

FIRST DIVISION

[G.R. No. 135693, April 01, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CORNELIO GELIN AND MANUEL GELIN, ACCUSED-APPELLANTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Dolores, Eastern Samar, Branch 4, in Criminal Case No. 14 (91-7), convicting accused-appellants of the crime of Murder and sentencing each of them to suffer the penalty of *reclusion perpetua*; to jointly and severally indemnify the heirs of the victim in the amount of P50,000.00 as death indemnity; and to pay the costs.

The information charging accused-appellants of the crime of murder states:

That on or about the 10th day of February 1991, at about 6:00 o'clock in the afternoon, more or less at Bo. Borong, Brgy. No. 4 Poblacion Can-avid, Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping one another with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, shoot, stab and wound one Dionisio Gelin with deadly weapons, namely: a rifle and a small bolo locally known as "Depang" which the accused conveniently provided themselves for the purpose thereby inflicting injuries on the different parts of the body of said Dionisio Gelin which resulted in his instantaneous death.

CONTRARY TO LAW, with the aggravating circumstances of abuse of superior strength and abuse of authorities, both accused being members of the CAFGU of Can-avid, E. Samar.^[2]

At their arraignment on December 3, 1991, accused-appellants pleaded not guilty.^[3] The case then proceeded to trial.

The version of the prosecution is as follows: Joel Gelin, the son of the victim, Dionisio Gilen, was on his way home at around 6:00 in the evening of February 10, 1991 when he met his second cousins, brothers Cornelio Gilen and Manuel Gilen, accused-appellants herein. Manuel poked a small bolo ("*depang*") on Joel's neck, while Cornelio threatened to shoot him with a long firearm. Joel was aware of the existing land dispute between accused-appellants and his family, thus, he suggested that they settle it amicably. Accused-appellants refused and forced Joel to bring them to the house of the victim. Upon reaching the house, they saw the victim, and without warning, Cornelio shot him. To ensure the victim's death, Manuel stabbed him on the chest. Joel could do nothing as the accused-appellants also threatened

to kill him. Thereafter, accused-appellants took Joel with them and returned their gun to the army camp where they were serving as CAFGU members. When Joel was finally released by the accused-appellants, he rushed to the house of his cousin, Romeo Anacio, and ordered his brother, Benjamin Gelin,^[4] to report the incident to the police station.^[5]

Prosecution witness Ida Balagbis testified that she was in the house of the victim when the latter was shot. From the kitchen where she was then washing the dishes, she saw the victim a meter away from her and standing by the annex ("*suy-ab*") of the house. At the sound of gunshots, she turned and saw accused-appellant Cornelio Gelin holding a gun. The victim was lying on the ground. Standing close to Cornelio was accused-appellant Manuel Gelin who was poking a "*debang*" on Joel. The two assailants were only three meters away from Ida Balagbis. Frightened, Ida immediately fled and informed her father of the shooting incident.^[6]

The results of the post-mortem examination conducted on the victim by Dr. Marcial A. Adal are as follows:

1. Well developed, well nourished individual in the state of Rigor-Mortis.
2. Wound, penetrating, Sternum.
Length - 1 inch, width - 1/2 inch, depth - 1 1/2 inches.
3. Gun-shot wounds, thru and thru (2).
Entrance-left Lumbar Region 2 inches far apart length- 1/2 inch, width 1/2 inch, presence of powder burns.
Exit-right lumbar region with right colon extruded.
Length - 4 inches, width - 1 inch. Opening the abdominal cavity, the right and left large intestines injured, as well as the small intestines, pancreas and kidneys.^[7]

Cause of death: Item No. 3.

In their defense, accused-appellants denied the accusation against them and claimed that at the time the crime was allegedly committed, they were inside the camp of the Philippine Army stationed in Can-avid, Eastern Samar. Accused-appellant Cornelio Gelin, a former CAFGU member, alleged that on February 10, 1991, he was on duty for two hours at the camp from 4:00 in the afternoon to 6:00 in the evening. After his shift, he stayed in the camp and left at 7:00 in the morning the following day.^[8] For his part, accused-appellant Manuel Gelin testified that at about 6:00 in the evening of February 10, 1991, he was resting inside the army camp as he was nursing a fever. He declared that he was too weak and was able to go home only the following morning at 8:00.^[9]

To bolster their theory, accused-appellants presented Sgt. Wilfredo Peralta and Alfredo S. Edaro, who both declared that the Gelin brothers were inside the camp from 6:00 in the evening of February 10, 1991 until the next day.^[10]

On June 11, 1998, the trial court found the version of the prosecution credible and rendered the assailed decision. The dispositive portion thereof reads:

WHEREFORE, premises considered, the Court hereby renders judgment finding accused CORNELIO GELIN and MANUEL GELIN guilty beyond

reasonable doubt of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, sentences said accused persons to suffer the indivisible penalty of RECLUSION PERPETUA, with the accessories of the law; to pay the heirs of the victim DIONISIO GELIN jointly and severally, the amount of FIFTY THOUSAND PESOS (P50,000.00) as indemnification, and to pay the costs. The bail bond posted by each accused are hereby ordered cancelled pursuant to Section 5, paragraph 1 of Supreme Court Administrative Circular No. 12-94.

SO ORDERED. [11]

In their Brief, accused-appellants raised the following assignment of errors:

I

THE LOWER COURT ERRED IN OVERLOOKING, MISAPPRECIATING AND/OR MISUNDERSTANDING CERTAIN FACTS AND CIRCUMSTANCES OBTAINING IN THE CASE.

II

THE LOWER COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF [THE] ALLEGED PROSECUTION EYE-WITNESSES AND IN DISREGARDING ACCUSED'S (sic) DEFENSE OF ALIBI; and,

III

THE LOWER COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANTS UPON REASONABLE DOUBT.[12]

Accused-appellants attempt to destroy the credibility of the prosecution witnesses by pointing out inconsistencies in their testimonies. Said inconsistencies, however, are so minor and trivial that they cannot impair the main thrust of the witnesses' testimony that they saw accused-appellants at the scene of the crime, and describing with clarity their active participation in the killing of the victim. For instance, it is immaterial whether it was Ben Gelin or Joel Gelin who caused the shooting incident to be listed in the police blotter; or whether Joel Gelin told the authorities who were the culprits. Verily, these matters are irrelevant to the elements of the crime and are thus not grounds for their acquittal.[13] At any rate, the police officer who took down the report explained that it was Ben Gelin who went to the police station to report the incident but it was Joel whom he listed as the informant because he was the one who ordered his younger brother, Ben, to go to the police. Moreover, Joel Gelin clarified that he initially withheld the identity of the persons who killed his father because accused-appellants, who were CAFGU members, threatened to kill him.[14]

Furthermore, the non-presentation of other witnesses to corroborate the testimony of Ida Balagbis and Joel Gelin is of no consequence. The matter of deciding whom to present as witness for the prosecution is not for the accused or for the trial court to decide, as it is the prerogative of the prosecutor.[15] More importantly, the testimony of Ida Balagbis and Joel Gelin, which are worthy of belief, are sufficient to convict accused-appellants. Courts are not precluded from rendering judgment based on the testimony even of a single witness. The weight and sufficiency of evidence is determined not by the number of the witnesses presented but by the

credibility, nature, and quality of the testimony.^[16]

Accused-appellants rely heavily on the presence of powder burns on the periphery of the wound sustained by the victim. The presence thereof, according to them, prove that the victim was shot at close range, contrary to the claim of prosecution witness Ida Balagbis that the victim was shot from a distance of 3 meters.^[17] So, also, accused-appellants declared that the victim must have died hours before 6:00 in the evening of February 10, 1991, judging from the necropsy report that the victim was in *rigor mortis* when Dr. Marcial A. Adal examined his body at around 7:00 of the same evening. In addition, accused-appellants make much of the testimony of Dr. Adal that the gunshot wound was inflicted post-mortem.

The contentions are without merit. The testimony of Ida Balagbis is merely an approximation of the distance between the victim and accused-appellant Cornelio. Such error in her calculation cannot militate against her credibility. In the same vein, the testimony of Dr. Adal that the gunshot wound was inflicted post-mortem is not sufficient to destroy the theory of the prosecution. Note that said testimony was never stated in the necropsy report nor explained by Dr. Adal in his testimony. Indeed, these minor lapses even tend to strengthen the evidence presented by the prosecution because they erase any suspicion of a rehearsed testimony.^[18]

Then, too, Dr. Adal clarified that *rigor mortis* was just beginning to set in when he examined the cadaver of the victim.^[19] This jibed with the testimony of the prosecution witnesses that the victim was shot at around 6:00 in the evening of February 10, 1991. *Rigor mortis*, which consists in the stiffening of the muscular tissues and joints of the body, setting in at a greater or less interval after death, may be utilized to approximate the length of time the body has been dead. In temperate countries, it usually appears three to six hours after death but in warmer countries, it may develop earlier.^[20] There is also the medical view that the early setting in of *rigor mortis* may be due to exhaustion or muscular irritability.^[21] These factors therefore explain the setting in of *rigor mortis* at the time the cadaver of the victim was examined.

The acts of both accused-appellants, collectively and individually, clearly show and point to a conspiracy because of a common purpose, concert of action, and community of interest.^[22] The brothers evidently and concurrently had in mind the killing of the victim. Likewise, from all indications, the mode of attack adopted by them ensured the accomplishment of their criminal objective without risk to themselves as the deceased did not give any provocation and was then unarmed when they shot and stabbed him. ^[23]

As to the aggravating circumstances of evident premeditation, abuse of superior strength and abuse of authority, the trial court correctly disregarded them considering that the prosecution failed to prove their attendance in the instant case.

The defenses of denial and alibi put up by accused-appellants cannot prosper. Such defenses are inherently weak and cannot prevail over the positive identification of accused-appellants. Moreover, they failed to meet the test that there must be clear and convincing proof of physical impossibility for the accused to be at the *locus criminis* at the time of the commission of the crime, in order that his defense of alibi