

## FIRST DIVISION

[ G.R. No. 118073, January 25, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RENATO ORPILLA @ ATONG, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is an appeal from the Decision<sup>[1]</sup> of the Regional Trial Court of Dagupan City, Branch 43, in Criminal Case No. D-11602, convicting accused-appellant of the crime of Murder and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the deceased the sum of P50,000.00 as death indemnity, P30,000.00 as moral damages and another P30,000.00 as medical and funeral expenses, and the costs of suit.

The information against accused-appellant states:

That on or about December 6, 1992, in the evening at [S]itio Banaba, [B]arangay Binday, [Municipality] of San Fabian, [P]rovince of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon with intent to kill, evident premeditation, and treachery, did, then and there wilfully, unlawfully and feloniously stab VICENTE VERCELES y DOCTOLERO inflicting upon him a stab wound about 3 cm., right lower abdomen, penetrating the abdominal cavity, lacerating the ascending colon; penetrating the retroperitoneum, transecting the right kidney with massive bleeding which caused his death, to the damage of the heirs of said Vicente Verceles y Doctolero.

CONTRARY to Art. 248, of the Revised Penal Code.<sup>[2]</sup>

On March 24, 1994, accused-appellant, assisted by counsel, pleaded not guilty.<sup>[3]</sup>

During the trial, the prosecution established the following facts: At around 7:00 to 8:00 o'clock in the morning of December 6, 1992, accused-appellant and the victim, Vicente Verceles, a tricycle driver, were at the parking lot of tricycles plying the route to Barangay Paladpad, San Fabian, Pangasinan. Accused-appellant asked the victim to deliver to his house in Paladpad, five (5) *gantas* of rice, beans and one (1) pig leg. After paying the victim P5.00 and a stick of cigarette, accused-appellant returned to his place of work as a dispatcher of vehicles going to Dagupan City.<sup>[4]</sup>

The victim, however, failed to deliver the goods to the house of accused-appellant. At about 6:00 in the evening of the same day, the victim arrived home and alighted from his tricycle in front of their house at Barangay Banaba, San Fabian, Pangasinan. Ten minutes latter, a jeepney came. Accused-appellant got off and

faced the victim and his wife, Carmen Verceles, who were both standing beside their tricycle. Carmen noticed that accused-appellant was holding a twelve-inch knife in his right hand, with its tip pointing upward and resting between the arm and the right side of accused-appellant's body.<sup>[5]</sup>

Accused-appellant inquired from the victim about the goods he asked to be delivered to his house. The victim apologetically answered that the goods were still in his tricycle and that he failed to deliver them because his tricycle developed engine trouble. The victim turned and stooped to get the items from the sidecar of his tricycle. As he was about to hand the goods to accused-appellant, the latter suddenly stabbed him on the lower abdomen and immediately ran away.<sup>[6]</sup>

Carmen lost no time in bringing her husband to the hospital, where he was treated but died due to loss of blood. The victim sustained a fatal wound with a diameter of three (3) centimeters and a depth of eight (8) inches, penetrating the abdominal cavity; lacerating the ascending colon; penetrating the retroperitoneum; and transecting the right kidney.<sup>[7]</sup>

The version of the defense, on the other hand, is as follows: Accused-appellant, a dispatcher of Dagupan-bound vehicles, and the victim, a tricycle driver, were friends and neighbors. On or about 7:00 to 8:00 o'clock in the morning of December 6, 1992, accused-appellant asked the victim to deliver to his house five (5) *gantas* of rice, beans and one (1) pig leg. For a fare of P5.00 and a stick of cigarette, the victim agreed. Thereafter, accused-appellant left and stayed in his place of work.<sup>[8]</sup>

At around 5:00 o'clock p.m., accused-appellant went home on board a tricycle driven by Isidro Fabia, also known as Dong, with Ludovico Doctolero, as co-passenger. When they passed by the house of the victim, he saw the latter seated beside Ben Sion, his brother-in-law. The victim waved at him, so he asked the tricycle driver to stop.<sup>[9]</sup>

Accused-appellant alighted from the tricycle while the victim approached him. The victim apologized to accused-appellant for his failure to deliver the items he entrusted to him. Accused-appellant replied that it was all right. While accused-appellant and the victim were conversing, Ben Sion drew a knife from his waist, cursed accused-appellant and shouted, "Atong I will kill you!"<sup>[10]</sup> Accused-appellant and the victim were about six to seven meters away from Ben Sion. Seeing that Ben Sion was bent on killing accused-appellant, the victim attempted to intervene and stood in front of accused-appellant. Accused-appellant seized the opportunity, and immediately ran away.<sup>[11]</sup>

On cross-examination, accused-appellant testified that he left town the next day for fear of Ben Sion who, prior to the December 6, 1992 incident, had already tried to kill him. According to him, it was only months later that he learned of the death of the victim and that he was suspected of having stabbed him. He did not bother to go to the authorities and make a categorical denial of the accusation against him because he was busy with his job.<sup>[12]</sup>

Defense witness Isidro Fabia, a tricycle driver, declared that on December 6, 1992, accused-appellant was his passenger. When they passed by the house of the victim,

accused-appellant told him to stop. He alighted from his tricycle and talked to somebody. After thirty (30) minutes, he heard somebody shouting, "Atong I will kill you!"; then he saw accused-appellant running toward the fields.<sup>[13]</sup>

On cross-examination, the witness testified that accused-appellant was about an arm's length away when he talked to somebody. However, he was not able to hear the conversation of the two. He did not notice if somebody fell to the ground after accused-appellant scampered away because he sped off with his tricycle.<sup>[14]</sup>

On August 26, 1994, the trial court rendered a decision, the dispositive portion thereof reads:

WHEREFORE, the COURT finds accused RENATO ORPILLA alias "Atong" guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code and pursuant to law, the COURT sentences him to suffer a prison term of Reclusion Perpetua and to pay Carmen Verceles the following, viz:

1. P50,000.00 as indemnity;
2. P30,000.00 as moral damages;
3. P30,000.00 representing medical expenses and expenses incurred during the wake, tomb, coffin, and funeral expenses;

and Costs.

SO ORDERED.<sup>[15]</sup>

Accused-appellant filed a Notice of Appeal on September 13, 1994,<sup>[16]</sup> however, his counsel failed to file the Appellant's Brief despite warnings from the Court. Hence, a counsel *de officio* was appointed to file the appellant's corresponding brief on behalf of accused-appellant.<sup>[17]</sup>

Accused-appellant raises the following errors:

- A. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF CARMEN VERCELES, WIFE OF THE VICTIM, AND IN DISREGARDING THE TESTIMONY OF DISINTERESTED WITNESS ISIDRO FABIA alias "DONG."
- B. THE TRIAL COURT ERRED IN DISREGARDING THE POSITIVE EVIDENCE THAT THE ACCUSED DID NOT STAB THE VICTIM.
- C. THE TRIAL COURT ERRED IN APPRECIATING THE EXISTENCE OF TREACHERY.
- D. THE TRIAL COURT ERRED IN HOLDING THAT THE PROSECUTION PROVED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.<sup>[18]</sup>

Accused-appellant's former counsel explained that the reason why he did not file an Appellant's Brief was because the latter informed him that he was no longer interested in pursuing his appeal.<sup>[19]</sup> Subsequently, accused-appellant confirmed to

this Court that he was indeed withdrawing his appeal.<sup>[20]</sup> Nevertheless, we are not precluded from reviewing the decision, especially since there is a need to modify accused-appellant's civil liability.<sup>[21]</sup> Hence, we resolved to deny accused-appellant's withdrawal of appeal.

The decisive issue in the instant case is the credibility of prosecution witness Carmen Verceles. Long settled is the rule that the assessment of the credibility of a witness falls primarily within the province of the trial judge. He is in a better position to determine whether a witness is telling the truth or merely narrating a concocted tale. He could weigh conflicting testimonies because he heard the witnesses themselves, observed their deportment and manner of testifying, and had full access to the vital aids of determining truth or falsehood, such as the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. Unless the trial judge plainly overlooked certain facts, the substance and value of which, if considered, might affect the result of the case, his assessment on credibility must be respected.<sup>[22]</sup>

After a careful review of the testimony of prosecution witness Carmen Verceles, the Court is convinced that she was telling the truth and that the trial court had not overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have materially affected the outcome of this case. Moreover, the fact that the principal witness for the prosecution was the victim's wife lends more credence to her testimony as her natural interest in securing the conviction of the guilty would deter her from indicating persons other than the culprits, lest the latter would thereby gain immunity.<sup>[23]</sup>

The trial court correctly disregarded the testimony of defense witness Isidro Fabia. Indeed, it is strange and contrary to human experience that Isidro Fabia did not hear anything in the alleged thirty-minute conversation between the victim and accused appellant, considering that he was only one arm's length away from the two. For testimonial evidence to be believed, it must not only proceed from the mouth of a credible witness but must also be credible in itself such as the common experience and observation of mankind can approve of as probable under the circumstances.<sup>[24]</sup>

The issue of lack of motive on the part of accused-appellant to kill the victim has no bearing in the instant case. Motive gains importance only when the identity of the culprit is doubtful.<sup>[25]</sup> In the present case, accused-appellant was positively identified by the wife of the victim. Since it was not shown that Carmen Verceles was impelled by any ill motive to testify falsely against him, the presumption is that, she was not so moved and that her testimony is entitled to full faith and credit.<sup>[26]</sup>

The Court finds that the killing was attended by treachery judging from the circumstances surrounding the incident, as well as from the manner with which the attack was carried out. The fact that the wife of the victim, and most probably so, the victim himself, noticed that accused-appellant was carrying a knife, does not in anyway serve as a warning of any impending peril on the victim's life. As established here, there was no previous animosity between the victim and accused-