

FIRST DIVISION

[G.R. No. 116294, August 21, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO CHAVEZ Y ESTAMANTE ALIAS "TONY," ACCUSED-
APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

This is an appeal from the February 24, 1994 Decision of the Regional Trial Court of Dumaguete City, Branch 32,^[1] in Criminal Case No. 10499 finding herein appellant Antonio Chavez y Estamante alias "Tony" guilty of the crime of murder committed against the person of one Bernabe Jaos and imposing on him the penalty of reclusion perpetua and the payment of civil indemnity in the amount of P50,000.00, interment expenses of P10,000.00, moral damages of P16,000.00 and the costs of suit.

The information^[2] for murder was filed against appellant on November 26, 1992. Appellant pleaded not guilty to the murder charge.^[3] As the accused was then on probation for the crime of robbery,^[4] his probation was revoked by the trial court.^[5]

The prosecution, through its principal witness Agripina Ablejina, sought to establish the following facts:

The victim, Bernabe Jaos, 23 years old,^[6] lived with his common-law wife, Agripina Ablejina, in Sitio Tampaga, Barrio Mantiquel, Siaton, Negros Oriental. Their nearest neighbor was Efraim Navarez whose wife was the sister of Jaos. The house of Jaos was about two (2) meters away from that of Navarez so that from there, one could look down on the front door of Navarez who sold goods to his neighbors.

At around 8:00 o'clock in the evening of October 18, 1992, Agripina was standing by the window of her home, where she could observe the Navarez household. Her husband Jaos was buying cigarettes at the house cum store of Navarez. Agripina saw that Efraim Navarez was with his wife and younger brother. Navarez and Jaos were smoking and conversing with each other when appellant, first cousin of Navarez, arrived and stabbed Jaos with a knife. Jaos was stabbed above his umbilical cord, causing his blood to spurt and his intestines to come out. The victim was then squatting near the door inside the house of Navarez. Chavez pushed Jaos, who fell to the ground. Chavez then ran to the house of his mother.

Agripina went to Jaos and removed the knife which was left sticking out of his body. She delivered the knife to the PNP station in Mantiquel. When she was investigated at the police station, Agripina could not finish her statement^[7] because her child was crying. She then requested Navarez to "finish" her statement.^[8] His body was

brought to the Siaton morgue.^[9]

Dr. Mitylene B. Tan, municipal health officer, was also presented as a witness. Dr. Tan testified that she conducted a postmortem examination on the body of Jaos at the morgue of the Siaton District Hospital at 8:00 p.m. of October 19, 1992. She found the body rigid and had been dead for approximately fifteen (15) hours. Her examination revealed that the victim had sustained a perforating 2 1/2 inches long stab wound with intestinal herniation at the mid-upper abdominal region.^[10]

PO3 Marcial Dingal in his testimony stated that he reflected the stabbing incident on the police blotter^[11] in the afternoon of October 19, 1992. He identified the weapon used, a 10-inch long bolo,^[12] which was surrendered by CAA^[13] Atanacio Caminade who was also a member of the CAFGU.^[14]

The defense interposed denial.

Appellant testified on his behalf, and his version of the events that transpired on October 18, 1992 is as follows:

At around 6:30 in the evening of October 18, 1992, he went to Navarez's place to buy bread. With Navarez then were Melvin and Henry Jaos, a first cousin of the victim. Navarez invited appellant to take a meal. While appellant was eating, Jaos arrived and, addressing Navarez said, "It's good that you are here, let us finish each other."

Having heard Jaos' utterance, Navarez pulled out a weapon and stabbed Jaos' stomach. As Jaos fell downstairs, appellant stood up and at this juncture, Navarez faced him and stabbed him in the right arm. Appellant leaned on the wall, parried the blows and kicked Navarez, hitting his chest. Then appellant jumped downstairs and ran to the house of his elder brother, Sebastian Chavez, Jr., who was at home with their sister, mother and appellant's wife. Appellant told his brother, "Nong, please help me because Bernabe was killed." However, appellant did not report the incident to the police "because it is very far."

That same evening, PNP members came for appellant. They told him that he was responsible for the death of Jaos. Appellant informed the police that it was Navarez who killed Jaos but the police replied, "Just go with us and relay the incident to our higher up."^[15]

Appellant's story was corroborated by Melvin Quimada. Quimada, who was from Sitio Saksak, Malabuhan, claimed that he had gone to Mantiquel to help out in the harvest of crops and was staying with his uncle, Agapito Quimada. In the evening of October 18, 1992, Melvin was in the house of Navarez when he heard Jaos shout at Navarez, "You have eluded before and ran away but now I will kill you." Jaos made one step and shouted, "I will kill you." Navarez got a knife, went to the front door and stabbed Jaos. As Jaos fell to the ground, appellant and Melvin both tried to jump from the house. However, appellant was stabbed by Navarez so that Melvin stepped back to hide behind the door. When he noticed that he had a way out, Melvin jumped out of the door and ran to the house of his uncle. He learned the following day that Jaos was dead. Melvin did not report the incident to the police

because he knew that they would not believe him.^[16]

Appellant's brother, Sebastian Chavez, Jr., testified that he let appellant into his house and applied herbal medicine to his right arm. Later, CAFGU members fetched appellant because Navarez had reported that appellant was responsible for the stabbing of Jaos. Sebastian protested that his brother was even wounded during the incident but the CAFGUs did not listen to him. Instead, they took appellant to the CAFGU headquarters. Sebastian, who accompanied his brother, saw Navarez at the headquarters,^[17] sitting with Agapito Quimada.

Agapito investigated Navarez and then, after the investigation, informed everyone that since appellant had run away from the crime scene, the matter should be investigated by the police. Sebastian reiterated that it was Navarez who stabbed the victim but Agapito repeated the "standing order" that both appellant and Navarez should be brought to the police station. He did not accompany appellant to the police station because he had fever then.^[18]

On rebuttal, the prosecution presented Agapito Quimada, father-in-law of Sebastian Chavez, Jr., Agapito testified that it was Antonio Merlo and Navarez who had requested for appellant's arrest at around 10:00 o'clock in the evening, as they had presented to him the letter^[19] of Serafin Sibol, a barangay councilman, requesting such arrest. Agapito arrested appellant at the house of his brother and later conducted an investigation at the crime scene. He saw the body of the deceased near the house of Navarez which was around one (1) meter away from the house of the victim. Agapito even made a sketch of the two houses.^[20]

Agapito likewise denied that his nephew, Melvin Quimada, went to his place in Mantiquel.

When Agapito went to the crime scene, the victim's wife and Serafin Sibol were around. A double-bladed knife, the weapon used in the crime, was surrendered to him by Agripina but it was Tating (Atanacio Caminade) who gave it up to the police. According to Agapito, the bolo marked as Exhibit E was not the murder weapon.

On his own volition, Agapito drew the sketch^[21] of the crime scene showing the victim lying between the houses of Jaos and Navarez. At the house of Sebastian Chavez, Jr., Agapito asked appellant why he stabbed Jaos. Appellant answered that he was "ganged up." It was in the house of Sebastian that he arrested appellant.

On the trial court's initiative, Agripina was recalled to the witness stand. The court verified from her as to whom she surrendered the knife she had pulled out of the victim's body. Agripina told the court that she gave the knife to Agapito Quimada and that the bolo labelled as Exhibit E was not the murder weapon.^[22]

Atanacio Caminade, a member of the CAFGU, surrendered the weapon to the police. Another CAFGU member, Antonio Fabillar, had given it to him. The weapon that he surrendered was not a bolo but a hunting knife. Upon learning that a bolo was brought to the court and identified as the murder weapon, he confronted policeman Marcial Dingal. According to Caminade, the weapon wrongly brought to the court by Dingal was the bolo used in the killing of a certain Sayson in Mantiquel. Caminade

saw how the killer in that case himself surrendered the bolo but it was he (Caminade) who surrendered the hunting knife used in killing Jaos.^[23]

Once again recalled to the witness stand, Agripina testified that she pulled the knife out of Jaos' body in the presence of the barangay councilman, Serafin Sibol and Elsa Quitay. She gave the knife to Agapito Quimada, a CAFGU, who was then in the company of Nelson Apostol, Benedicto Trumata and Antonio Sombilon.^[24]

As a surrebuttal witness, Sebastian Chavez, Jr. claimed that while it was true that he and his father-in-law, Agapito Quimada, used to be in good terms with each other, their relationship turned sour when Agapito sided with his son, Toribio, with whom Sebastian had an altercation when Toribio's horse nibbled Sebastian's rice and corn plants.

When he himself returned to the witness stand, Melvin Quimada insisted that he was in Mantiquel in the month of October, 1992, harvesting rice. He had gone there to harvest several times already. When he returned to Cama after the incident which resulted in the death of Jaos, Agapito went to his house. Agapito "murmured" to him, asking why he (Melvin) had become a witness in this case. Melvin answered that he only wanted to tell the truth.^[25]

Not satisfied with the trial court's decision, appellant appealed to this Court assigning the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING FULL FAITH AND CREDIT TO THE TESTIMONY OF THE PROSECUTION WITNESSES AND IN TOTALLY DISREGARDING THAT OF THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT ANTONIO CHAVEZ Y ESTAMANTE GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.^[26]

Considering that the parties presented contradictory facts, the issue in this appeal boils down to credibility. As this Court has time and again said, the trial court's evaluation on the credibility of witnesses is viewed as correct and entitled to the highest respect by appellate courts. The trial court is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies.^[27] Its findings on the issue of credibility of witnesses and its consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered might affect the result of the case.^[28]

After a careful scrutiny of the records and evidence of the case, we find no persuasive reason to depart from this well entrenched rule on credibility as to warrant a reversal of the decision of the trial court. Nevertheless, the issues raised by the appellant should be faced squarely.

Appellant bewails the fact that the trial court accorded great weight to the testimony of the common-law wife of the victim. Appellant posits that she could hardly be considered as an eyewitness as she was in her house at the time of the killing, while there were other persons at the scene of the crime, who were not even presented as witnesses.^[29]

This argument has no basis in fact and in law. In the first place, it is the prosecution which determines who among the witnesses to a crime should testify in court. The prosecutor handling the case is given a wide discretion on this matter. It is definitely not for the courts, much more the defense, to dictate what evidence to present or who should take the witness stand at the trial of a case.^[30]

Secondly, the trial court did not err in finding that Agripina was a credible witness whose testimony should be deemed as nothing but the truth. The appellant himself admitted that there was no reason why she should testify against him.^[31] Well-settled is the rule that when there is no evidence to indicate that the principal witness for the prosecution was moved by improper motive, the presumption is that such witness was not so moved and that his testimony is entitled to full faith and credit.^[32]

Thirdly, simply because Agripina was a common-law wife of the victim, it does not necessarily follow that her testimony is biased, incredible or self-serving. This Court has held that there is no legal provision that disqualifies relatives of the victim of a crime from testifying, being otherwise competent, regarding the facts and circumstances of the crime. Mere relationship of witnesses to the victim of a crime, whether by consanguinity or affinity, does not necessarily impair their credibility as witnesses. This is specially so when the witnesses were present at the scene of the crime.^[33]

Lastly, the defense further attacks Agripina's credibility on the ground that her affidavit before the police, does not even mention the stabbing incident itself.^[34] This omission was, however, explained by Agripina when she testified that she could not finish her statement because she had to attend to her crying child.^[35] Affidavits, being taken ex-parte, are almost always incomplete and inaccurate.^[36]

Appellant points out that Agripina's testimony is not credible because her claim that her house was elevated and therefore higher than that of Navarez, was contradicted by prosecution witness Agapito Quimada. However, both the testimony of Agripina and Agapito's sketch show that the window of the victim's house faced the front door of the Navarez residence. In other words, Agripina had an unobstructed view of the incident. This is the material aspect of the prosecution's case which the defense failed to disprove satisfactorily.

Another matter which appellant stresses as indicative of Agripina's incredulous testimony is the fact that while she claimed that the murder weapon was a knife, the police presented a bolo. The mistake on the part of witness Dingal in presenting the wrong murder weapon was satisfactorily explained by the prosecution. That it was not Dingal himself who rectified the error on the stand^[37] is of no moment. It would not be amiss to point out that the production of the murder weapon is not