

SECOND DIVISION

[G.R. No. 138266, April 30, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PEDRO CABRERA, JR., ALIAS "ONYONG" AND DANILO CABRERA, ALIAS "TOTI" (AT LARGE), ACCUSED,

PEDRO CABRERA, JR., ALIAS "ONYONG," APPELLANT.

DECISION

QUISUMBING, J.:

This is an appeal from the decision^[1] dated January 5, 1999, of the Regional Trial Court of Davao City, Branch 9, in Criminal Case No. 34, 985-95, finding appellant Pedro Cabrera, Jr., alias "Onyong" guilty of murder and sentencing him to *reclusion perpetua*. Appellant's co-accused, Danilo Cabrera, alias "Toti," remains at large.

The amended information,^[2] dated August 21, 1995, charged appellant and his co-accused as follows:

The undersigned accuses the above-named accused of the crime of Murder under Article 248 of the Revised Penal Code, committed as follows:

That on or about November 22, 1992, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and helping one another, with treachery, armed with a bladed weapon and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and stabbed one Leopoldo Alvarado thereby inflicting upon the latter stabbed wounds which caused his death.

Contrary to law.

To this amended information, only appellant Pedro Cabrera, Jr., was arraigned. Assisted by counsel, he pleaded not guilty. Trial ensued.

The prosecution adduced evidence consisting of the testimonies of Shirley Aguilus,^[3] Benedicto Aguilus, Dr. Danilo Ledesma, and SPO3 Josefa F. Crodua, as well as several documents.

Shirley Aguilus testified that on November 22, 1992, she decided to pay her father a visit at 1055 C. Arellano Street, Davao City.^[4] She was with her boyfriend, Leopoldo Alvarado. On their way coming from her work, she observed that there was a gathering in the nearby house of appellant's mother because it was the first death anniversary of Conrado Cabrera, a brother of appellant. Appellant and another

brother, the co-accused Danilo Cabrera, were there in the celebration. The Cabrerias lived only a house away from the Aguilus' residence.

At nine o'clock that evening, after Shirley Aguilus and her boyfriend Leopoldo Alvarado had dinner and watched TV, they left her father's house to return to where she was staying with a sister in Buhangin, Davao City. But as they were passing the Cabrerias' house, Shirley saw the appellant and his co-accused standing at the front gate. Shirley and Leopoldo were crossing the junction of Jacinto and Quirino Streets, walking side by side, arm in arm, when appellant suddenly came from behind and stabbed Leopoldo. Shocked, Shirley cried, "*Bakit n'yo kami ginaganito wala kaming kasalanan sa inyo?*" Leopoldo retreated to the Central Bank Building area where, according to Shirley, he was stabbed anew in the stomach by co-accused Danilo Cabrera. Thereafter, Shirley said she saw appellant and his co-accused leave together toward a gasoline station. Two male bystanders helped her bring the wounded Leopoldo to the San Pedro Hospital where Leopoldo was pronounced dead on arrival.^[5]

According to Shirley she had her father, Benedicto Aguilus, notified by telephone and together from the San Pedro Hospital they went to the San Pedro Police Station to have the stabbing incident blotted. Asked who did the stabbing, she replied, "our neighbors." She identified the assailants as the Cabrera brothers, whom she only knew by their nicknames. She was told by the police officer on duty to come back the following day to provide the real names of the culprits. She did not return at that time as she was then eight and a half months pregnant with Leopoldo's lovechild, and she was afraid of the accused who were known "*hawod*" in their place.^[6]

When asked, she could not offer a possible reason why appellant and his brother stabbed and killed Leopoldo. But she said that it could have been a case of mistaken identity, the accused mistaking Leopoldo for a certain "Muki"^[7] who appears to be their enemy. Muki apparently had features similar to Leopoldo's. As it later surfaced in appellant's own testimony, Pedro Cabrera, Jr., admitted that a certain Muki Yparraguirre was the suspect in the killing of appellant's other brother a year earlier.^[8]

Lastly, according to the witness Shirley Aguilus, Davao City Mayor Rodrigo Duterte assured her of his assistance early in 1995, so she came forward to execute an affidavit which led to the prosecution of the accused.^[9]

Shirley's father, Benedicto Aguilus, corroborated the testimony of his daughter. He testified that around 15 to 20 minutes after Shirley and Leopoldo left his residence at 1055 C. Arellano St., a certain Romeo Tambio, a janitor at the Emmanuel Baptist Church, came to inform him that Shirley called from the hospital and had requested Benedicto to come over. Forthwith, he went to the San Pedro Hospital and saw her daughter crying. She told him that Leopoldo was stabbed by the brothers "Onyong" and "Toti" Cabrera. Thus, witness Benedicto Aguilus and his daughter Shirley went to the San Pedro Police Station to report the incident.^[10]

Witness Dr. Danilo Ledesma, a medical officer, also testified. According to him, he conducted the autopsy on the victim. As stated in his necropsy report,^[11] he testified that the victim sustained three (3) stab wounds. In the death certificate^[12]

of Leopoldo Alvarado, Dr. Ledesma indicated the cause of death as "hemorrhage, severe, secondary to stab wound of the chest."

Finally, SPO3 Josefa F. Crodua testified on the due execution of the report in the police blotter, showing the events on the night of November 22, 1992. The blotter was presented in evidence as Exhibit C.

For the defense, appellant Pedro A. Cabrera, Jr., his brothers, Ruben and Leonardo A. Cabrera, and Ricarte P. Alaton testified and presented documentary evidence, marked as Exhibits 1-11.

Appellant invoked the defense of denial and alibi. He testified that he did not kill the victim and that he did not know the person named Leopoldo Alvarado, who died of stab wounds on November 22, 1992. He denied knowing their neighbor, Shirley Aguilus. According to appellant, from 1989 to April of 1995, he was in Manila employed as a helper in the business of his brother, earning P1,000.00 a month. On November 22, 1992, the day of the alleged murder, he was at work, doing his job. As proof of his employment, he presented his brother, Ruben Cabrera, to corroborate his testimony.

According to witness Ruben Cabrera, he has a business firm in Quezon City, engaged in the buy and sell of home decors, carpets, furnitures, jars, paintings, and other objects. He said that sometime in 1989, he hired his brother Pedro Cabrera, Jr., as "*kargador*." When asked on cross-examination, he failed to show any record of appellant's employment. According to the witness, as employer he had no listing of his employees but he could memorize their faces. He added that on November 22, 1992, he was with appellant making deliveries.^[13]

Defense witness Ricarte P. Alaton testified that appellant could not have been the assailant of Leopoldo Alvarado because on November 22, 1992, appellant was in Manila. Witness Alaton said he even had a drinking spree with appellant at the Headquarters of the National Equifrilibricum, a religious organization of which he is a member.^[14] To substantiate his claim he offered in exhibit his Equifrilibricum World Religion membership card.^[15] It turned out, however, that he was the brother-in-law of Renato Cabrera, also a brother of the appellant.

Another brother of appellant, namely Leonardo A. Cabrera, was presented on the witness stand. He stated that the appellant was one of fifteen siblings.^[16] But one of their brothers, Conrado Cabrera, died on November 22, 1991, and a sister died on December 21, 1992. ^[17] He corrected Ruben Cabrera's testimony as to these dates.

The trial court disbelieved the defense but gave credence to the testimony of eyewitness Shirley Aguilus and other witnesses for the prosecution.

Accordingly, the court rendered judgment as follows:

WHEREFORE, finding the accused PEDRO CABRERA, JR., guilty beyond reasonable doubt of the crime of MURDER qualified by treachery, as defined in Art. 248 of the Revised Penal Code, he is hereby sentenced to suffer imprisonment of RECLUSION PERPETUA, to suffer the accessory

penalties attendant thereto and to indemnify the heirs of Leopoldo Alvarado in the amount of P50,000.00.

His immediate confinement at the National Penitentiary is hereby ordered.

The case against DANILO CABRERA alias Toti, the other accused, is hereby held in abeyance and archived until he is brought to the jurisdiction of this Court. Issue alias warrant for his arrest.

Costs de oficio.

SO ORDERED.^[18]

Aggrieved, appellant comes to this Court assigning as lone error the failure of the trial court to acquit him,^[19] in this wise:

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT.^[20]

The resolution of this appeal hinges on the credibility of the prosecution's witnesses, particularly the eyewitness. Appellant seeks to discredit the testimony of the prosecution's eyewitness, Shirley Aguilus. He points out that contradictions in the latter's testimony cannot be appreciated as mere mistakes, but constitute deliberate falsehood, thus impairing her credibility as a witness and the weight of her testimony. Specifically, appellant claims that Shirley's statement on the night of the incident as borne in the police blotter contradicts her testimony on the witness stand four years later as regards the identity of the malefactor.^[21]

On record are the pertinent contents of the police blotter, to wit:

2145H	For record	MOC informed this Office thru telephone ICOW stabbed victim rushed to San Pedro Hospital; In this connection, PO3 Ballenas and PO3 Jackaria with members of Wagon Bravo led by Pacumbaba left this station to verify.
2210H	Returned re-item 2145H Nov 22, 1992 Stabbing Incident	Peace officers mentioned in the immediate preceding item returned this office with info that stabbing incident transpired at the vicinity of Central Bank, along Jacinto Ext., Davao City. The victim identified as one LEOPOLDO ALVARADO Y FERNANDEZ, 25 years old, married, AC Jeep Driver, native of Bansalan,

Davao del Sur, presently resident of Care of Montajes Art and Sign, along San Roque St., Bajada, Davao City, who sustained two stabbed wounds in the left and right breast and left arm. Initial investigation disclosed that victim together with his wife one SHIRLEY ALVARADO were walking along aforementioned place when the unidentified suspects without any apparent reason nor provocation followed them and stabbed the victim twice. Victim was rushed to San Pedro Hospital for treatment. However, he was declared dead on arrival by attending physician. That suspect after the incident hurriedly boarded Alpa PU Minica color white and fled to unknown direction. While at this office **the wife of the victim averred that she can identify the suspect if seen again.** Case Ref to HAS.^[22]

According to appellant, the statements made by Shirley Aguilus appearing in the police blotter immediately after the stabbing incident are admissible as part of the *res gestae*.^[23] He contends that the phraseology "she can identify suspect if seen again" presents a factual impression that Shirley Aguilus never knew of the identity of the assailants at the time of the stabbing; and that her testimony later, identifying appellant as one of the assailants, is a mere concoction raising doubt as to the truth of her testimony.

For the appellee, the Office of the Solicitor General argues that appellant's logic is faulty and his contention bereft of merit; hence, his conviction should be sustained. According to the OSG, in her testimony Shirley positively identified appellant as one of the assailants on the night of November 22, 1992.^[24] The fact that Shirley did not give the full names of the assailants to the desk officer as directed does not detract from her credibility since she had given their nicknames as her neighbors, says the OSG.

At the outset, it should be noted that during trial, appellant's defense vigorously interposed denial and alibi. After trial, however, his defense changed tack and began to attack the credibility of the prosecution's eyewitness.

To impeach the credibility of eyewitness Shirley Aguilus, appellant makes it appear that the statements made by Shirley as borne by the police blotter are inconsistent with her statements on the witness stand. Appellant contends also that the omission