in Opon, Cebu, where his friend Buenaventura Robo worked as a carpenter.<sup>[11]</sup> He proceeded to Robo's workplace and arrived thereat at around 1:00 p.m.<sup>[12]</sup> Domingo immediately approached the foreman who informed him that they were not in need of laborers but were hiring carpenters.<sup>[13]</sup> The foreman told him that he and Robo may stay at the bunk house.<sup>[14]</sup> After 5:00 p.m., Robo joined Domingo in the bunk house, where they played *dama* together with the foreman and other workers. Domingo and Robo retired by 10:00 in the evening. At about 7:00 a.m. the next day, August 25, 1996, Domingo and Robo boarded a Librando bus going to Moalboal, Cebu.<sup>[15]</sup> Domingo came to know for the first time of the charge against him when he was arrested on July 29, 1998.<sup>[16]</sup> The testimony of Domingo was corroborated by Robo.

Domingo's second witness, Isabelo Barredo, chief of the Barangay Tanods in Barangay Bala, Moalboal, Cebu, testified that at past 3:00 p.m. on August 24, 1996, he went to the tabo of Canduhong, Bala, Moalboal, Cebu to watch a basketball game. At past 6:00 p.m., while on his way home, Isabelo met Rufina who informed him, "Brod, your Brod Basilio was killed. He was shot." But when asked who the perpetrator was, Rufina replied that she did not know the identity of the killer. Upon seeing the body of Basilio, Isabelo forthwith went for the barangay captain who, upon arrival at the scene, asked Rufina anew if she knew who the perpetrator was, but Rufina again replied that, "I don't know who killed my husband because it was dark." Isabelo further testified that he did not know Domingo but was acquainted with Basilio and Rufina because they were his neighbors in Bala, Moalboal, Cebu.  
[17]

### **The Verdict of the Trial Court**

On June 30, 1999, the trial court rendered its Decision<sup>[18]</sup> convicting Domingo of Murder, the decretal portion of which reads:

"JUDGMENT is hereby RENDERED, declaring the accused, Domingo Patoc, GUILTY of the crime of MURDER, appreciating the use of unlicensed firearm and the means of treachery and evident premeditation in committing the offense. He is therefore sentenced to serve the PENALTY OF RECLUSION PERPETUA and to pay the heirs of the victim, Basilio Malabago, the sum of Fifty Thousand Pesos (P50,000.00) as indemnity.

SO ORDERED.<sup>[19]</sup>

Hence, the appeal at bar.

## **The Assignment of Errors**

Accused-appellant assails the decision of the trial court, contending that:

### **I**

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

### **II**

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE AGGRAVATING CIRCUMSTANCES OF TREACHERY, EVIDENT PREMEDITATION, AND THE USE OF AN UNLICENSED FIREARM ARE PRESENT IN THE CASE AT BAR.

### **III**

THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING THE DEFENSE OF ALIBI IN FAVOR OF THE ACCUSED-APPELLANT.

## **The Verdict of this Court**

The lynchpin of accused-appellant's submission is essentially on the issue of credibility.

The cardinal rule is that where the issue is one of credibility of witnesses, reviewing courts generally will not disturb the findings of the trial court, unless it can be shown that the latter overlooked certain facts of substance and value that, if considered, might affect the result of the case. The matter of assigning values to declarations on the witness stand is best done by the trial judge who, unlike appellate magistrates, can weigh firsthand the testimony of a witness in the light of his demeanor, conduct and attitude, and is thereby placed in a more competent position to discriminate between the true and false.<sup>[20]</sup>

In the appeal at bar, accused-appellant avers that the trial court erred in giving full faith and credit to the testimonies of the prosecution witnesses which he insists are punctured with irreconcilable and unexplained inconsistencies thereby casting doubt on his guilt for the crime charged. He points out that while Rufina testified that the victim was hit in the mouth and the bullet exited at the back, the medico-legal expert testified that the victim was also shot at the back. For another thing, while Rufina claimed that the victim was watching a cockfight at the time she told him that they will be going home. Christopher, on the other hand, testified that the victim was having a drinking spree at that time.<sup>[21]</sup>

Accused-appellant is clutching at straws. Case law has it that variations in the declarations of witnesses respecting collateral, peripheral and incidental matters do not impair the verisimilitude of the testimonies of such witnesses and the probative weight thereof on the *corpus delicti* and the perpetrators thereof. Minor inconsistencies in the testimonies of said witnesses strengthen rather than weaken