

## THIRD DIVISION

[ G.R. No. 129284, March 17, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROSALINO FLORES, ACCUSED-APPELLANT.**

### DECISION

**GONZAGA-REYES, J.:**

This is an appeal from the decision<sup>[1]</sup> of September 19, 1996, of the Regional Trial Court of Malolos, Bulacan, Branch 16, in Criminal Case No. 1323-M-92 convicting accused-appellant Rosalino Flores alias "Jianggo" of the crime of murder as follows:

"WHEREFORE, premises considered, herein accused is hereby found guilty beyond reasonable doubt of the crime of murder defined under Article 248 of the Revised Penal Code, and he is therefore sentenced to suffer the penalty of RECLUSION PERPETUA.

Further, accused is ordered to pay the wife or heirs of deceased Antonio Garcia, the following:

- a) P50,000, as death indemnity;
- b) P9,000, as expenses for the wake;
- c) P13,000, as expenses for the funeral;
- d) P18,000, as lost income of Antonio Garcia for 10 years; and
- e) P60, 000, as moral damages; plus costs.

Considering that the accused is a detention prisoner, the period served by him as such shall be deducted from this sentence in his favor

SO ORDERED."<sup>[2]</sup>

The Information dated July 3, 1992 against accused-appellant reads:

"The undersigned Asst. Provincial Prosecutor accuses Risalino<sup>[3]</sup> Flores y Caperlac alias "Jianggo" of the crime of murder, penalized under the provisions of Art. 248 of the Revised Penal Code, committed as follows:

That on or about the 13th day of June, 1992, in the municipality of San Miguel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a handgun and with intent to kill one Antonio Garcia, did then and there willfully, unlawfully and feloniously, with evident premeditation, abuse of superior

strength and treachery, attack, assault and shoot with the said handgun he was then provided said Antonio Garcia, hitting the latter on his left side, thereby inflicting serious physical injuries which directly caused the death of said victim.

CONTRARY TO LAW."<sup>[4]</sup>

Upon arraignment, accused-appellant Rosalino Flores entered a plea of not guilty and trial thereafter ensued.

The facts as found by the trial court are as follows:

"Antonio Garcia is 39 years old, married to Teresita Maningas Garcia, tricycle driver, and residing at No.27 Bulualto, San Miguel, Bulacan. On June 13, 1992 at about 7:00 in the evening, he was celebrating his birthday and having a drinking spree with his invited guests namely: Danilo Lacanilao<sup>[5]</sup>, Romeo Lacap, Gregorio Olalia, Hermogenes Gatdula and Sergio Villegas, who were all from Bulualto. They were all seated around a table at the backyard 4 arms' length away from the back door of his house. The table was about 4 to 5 meters away from the bamboo trees. Between the table and the bamboo trees was a lighted 60 to 100-watt electric bulb hanging from a wire 2 1/2 meters away from the bamboo trees. At about that time, Myla Garcia, 17 years old and 2nd year high school student daughter of Antonio Garcia was also at the backyard to throw garbage to the dump pit. On her way, she heard noise (langitngit) of the debris of the bamboo trees at the backyard (siit ng kawayan sa may likuran). When she inspected what was the noise about, she saw Rosalino Flores, herein accused standing 1 arm's length away from her and 3 arms' length away from her father and holding a short gun pointed to her father. Accused was half-naked upward and wearing black pants. She rushed to her father but before reaching him, accused had already fired the gun hitting her father who leaned on her and eventually fell to the ground at her side. She embraced her father and walked with him to the house 4 arms' length away but before reaching the house, she saw the accused still there and when she shouted "si Jianggo, si Jianggo", the accused ran away. Antonio was brought inside the house still breathing and talking and while being embraced by his wife and his head was on the lap of his daughter, he uttered the words "Hoy, may tama ako. Binaril ako ni Jianggo." His daughter, wife and Roberto Sebastian heard those words. He (Antonio Garcia) was immediately brought to San Miguel District Hospital, but he died 20 minutes before reaching the hospital. He was pronounced dead on arrival. He died of hemorrhage due to gunshot wound caused by a bullet fired from a handgun believed to be a .38 caliber. The bullet hit first the left arm of Antonio Garcia towards the left side of his stomach and landed on his left lung. A deformed slug measuring 0.2 centimeter by 2 centimeters was extracted from his left leg.

Roberto Sebastian resident also of Bulualto, San Miguel, Bulacan was an invited guest of Antonio Garcia to his birthday party. On his way to the party and while he was at the gate of the house of Antonio Garcia which was about 5 to 6 meters away from the place where Antonio Garcia and

his guests were drinking, he heard a gun shot and thereafter a shout "Si Jianggo, si Jianggo." He saw the accused half-naked standing and holding a shot gun 1 meter away from the bamboo tree where a lighted electric bulb of 60 to 100 watt was hanging from the wire. He was 10 to 11 meters away from the accused when the latter ran away from the scene of the incident. He (Roberto Sebastian) was 1 foot away from Antonio Garcia when he heard the latter utter "Binaril ako ni Jianggo." After uttering those words Antonio Garcia expired (nalungayngay). Both Roberto Sebastian and Myla Garcia gave sworn written statements about the subject incident to the NBI District Office at Baliuag, Bulacan 1 day after the incident."<sup>[6]</sup>

Accused-appellant denied killing the victim and proffered an alibi that on the date and time of the alleged shooting, he was at the house of one PO3 Ernesto Martin attending the birthday party of the latter's daughter. According to him, PO3 Martin invited him in the morning of June 13, 1992 but he went to the latter's residence between 4:00 p.m. to 5:00 p.m. and stayed there until 7:00 p.m. to 8:00 p.m.<sup>[7]</sup>

In his appeal, accused-appellant contends:

- A. THE LOWER COURT ERRED WHEN IT HELD THAT THE PROSECUTION PROVED BEYOND REASONABLE DOUBT THAT THE APPELLANT KILLED ANTONIO GARCIA.
- B. THE COURT ERRED IN ADMITTING THE DYING DECLARATION OF ANTONIO GARCIA.
- C. THE COURT ERRED IN DISREGARDING APPELLANT'S DEFENSE OF ALIBI.<sup>[8]</sup>

The appeal is without merit.

We shall resolve the admissibility of the dying declaration of Antonio Garcia first. Accused-appellant argues that the dying declaration of the victim is inadmissible because he was an incompetent witness and it was not made with knowledge of an impending death. The elements for the admissibility of a dying declaration are: (1) the declaration must concern the crime and surrounding circumstances of the declarant's death; (2) it was made at a time when the declarant was under the consciousness of an impending death; (3) the declarant would be competent to testify; and (4) the declaration is offered in any case in which the decedent is the victim.<sup>[9]</sup>

We agree with accused-appellant that the dying declaration is inadmissible for the sole reason that the declarant was not competent to testify had he survived. Garcia was not a competent witness because he could not have seen who shot him. According to Myla's testimony, the assailant was positioned behind her father.<sup>[10]</sup> Upon being shot, Antonio Garcia stumbled and fell on his daughter. There is no showing that Garcia had the opportunity to see his assailant. Apparently, Garcia heard his daughter shout "Si Jianggo, si Jianggo" and relying thereon, uttered, "Hoy, may tama ako, binaril ako ni Jianggo," before he expired. A dying declaration of the victim identifying his assailant will not be given probative value if the victim was not

in a position to identify his assailant as he was shot from behind.<sup>[11]</sup>

Notwithstanding, the prosecution established with certainty the identity and culpability of accused-appellant.

Accused-appellant's contention that there is reasonable doubt that the accused-appellant killed Antonio Garcia for the following reasons: 1) there is no direct evidence that the appellant actually shot Antonio Garcia; 2) the accused-appellant tested negative in the paraffin test; 3) the gun supposedly used to kill the victim and the slugs were never presented in evidence; and that 4) there was another person, Danilo Leonardo, who possessed a gun at the time the killing occurred, fails to convince the Court.

First, accused-appellant argues that the trial court convicted the accused-appellant on the basis of circumstantial evidence which is not sufficient to support a conviction, to wit: (1) Myla's testimony that she saw accused-appellant with a gun pointed at her father; (2) Roberto's testimony that he saw accused-appellant flee from the scene of the crime after Garcia was shot.

We do not agree. Circumstantial evidence is sufficient to convict provided the following requisites are present, namely: (1) there is more than one circumstance; (2) the facts from which the inferences are derived from are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.<sup>[12]</sup> The circumstantial evidence must constitute an unbroken chain of events so as to lead to a fair and reasonable conclusion that points to the guilt of the accused.<sup>[13]</sup>

Although Myla and Roberto may not have seen the accused-appellant in the actual act of shooting the victim, the unrebutted testimony of the witnesses for the prosecution point to him as the only person who may have been responsible for the commission of the crime to the exclusion of any other person. Witness for the prosecution Myla Garcia, daughter of the victim, testified in a plain and straightforward manner that she saw accused-appellant standing 3 arms' length away from the place where her father Antonio Garcia and his companions were drinking; that she approached him at a distance of about one arm's length; that she saw him pointing a gun at her father; that as she rushed towards her father she heard a shot that hit her father who leaned and then fell on her side; that she embraced him and walked him towards their house; that before they entered the house, she saw accused-appellant still there but when she shouted, "si Jianggo, si Jianggo," he ran away.<sup>[14]</sup>

The other witness for the prosecution, Roberto Santiago, testified that as he was about to enter the gate of the victim's residence to attend the latter's birthday celebration, he heard a shot and someone shouted, "si Jianggo, si Jianggo". He passed through the front door and went out the back door to where he heard the shot. Thereafter, he saw accused-appellant holding a gun and running away from the place of the incident.<sup>[15]</sup>

At the time Myla and Roberto saw accused-appellant they were at a distance reasonable to make an accurate identification. Myla was only an arm's length away, while Roberto was 10 to 11 meters away from accused-appellant. Further, Myla and

Roberto are familiar with the accused-appellant as they live in the same place and accused-appellant is Myla's uncle.

All these circumstances put together constitute an unbroken chain, consistent with each other and the theory that accused-appellant authored the crime charge. The culpability of the accused is further strengthened by that fact that he fled from the place after the commission of the crime.<sup>[16]</sup> This Court has already ruled time and again that flight of an accused from the scene of the crime removes any remaining shreds of doubt on his guilt.<sup>[17]</sup>

Second, accused-appellant argues that the lower court erred in according great weight to the testimony of Roberto Sebastian that he saw accused-appellant leaving the crime scene after Antonio Garcia was shot. Accused-appellant questions the credibility of Roberto Sebastian. According to accused-appellant, Roberto Sebastian could not have possibly seen the accused leave the premises considering that Myla testified that the assailant ran away after the shot was fired and at that point in time, Sebastian was just entering the gate of the house of the victim. True, Sebastian testified that he was at the gate when he heard a gun shot and a shout, "Si Jianggo, si Jianggo." However, he also testified that it only took him 6 to 7 seconds to get to the crime scene by passing through the front door and out the back door.<sup>[18]</sup> Verily, the fact that it only took Roberto 6 to 7 seconds to reach the back of the house from the gate enabled him to see accused-appellant still holding the gun and fleeing from the crime scene.

Moreover, credibility of witnesses is generally for the trial court to determine. The reason is that it had seen and heard the witnesses themselves and observe their demeanor and manner of testifying. Its factual findings therefore command great weight and respect. These findings can only be overturned if the trial court overlooked facts of substance and value that if considered might change the result of the case.<sup>[19]</sup> None was adduced in the instant case.

Third, accused-appellant attempts to break the chain of circumstances by pointing out that the defense presented a witness who testified that she saw a person whom she identified as Danilo Leonardo as also half-naked and carrying a gun in the vicinity of the crime scene. Defense witness Carmelita Leonardo testified against her own brother, Danilo Leonardo, that she saw the latter undressed, holding a small gun and going out of the crime scene after Antonio Garcia was shot. Danilo Leonardo took the witness stand to refute the testimony of his sister. Danilo Leonardo testified, among others, that he did not see Carmelita in the house of the victim in the evening of June 30, 1992; that Carmelita could not have been invited by Antonio Garcia to his birthday because they became adversaries when Antonio Garcia testified against Rosalino Flores, brother of Victorino Flores who happens to be the husband of Carmelita.<sup>[20]</sup> The trial court found the version of Danilo Leonardo credible and that of Carmelita's as biased for the reason that "she is the live-in-partner for 10 years of Victorino Flores, the brother of the accused, who together with the accused, threatened to kill Antonio Garcia for testifying against said accused." We find no reason to set aside the evaluation by the trial court of the contradictory testimonies of these two witnesses. As we have mentioned earlier, the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the witness stand and determine whether they are telling the truth