

## EN BANC

[ G.R. No. 130588, June 08, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO  
CAPILI Y TAGUDAR, ACCUSED-APPELLANT.**

### D E C I S I O N

**MELO, J.:**

The judgment rendered by Branch 5 of the Regional Trial Court of the Second Judicial Region, stationed in Tuguegarao, Cagayan imposing the death sentence upon accused-appellant for the heinous crime of murder is before this Court on automatic review. A perusal of the record brings to mind the legal maxim: "*mas vale que queden sin castigar dies reos presuntos, que se castigue uno inocente*" (*People vs. Cunanan*, 19 SCRA 769 [ 1967]).

Accused-appellant was charged in an Information pertinently reading as follows:

Criminal Case No. 6648

That on or about the October 5, 1994, in the Municipality of Alcala, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused ROMEO CAPILI y TAGUDAR, with intent to kill, with evident premeditation and treachery did then and there willfully and feloniously attack, assault, maul and thereafter submerged the said victim Alberto Capili in the Cagayan River which caused his death.

Contrary to law.

(p. 4, Rollo.)

The People's brief summarizes the prosecution evidence as follows:

Angelo Badua, a resident of Masical, Amulung, Cagayan, was a student of Afusing High School located at Barangay Afusing, Alcala, Cagayan. Masical is about one (1) kilometer distant from Afusing High School. Between Masical and Afusing is Barangay Abbeg, Alcala, Cagayan. To go to school, Angelo had to take the road and at Abbeg cross a creek to reach Afusing. At the mouth of the creek is the Cagayan River (t.s.n., May 10, 1995, pp. 3-7-9).

On October 5, 1994, at about 4:00 o'clock in the afternoon, Angelo Badua and his two schoolmates, Harlen Ormillo and Rowena Ancheta, were on their way home from school and while at the bank of the Cagayan River and about ten (10) meters away from the boat occupied by appellant and the latter's nephew, Alberto Capili, they saw appellant who was sitting behind Alberto strike him twice with a paddle. After

appellant struck and hit Alberto on the head, appellant submerged him into the river by holding his hair. When the victim did not come up from the water anymore, appellant pushed and let him go with the current of the river. Thereafter, appellant saw the three students and without uttering any word ferried them to the other side of the creek. Out of fear, the three of them did not dare inquire or talk with appellant about the incident (t.s.n., May 10, 1995, pp. 3-13, 23-24).

Angelo Badua further declared on cross-examination that on the afternoon of the incident in question, he reported or related the same to his family and to his aunt, Zosimo Caducio. The next day, October 6, 1994, he reported the matter to the Alcala, Cagayan PNP Station as well as to the family of the victim, Alberto Capili (t.s.n., May 10, 1994, pp. 14-16, 29-32).

Eyewitness Harlen Ormillo corroborated the testimony of Angelo Badua in its material points and identified the appellant as the assailant during the trial (t.s.n., June 1, 1995, pp. 6-12).

Alcala, Cagayan Municipal Health Officer Dr. Rafael Sumabat, who conducted the post mortem examination on the victim (Exh. "A"), testified on the injuries sustained (i.e., "severe abrasion circular, 4 cm. in diameter occipito parietal area with contusion around") and the cause of death (i.e., "might have been drowning") of the latter (t.s.n., June 1, 1995, pp. 3-6).

Dr. Sumabat indicated the location of the wounds to be at the back, right side of the head (ibid., p. 6).

Upon admission by the defense, the proposed or offered testimony of SPO2 Federico Vergara of the Alcala, Cagayan PNP Station to the effect that the cadaver of the victim, Alberto Capili, was found at the Cagayan River and that such fact was entered or reflected in the police blotter, was dispensed with (t.s.n., August 10, 1995, pp. 3-4).

Danilo Capili, the brother of the victim and the nephew of appellant, declared that he and the victim were both from Afusing Bato, Alcala, Cagayan. At about 6:00 o'clock in the morning of October 5, 1994, he saw appellant in the house of the victim because the two had an agreement that they were going to sell that day a pig belonging to the victim. Danilo actually saw appellant and the victim leave the latter's house that day and that was the last time he saw his brother alive. They were able to locate the cadaver of the victim floating on the Cagayan River at Tupang, Alcala, Cagayan on October 7, 1994 at about 9:30 o'clock in the morning. Upon seeing the cadaver of his brother, Danilo and his companions reported the matter to the PNP Station in Alcala, Cagayan and requested Municipal Health Officer Dr. Rafael Sumabat to conduct an autopsy on the victim's cadaver (t.s.n., August 10, 1995, pp. 4-9).

Accused-appellant imputes four errors in the trial court in convicting him of murder, to wit:

I

THE GUILT OF THE ACCUSED HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

ASSUMING WITHOUT CONCEDED THAT THERE IS STRONG EVIDENCE OF ACCUSED'S GUILT, THE LOWER COURT ERRED IN FINDING THAT TREACHERY WAS ATTENDANT IN THE DEATH OF ALBERTO CAPILI.

III

ASSUMING WITHOUT CONCEDED THAT THERE IS STRONG EVIDENCE OF ACCUSED'S GUILT, THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED WAS GUILTY OF MURDER.

IV

ASSUMING WITHOUT CONCEDED THAT THERE IS STRONG EVIDENCE OF ACCUSED'S GUILT, THE LOWER COURT ERRED IN IMPOSING THE DEATH PENALTY ON THE ACCUSED.

Accused-appellant impugns the credibility of the principal prosecution witnesses, Angelo Badua and Harlen Ormillo, on the ground that their declarations run counter to and go against natural human experience. Badua and Ormillo, after allegedly having witnessed a man being attacked and killed barely 10 meters away from where they were standing did not run away or at least hide from the culprit. Instead, they waited for the alleged assailant to fetch them and ferry them across the river, keeping silent all the while. Despite admitting that they were afraid accused-appellant might do to them the same thing he did to Alberto Capili, they chose to ride on accused-appellant's boat with no other persons but themselves, instead of taking the earliest opportunity to flee from a supposed killer. Also telling is the fact that despite the absence of any threat or warning from accused-appellant, Badua and Ormillo failed to promptly report the incident to the proper authorities. By and large, accused-appellant submits that the lower court erred in not taking into account numerous inconsistencies and improbabilities in the prosecution's evidence which would have provided more than adequate basis for his acquittal on the ground of reasonable doubt.

We find merit in his contentions.

The supposed eyewitnesses to the crime charged in the case at bar were students of Afusing High School, Angelo Badua, then 16 years old (Record, p. 4), Harlen Ormillo, 15 years old, and Rowena Ancheta, 14 years old (Record, p. 6). They were allegedly on their way home from school and were approaching the riverbank at Minanga, Abbeg, Alcala, Cagayan, when they saw accused-appellant Romeo Capili in *flagrante delicto*, actually striking the victim, Alberto Capili twice on the head and the shoulder with a paddle and thereafter submerging the head of the victim in the

river. Right after this incident, accused-appellant apparently saw them by the riverbank and offered them a ride across the river, to which the two readily acceded.

Firstly, it is rather unnatural, to say the least, actually defying sound reason, for three young students, one boy and two girls at that, to allow themselves to be ferried by an adult male whom they have just recently witnessed kill and drown a helpless and unsuspecting victim. It makes us wonder if these three supposed eyewitnesses directly saw the actual killing of the victim in this case. It would have been more credible had these witnesses not claimed having actually witnessed the crime but that they only saw accused-appellant at the supposed scene of the crime at the time the crime took place. Their lack of knowledge of the actual commission of the crime at that time would have justified their having allowed themselves to be ferried by the alleged assailant. Their testimony would have then simply become one element in the chain of circumstantial evidence which could have formed part of an unbroken sequence of events pointing to the guilt of the accused-appellant. But it was unfortunately not so. The record shows that said witnesses claimed that they actually saw accused-appellant commit murder in *flagrante delicto* from its inception to its consummation. We find such assertion under these circumstances rather too strange and odd to accept. It is just too incredible. At the very least, this generates moral basis to reasonably doubt the veracity of the witnesses' claim that they actually saw the killing of Alberto Capili.

The Court has consistently ruled over the decades that "evidence to be believed must not only proceed from the mouth of a credible witness, but it must be credible in itself - such as the common experience and observation of mankind can approve as probable under the circumstances" (*People vs. Lacson*, 83 Phil. 574 [1949]; *People vs. Macatangay*, 107 Phil. 188 [1960]; *People vs. Baquiran*, 20 SCRA 451 [1967]; *People vs. Beltran*, 61 SCRA 246 [1974]; *People vs. Santos*, 94 SCRA 277 [1979]; *People vs. Peruelo*, 105 SCRA 226 [1981]; *People vs. Joyno*, G.R. No. 123982, March 15, 1999). There can never be a better gauge by which a witness' testimony may be evaluated and analyzed than the ordinary common human experience.

Secondly, Badua's inconsistency on the issue as to when he reported the incident to the relatives of the victim and/or the authorities bears heavily on his credibility. On October 13, 1994, Badua declared before Investigator SPO2 Federico Vergara and his statement was later subscribed and sworn to before Judge Nathaniel Pattugalan, MTC Judge of the 2nd Judicial Region at Alcala, Cagayan, as follows:

12. Q: - Did you report/inform to anybody regarding the incident?  
A: - I told my parents, sir.
13. Q: - What else did you do regarding this incident, if any?  
A: - No more, sir.

(Exhibit "C"; Record, p. 4)

During his testimony on May 10, 1995 he declared differently:

ATTY. MORALES:

- Q: Did you report to the brother or to the father of Alberto Capili what you allegedly witness(ed) in the afternoon of