Supreme Court E-Library

jurisprudence, seeking shelter in the opprobrious term "old society tactics," is an implied admission of his actuation being devoid of support in law. As was so well stated by Chief Justice Hughes: "It must be conceded that departmental zeal may not be permitted to outrun the authority conferred by statute."[19]

WHEREFORE, the writ of prohibition is granted and the assailed order of February 28, 1973, citing the then Judge Jaime de los Angeles, as well as petitioner Arcadio R. Tolentino for contempt, declared void and of no force or effect, both orders having been issued beyond the power of respondent Amado Inciong to issue. The temporary restraining order issued by this Court on March 6, 1973 is hereby made permanent.

Barredo, Antonio, Aquino, and *Concepcion. Jr., JJ.*, concur.

Santos and *Abad Santos, JJ.*, are on official leave.

SECOND DIVISION

[G.R. No. L-37839. July 25, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DELFIN VEGAYAN, JOSE BESORIO & MANUEL BUENA,** *defendants,* **JOSE BESORIO and MANUEL BUENA,** *defendants-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENCE OF CIRCUMSTANCES THAT DISCREDIT; CASE AT BAR.— This alleged contradiction is more apparent than

---

[19] *United States v. Macintosh*, 283 US 605, 629 (1931).

Supreme Court E-Library

real. It should be noted that her testimony in court is more detailed than her affidavit. In both statements, she positively declared that she saw her father being stabbed. The circumstance that she omitted some of those details in her pre-trial affidavit does not render her testimony in court incredible. As this Court observed in a previous case, the omission in the pre-trial affidavits of some facts later testified to in court by the affiants as prosecution witnesses does not necessarily impair their credibility. There is no question that Esperanza Sulleza, the widow of Nicanor Sulleza, Jr., was at the scene of the crime on the date and time in question and actually saw the stabbing of her husband. As stated by the trial court in its decision, it found no compelling reason why it should not believe her testimony as appellants have not shown any fact or circumstance from which it could be reasonably inferred that said witness falsely testified or that she was actuated by improper motives.

2. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT WHEN THE VICTIM WAS NOT IN A POSITION TO DEFEND HIMSELF; CASE AT BAR.**— The records clearly disclose that the victim was already in the act of running away when he was pursued by Jose Besorio and Manuel Buena. He was, moreover, already wounded, having been stabbed in the abdomen by Delfin Vegayan. Upon being overtaken by Besorio and Buena, he was stabbed by Besorio in the abdomen and then in the back, and while Buena held both his hands from behind, Besorio stabbed him a third time. It is apparent, therefore, that the victim was not in any position to defend himself, that appellants took advantage of his wounded condition, and that in holding both his hands from behind, Buena insured his defenselessness, thus enabling Besorio to stab him a third time. It is settled that treachery is present where the victim is rendered defenseless in order to insure the execution of the crime without risk to the offenders.

APPEARANCES OF COUNSEL

J. Serrano Espiritu for defendants-appellants.
Office of the Solicitor General for plaintiff-appellee.

Supreme Court E-Library

DECISION

ANTONIO, *J.*:

Appeal from the judgment of the Court of First Instance of Iloilo, Branch IV, on September 4, 1973, convicting appellants Jose Besorio and Manuel Buena of the crime of Murder and sentencing each of them to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided for by law, "to indemnify, jointly and severally, the heirs of the deceased Nicanor Sulleza, Jr. for his death the sum of ₱12,000.00, and in addition thereto, to pay said heirs the sum of ₱20,400.00 for loss of income and the total of ₱19,000.00 for moral damages, and the costs."

In the evening of December 22, 1971, the provincial officials and employees of the Province of Iloilo were having a Christmas party in the quadrangle of the Provincial Capitol. Esperanza Sulleza had a cigarette stand in front of the Provincial Capitol, about seven (7) meters from the repair shop for refrigerators and other appliances owned by appellants Manuel Buena and Jose Besorio. In the afore-mentioned shop, Delfin Vegayan, a nephew of Jose Besorio, was employed as helper. Early that evening of December 22, 1971, Manuel Buena, Jose Besorio and Delfin Vegayan were seen drinking beer in the repair shop. At this point of time Esperanza Sulleza was selling cigarettes in front of the Capitol, assisted by her children — William, 7 years of age, Melanie, 10 years of age, and Lorna, aged 12.

According to Esperanza Sulleza, at about 8:00 o'clock that evening, her husband, Nicanor Sulleza, Jr. arrived and asked for cigarettes. As he was stooping to light his cigarette from a kerosene lamp on the cigarette stand, Delfin Vegayan suddenly stabbed him in the abdomen with a butcher's knife. Esperanza immediately grabbed Delfin Vegayan and held him while she shouted at her husband to run away. The victim ran towards the Bahay Kubo Store in front of the fountain, pursued by Jose Besorio and Manuel Buena. He was, however overtaken by appellant Jose Besorio who stabbed him in the back and then

Supreme Court E-Library

in the abdomen. This witness further testified that Manuel Buena held the two hands of Nicanor from behind, and Besorio again stabbed the victim. After Nicanor had fallen to the ground and Besorio and Buena had run away, Esperanza shouted: "Oh, my husband is already dead." In the meantime, Delfin Vegayan had also extricated himself from the hold of Esperanza and run away. Jose Besorio ran towards the residence of Maximo Sorongon. The victim, Nicanor Sulleza, Jr., was brought to the St. Paul's Hospital but he died upon arrival. When the policemen arrived at the scene of the incident, Esperanza told them that the three — Vegayan, Besorio and Buena — stabbed her husband.

Lorna Sulleza, 12 years of age, student, declared that while she was going to the dance hall, she heard her mother shouting. She ran towards her and saw her holding Delfin Vegayan. At that time, her father was running towards Iznart Street, pursued by appellants Jose Besorio and Manuel Buena. Jose Besorio overtook her father and stabbed him in the back with a kitchen knife. After Manuel Buena had gotten hold of the hands of the victim, Besorio stabbed him again in front. Buena and Besorio then ran away. The policemen were able to apprehend Manuel Buena and Jose Besorio but failed to apprehend Delfin Vegayan, who remains at large up to the present.

At about 10:30 in the evening of that day, Dr. Tito D. Doromal, Acting Medico-Legal Officer, performed an autopsy on the body of the victim and found the following injuries:

"*Head & Neck*

1. Abrasion linear, 3 cm. in length, lateral aspect, left neck.

Thoraco-Abdominal Region.

1. Stab wound, 8 mm. wide, 1.5 cm. long, 3rd, intercostal space, right mid clavicular line, 8 cm. from the mid line, with sharp edge on its supero medial aspect, directed lateral upward to the level of the right axillary fossa, non penetrating.

2. Stab wound, 8 mm. wide, 2 cm. long, over the 6th intercostal space, level of the mid clavicular line, 11 cm. from the mid line, 10

Supreme Court E-Library

cm. below the left nipple, cutting the 7th rib, directed antero postero medially upward, perforating the peri cardial sac, the inferior aspect, right ventricle of the heart with wound of exit at the right auriculo ventricular junction. About 200 cc of blood was extracted at the peri cardial sac.

3. Stab wound, 2 cm. wide, 6.5 cm. long, mid epigastric region, with sharp edge on left limb, penetrating, incising the left lobe of the liver.

4. Stab wound, 2 cm. in length, 9th intercostal space, left posterior axillary line, penetrating, incising the lower lobe, left lung. About two (2) liters of blood was extracted at the thoracic cavity.

Cause of Death:

Shock, cardiac tamponade and hemorrhage due to multiple stab wounds." (Exhibits "A", "B", "B-1" to "B-5").

Appellants Jose Besorio and Manuel Buena admitted that they were occupying and renting a house at No. 15 Gen. Luna Street, Iloilo City, in front of the Provincial Capitol where they lived with Delfin Vegayan. The ground floor was utilized as a repair shop for refrigeration appliances owned and operated by Jose Besorio and Manuel Buena, wherein Delfin Vegayan was employed as a helper. Nicanor Sulleza, Jr. and his family lived in another house, about seven (7) meters away from the house of appellants. According to appellants' evidence, at about 8:00 o'clock in the evening of December 22, 1971, PC Staff Sgt. Antonio Palmares and Jose Palabrica were drinking beer with Manuel Buena and Jose Besorio in the house of the latter. Jose Besorio was then holding his three-month old baby, while Manuel Buena was playing the guitar. Jose Palabrica was singing.

According to Sgt. Palmares, while they were thus engaged, he heard shouts to the effect that there was a fight going on. He noticed a commotion at the street about thirty (30) yards away. Upon noticing this, he went down the house, followed by Jose Besorio and Manuel Buena, and they proceeded to the place of the commotion. When Palmares arrived at the scene, he came upon Esperanza who was then shouting that her husband was stabbed by Delfin Vegayan. He also saw Nicanor Sulleza, Jr. already wounded. Many people and peace officers were

Supreme Court E-Library

milling around the place, but he did not notice the presence of appellants Jose Besorio and Manuel Buena. He further testified that as the city police authorities were already at the scene, he looked for Delfin Vegayan at the house which he was occupying and the adjacent houses but he could not find him.

Appellants Besorio and Buena, upon the other hand, testified that they followed Sgt. Palmares and when they arrived at the scene of the crime, they saw Esperanza Sulleza moving around shouting "Delfin stabbed Junior." The victim at that moment was about eight (8) meters away from them walking in a groggy manner as if he could not maintain his balance. Upon seeing his condition, Jose Besorio told Manuel Buena: "Let us help Junior for he is about to fall." It was at that instance that Manuel Buena allegedly placed himself behind Nicanor and after placing his left arm under the left armpit of the deceased, tried to support him to prevent him from falling. Jose Besorio declared that he placed himself in front of Nicanor, lifted his (Nicanor's) T-shirt and peered at his abdomen and said: "Oh, Junior is wounded." At that moment, motorcycle policeman Julian de Jose arrived at the scene, and upon noticing the condition of the victim, he suggested that they make him sit on the chair. According to appellant Besorio, he delivered the person of Nicanor Sulleza, Jr. to Pat. de Jose and told him: "Delfin Vegayan stabbed Junior Sulleza." Thereafter, he and appellant Buena went home and slept. At about 2:00 o'clock in the morning of December 23, 1971, some policemen came to the house of appellants Besorio and Buena and arrested them and they were brought to the police headquarters. At that place, they saw Mrs. Esperanza Sulleza and Lorna Sulleza who both pointed to them as the persons responsible for stabbing the deceased.

On January 6, 1972, the City Fiscal of Iloilo City filed an Information with the Court, charging the appellants with Murder, as follows:

"That on or about the 22nd day of December, 1971, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, Delfin Vegayan and Jose Besorio each armed with a butcher's knife, conspiring and confederating with their co-accused Manuel Buena, working together and helping one another, with deliberate

Supreme Court E-Library

intent and without any justifiable motive, with treachery and evident premeditation, taking advantage of their superior strength and number, did then and there wilfully, unlawfully and criminally stab, hit and wound Nicanor Sulleza with the said weapons with which the accused were provided at the time, hitting said Nicanor Sulleza on vital parts of his body which caused his death few hours thereafter.

"CONTRARY TO LAW."

Delfin Vegayan, until the present, remains at large, hence, only Jose Besorio and Manuel Buena were tried and convicted of the offense. On February 2, 1979, during the pendency of this appeal, the case against Manuel Buena was dismissed insofar as his criminal liability is concerned, in view of the death of said appellant on October 3, 1978. Hence, this decision refers only to the appeal of Jose Besorio.

The main issue raised in appellants' brief is the credibility of the testimonies of Esperanza Sulleza and her daughter, Lorna Sulleza, in pointing to Besorio and Buena as the assailants of the victim. It is the contention of appellants that it was highly improbable for the appellants to have attacked Nicanor Sulleza since neither Besorio nor Buena had any misunderstanding with the victim and, therefore, had no motive whatsoever to do him harm. Appellants further contend that the testimonies of the prosecution witnesses contained contradictions and inconsistencies. Thus, appellants place much stress on the alleged variance between the statement of Lorna Sulleza before the Fiscal on December 23, 1971 (Exhibit "1"), and her declaration at the trial. According to the affidavit of Lorna Sulleza, she was at the provincial building observing the dance when she heard the voice of her mother shouting "Help" and it was at that juncture when she saw her father being stabbed, and when she was asked what she did, she answered: "Nothing, I merely looked at them. Aside from that I did not at first know that they were ganging up on my father." On the witness stand, she testified that she saw her mother holding Delfin Vegayan, while her father ran away. At that juncture, appellants chased and overtook her father, one stabbing him in the back while the other held both of his hands. This alleged contradiction is

Supreme Court E-Library

more apparent than real. It should be noted that her testimony in court is more detailed than her affidavit. In both statements, she positively declared that she saw her father being stabbed. The circumstance that she omitted some of those details in her pre-trial affidavit does not render her testimony in court incredible. As this Court observed in a previous case, the omission in the pre-trial affidavits of some facts later testified to in court by the affiants as prosecution witnesses does not necessarily impair their credibility.[1]

There is no question that Esperanza Sulleza, the widow of Nicanor Sulleza, Jr., was at the scene of the crime on the date and time in question and actually saw the stabbing of her husband. As stated by the trial court in its decision, it found no compelling reason why it should not believe her testimony as appellants have not shown any fact or circumstance from which it could be reasonably inferred that said witness falsely testified or that she was actuated by improper motives. Neither has it been shown that Lorna Sulleza was actuated by improper motives in testifying against the appellants. Where no improper motive has been shown, relationship of a witness to the victim does not render the clear and positive testimony of said witness less worthy of credence.[2]

On the other hand, the trial court declared that it "cannot believe both accused from their manner and demeanor on the witness stand, from their facial expressions and tone of their voices while testifying, and the circumstances of the case * * *." As observed in *People v. Solaña*,[3] a witness' demeanor in the witness box is often better evidence of his veracity than the answer he gives. It is not disputed that the scene of the crime afforded clear and positive identification of the assailants as it was then well lighted. Appellants were admittedly well known by said witnesses. It was, therefore,

---

[1] *People vs. Lacson*, L-8188, Feb. 13, 1961, 1 SCRA 414.

[2] *People v. Asmawil*, L-18761, March 31, 1955.

[3] L-13967, Sept. 29, 1962, 6 SCRA 60.

Supreme Court E-Library

unlikely that either Esperanza or her daughter, Lorna, were mistaken in their identification of appellants and in describing the manner in which they attacked the deceased.

Indicative of the sincerity of said witnesses is the fact that immediately after the incident they pointed to the two appellants as the assailants of the deceased. Thus, the trial court found that in the evening of the incident, just a few hours after the stabbing, Esperanza Sulleza and Lorna Sulleza, who were at the police headquarters pointed at the two accused as the persons responsible for the death of Nicanor Sulleza, Jr. the moment said accused arrived thereat accompanied by policemen. "At that moment Esperanza and Lorna did not think and they did not have in mind that Delfin Vegayan would not be apprehended."

In summing up the evidence against appellant Jose Besorio, the trial court stated:

"Did Jose Besorio stab Nicanor Sulleza, Jr.? According to Esperanza, Delfin Vegayan stabbed her husband at the stomach (abdomen). According to Herna Domanil she saw Delfin Vegayan stab and pull a bloody knife from the abdomen of Nicanor Sulleza, Jr. The wound thus inflicted must be wound No. 3 (Exh. 'B-4) at the abdominal region described in Exhibit 'A'. This wound No. 3 in Exhibit 'A' or Exhibit 'B-4' is '2 cm. wide, 6.5 cm. long,' Wounds No. 1 (Exh. 'B-2') and No. 2, (Exh. 'B-3.') described in Exhibit 'A' have the width of '8 mm'. In other words, the sharp pointed knife which inflicted wounds Nos. 1 and 2 described in Exhibit 'A' (Exhs. 'B-2' and 'B-3' in Exhibit 'B') has the thickness of '2 cm', *i.e.*, one knife inflicted wound Nos. 1 and 2 and another knife inflicted wound No. 3. Wounds No. 1 and 2 described in Exhibit 'A' or Exhibits 'B-2' and 'B-3' were inflicted by Jose Besorio; wound No. 3, described in Exhibit 'A' or Exhibit 'B-4' was inflicted by Delfin Vegayan. Wound No. 4 described in Exhibit 'A' or Exhibit 'B-5' was inflicted by Jose Besorio when he had overtaken Nicanor Sulleza Jr. when he ran away after he received the stabbed blow from Delfin Vegayan."

Appellants pose the defense of alibi, yet both of them admitted that they were in the vicinity of the crime. Their claim that they went there to help the victim is not corroborated by competent evidence.

Supreme Court E-Library

It is true that Sgt. Palmares testified that at the time of the stabbing the two appellants were drinking beer with him. This testimony, however, is unpersuasive. Although he claimed to be present at the scene of the incident immediately after the stabbing and that as a peace officer he pursued Delfin Vegayan because he was interested in arresting the assailant, he never bothered to inform the police of what he knew when they arrived at the scene of the incident to investigate. Instead, he stated that he lost interest in the case when he did not find Vegayan in the house. If it were true that he knew that the two appellants who were his friends were not involved in the crime, why did he not inform the police of that fact after learning of appellants' arrest and detention by the police, or the Fiscal, when he was investigating the case? Certainly, such an unpersuasive testimony cannot prevail over the positive declaration of the two witnesses for the prosecution.

The court *a quo* correctly held that the crime committed is murder qualified by treachery. The records clearly disclose that the victim was already in the act of running away when he was pursued by Jose Besorio and Manuel Buena. He was, moreover, already wounded, having been stabbed in the abdomen by Delfin Vegayan. Upon being overtaken by Besorio and Buena, he was stabbed by Besorio in the abdomen and then in the back, and while Buena held both his hands from behind, Besorio stabbed him a third time. It is apparent, therefore, that the victim was not in any position to defend himself, that appellants took advantage of his wounded condition, and that in holding both his hands from behind, Buena insured his defenselessness, thus enabling Besorio to stab him a third time. It is settled that treachery is present where the victim is rendered defenseless in order to insure the execution of the crime without risk to the offenders.[4]

There being no aggravating nor mitigating circumstance accompanying the commission of the crime, the penalty of *reclusion perpetua* was properly imposed.

---

[4] *People v. Bautista*, L-38624, July 25, 1975, 65 SCRA 460, *People v. Mabuyo*, L-29129, May 8, 1975, 63 SCRA 532.

Supreme Court E-Library

WHEREFORE, the judgment of the trial court, insofar as appellant Jose Besorio is concerned, is hereby AFFIRMED.

SO ORDERED.

Barredo (Chairman), Aquino, Concepcion Jr., and *De Castro, JJ.*, concur.

Santos and *Abad Santos, JJ.*, are on official leave.

EN BANC

[G.R. No. L-38705. July 25, 1979].

CARLITO GAÑA, ET AL., *petitioners, vs.* **COURT OF APPEALS, ET AL.,** *respondents.*

[G.R. No. L-44358. July 25, 1979]

CARLITO GAÑA, ET AL., *petitioners, vs.* **COURT OF APPEALS, ET AL.,** *respondents.*

[G.R. No. L-44727. July 25, 1979]

BENIGNO CASTRO, *petitioner, vs.* **COURT OF APPEALS, ET AL.,** *respondents.*

[G.R. No. L-45043. July 25, 1979]

CANDIDO BARON, *petitioners, vs.* **COURT OF APPEALS, ET AL.,** *respondents.*