

SECOND DIVISION

[G.R. Nos. 100460-61, June 05, 1996]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MOISES PANO Y BAYLOSIS, MARIANO FUENTES Y BAYLOSIS,
ACCUSED-APPELLANTS.**

D E C I S I O N

TORRES, JR., J.:

Assailed in this appeal is a decision rendered by the Regional Trial Court of Cebu, Branch 13, in Criminal Cases Nos. CBU-8544 and CBU-8545 finding appellants; MOISES PANO y BAYLOSIS and MARIANO FUENTES y BAYLOSIS guilty of the crime of MURDER in both cases.

Pano and Fuentes were charged, together with Crisanto Fuentes, with the crime of Murder qualified by treachery and attended by the aggravating circumstance of evident premeditation, for the killing of Sisenando and Nestor Limbaga. The charges, contained in two separate informations,^[1] read:

CBU-8544

"That on or about the 20th day of November, 1985 at around 7: 30 o'clock in the evening, more or less, in Sitio Ampac, Barangay Cerdena, Municipality of Malabuyoc, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping with each other, with means of treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously, attack, assault, shoot and stab therewith Sisenando Limbaga, in the different parts of the body, inflicting upon him gunshot wound and lacerated wound; and as a result thereof, said Sisenando Limbaga died instantly due to intracranial hemorrhage, shock, secondary to gunshot wound in the cranial cavity.

All contrary to law, and with the qualifying circumstance of alevosia, and the generic aggravating circumstance of evident premeditation.

CONTRARY TO LAW."

CBU-8545

"That on or about the 20th day of November, 1985 at around 7: 30 o'clock in the evening, more or less, in Sitio Ampac, Barangay Cerdena,

Municipality of Malabuyoc, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other, with deliberate intent and interest to kill, and by means of treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously, attack, assault, shoot and stab therewith Nestor Limbaga in the different parts of the body, inflicting upon him sixteen (16) stab and gunshot wounds; and as a result thereof, said Nestor Limbaga died instantly due to hemorrhage, shock, secondary to stab wounds penetrating the heart, liver, lung and intestines.

All contrary to law, and with the qualifying circumstances of alevosia and the given aggravating circumstance of evident premeditation.

CONTRARY TO LAW."

Arraigned on July 18, 1986,^[2] the two accused pleaded not guilty to the crimes charged. The two cases were then consolidated, and a joint trial on the merits ensued.

The court **a quo** rendered its decision on June 20, 1990, convicting accused MOISES PANO and MARIANO FUENTES with the crime of Murder under Art. 248 of the Revised Penal Code, for the killing of the victims.^[3]

The dispositive portion of the decision of the trial court reads:

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"WHEREFORE, premises considered, judgment is hereby rendered finding accused MOISES PANO and MARIANO FUENTES, GUILTY beyond reasonable doubt in -

CRIMINAL CASE NO. CBU-8544 - of the crime of murder and hereby sentences each of them to a penalty of **RECLUSION PERPETUA** and to indemnify the heirs of Nestor Limbaga the sum of P30, 000. 00.

CRIMINAL CASE NO. 8545 - of the crime of murder and hereby sentences each of them to a penalty of **RECLUSION PERPETUA** and to indemnify the heirs of Nestor Limbaga the sum of P30, 000. 00.

With costs against them in both cases.

xxx xxx xxx

Accused CRISANTO FUENTES, however, was exonerated from any liability^[4] thus:

"Accused CRISANTO FUENTES is hereby acquitted of the crime charged in both information. The CPDRA jail warden is hereby directed to immediately effect his release, unless there is any other legal ground for his continued detention."

On account of the acquittal of Crisanto Fuentes, he is not included as a party in the instant appeal.

Appellants, filed their Notice of Appeal in the lower court on 4 July 1990, invoking this Court's appellate jurisdiction.^[5]

The events leading to the killing of the victims, and thereafter, rest largely on the testimonies of the following prosecution witnesses:^[6]

Gregorio Malabon testified that on November 13, 1985, he, together with appellants, Daniel Allanic and Vidal Fuentes were at the latter's house, celebrating the baptism of appellant Mariano's child. At this gathering, the appellants came to their decision to kill Sisenando Limbaga and Nestor Limbaga. When Malabon asked them the reason for their plan, he was told to stay out of it because he had no business relating thereto.

Moises Pano allegedly repeated the same statement on November 20, 1985 at 3:00 o'clock in the afternoon, this time in the house of Daniel Allanic, while Malabon, Pano and Allanic were having another drinking splurge. Thereupon, Pano dropped a 38 cal. Revolver on the table and later, left the group. He returned to Daniel's house at 9:30 o'clock in the evening, together with Mariano Fuentes who was wearing a bloody shirt. Moises Pano told those present, "do not go to Barangay Ampac because Sisenando and Nestor Limbaga are already dead."

Witness Iluminada Limbaga testifying for the prosecution, related that she witnessed how the two appellants attacked and killed her father and cousin, the victims in this case.

On November 20, 1985, at 7:30 o'clock in the evening, she was sitting by the door of her house, which was about four fathoms away from the victim. Suddenly, she heard a shot and looked towards the direction or origin of the sound. She saw Moises Pano shoot her father Sisenando Limbaga and then turn and shoot at Nestor Limbaga, who was able to dodge the shot. Then she saw Mariano Fuentes, together with an unidentified person, overtake and subdue Nestor Limbaga. Mariano stabbed Nestor several times. Now frustrated and immobile, Nestor was likewise shot by Moises Pano three or four times. Thereafter, the appellant and the unidentified assailant left the scene of the crime.

The thrust of this appeal is on the alleged weakness of the appellee's case arising from the implausibility of the prosecution's evidence. In appellants' brief, they maintained that the lower court erred in at least two instances, particularly:

THE TRIAL COURT ERRED IN APPRECIATING THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE THE LEGAL IMPURITIES ATTACHED THERETO; AND IN DISREGARDING OR DISCREDITING DEFENSE EVIDENCE.

II

THE TRIAL COURT ERRED IN FINDING MOISES PANO AND MARIANO FUENTES GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.^[7]

Appellants alleged that "in the case obtaining, cursory reading of the appealed decision will certainly show that the prosecution's evidence was appreciated by the trial court with precipitate credulity, such that the inherent loopholes saddling it went unnoticed despite its significance. The trial court anchored its conviction of the accused-appellants on the eyewitness account of Iluminada Limbaga and the testimony of Gregorio Malabon. However, after analyzing their testimonies, one cannot help but doubt their veracity. It has often been said that evidence to be believed must not only come from the mouth of credible witnesses, it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances."^[8]

Again, the decisive issue in the case at bar, is the credibility of the witnesses for the prosecution. Consequently, a review of the evidence is in order.

The prosecution's case is beefed up by the weight given to the testimony of Iluminada Limbaga, the victims' daughter and cousin, The lower court found her testimony to be normal and credible.

Appellants would have us discredit Iluminada as a witness because relative to the incident testified to by her, she merely stood by and let her loved ones die. Her reaction, or the lack of it, shows that she was not truly present at the scene of the crime, since her natural reaction would have been to come to the aid of the victims. We are not persuaded by this submission for appellants. It is noteworthy to state in this regard that as a matter of common observation and knowledge, the reaction or behavior of persons when confronted with a shocking incident varies.^[9]

In the case at bar, the sex and state of mind of Iluminada considering, coupled with the gruesome scene which she just saw, the young lass would naturally freeze with fear and shock. Overwhelmed with fear, she could not have come to the aid of her loved ones, considering that the assailants were armed with a gun and knife.

In *People vs. Panlilio*, ^[10] we stated--more importantly, ample margin of error and understanding should be accorded to young witnesses who much more than adults, would be gripped with tension due to the novelty of testifying before a court."

Appellants also alleged that Iluminada's declarations that she was residing in the city at the time the crime was committed, was inconsistent with her claim that she witnessed the carnage, which occurred in Sitio Ampac. The court **a quo** found this

inconsistency to be trifling, for the reason that it was not impossible for Iuminada to be at home in Sitio Ampac when the crime was committed. It appears that Iuminada would stay in Malabuyoc to attend school at the Perpetual Succor Academy, but would on occasions be at Sitio Ampac to be with her family. Iuminada testified that she had stopped going to school in 1984, upon her parents' order. ^[11] Thus -

FISCAL M. V. PARANDANG

Q: On November 20, 1985, were you still schooling?

A: I studied up to 1984.

Q: So in short, Miss Limbaga, you were telling a lie when you said that you stopped schooling because of the death of your father, that was on November 20, 1985, am I right?

A: What I meant was that I was studying in 1983-1984 but in the following year 1985-1986, I stopped schooling because my parents decided to send my older brother to the city to study.

Obviously on November 20, 1985, when Iuminada's father was killed, she was in their place or house in her barrio.

Appellants insist that the court **a quo** should have given more weight to the testimonies of their witnesses which were uniform in providing the appellants with convenient alibis. ^[12] It appears on record that these defense witnesses were either wives or mothers of the accused, who in almost all instances, would freely perjure themselves for the sake of their loved ones. ^[13] In *People vs. Flores*, ^[14] we stated that - "the defense of alibi may not prosper if it is established mainly by the accused themselves and their relatives, and not by credible persons."

As against their positive identification by the prosecution witness, the appellants' alibis, which constitute the sum of their defense, becomes weak. Well-entrenched is the rule that the defense of alibi cannot prevail over the positive identification of the accused by the prosecution witnesses. ^[15]

Alibi is one of the weakest defenses. Easily susceptible of concoction, it is invariably viewed with suspicion and may be considered only when established by positive, clear, and satisfactory evidence. To be given credence, it must be established that it was impossible for the accused to be at the scene of the crime at the same time. ^[16] Not only was it physically very possible for both appellants to be present at the scene of the crime, the distance of their alleged locations at that time was at most a mere two (2) kilometers, coupled with the fact that the prosecution witnesses positively pointed to the accused as the assailants.

It appears on record that witness Iuminada Limbaga testifying for the prosecution gave a straightforward testimony as to her account of the incident. This assures the objectivity of the testimony of the witness, thereby bolstering its claim to truth.