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[G.R. Nos. L-44444-45. July 7, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GREGORIO PACADA, JR., GREGORIO PACADA, SR., AVELINO PACADA, and CESARIO MAUR,** *accused,* **GREGORIO PACADA, JR., and AVELINO PACADA,** *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; IT IS PERFECTLY REASONABLE TO BELIEVE THE TESTIMONY OF A WITNESS WITH RESPECT TO SOME FACTS AND DISBELIEVE IT WITH RESPECT TO OTHER FACTS.**— While it may be that the lower Court disbelieved Alfonsa Patnon's identification of accused Cesario Maur, who was acquitted, it does not follow that the Court should have discredited her entire testimony under the principle of *"falsus in uno falsus in omnibus"*. Suffice it to state that the rule is not an absolute one, and it is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. The rule is not mandatory but permissive and the Courts may or may not draw the inference, depending on the circumstances, such as, the corroborative evidence, the probabilities and improbabilities of the case, the general character of the witness, his manner and demeanor on the stand, his intelligence and means of knowledge, and his willingness to speak the truth.

2. **ID.; ID.; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.**— Appellants' defense of alibi must fail as it is overturned by their positive identification by prosecution witnesses, who had known them for several years. Moreover, the governing rule is that it is not enough to prove that the accused were somewhere else when the crime was committed but it must likewise be demonstrated that it was physically impossible for them to have been at the scene of the crime at the time of its commission. The evidence discloses that appellant's homes, wherein they allegedly were during the incident, were only one kilometer away in so far as GREGORIO

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was concerned, and half a kilometer away as to AVELINO, from the crime scene.

3. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUISITES.**— The Trial Court correctly categorized the crimes as Murder and Frustrated Murder. True, evident premeditation was not attendant, absent proof of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit had clung to its determination; and (3) sufficient time elapsed between the determination and the execution to allow him to reflect upon the consequences of his act.

4. **ID.; ID.; TREACHERY; WHEN APPRECIATED.**— Treachery has to be taken into account since the attack by appellants against the victims was sudden and unexpected in such a manner that there was no risk to themselves arising from the defense the victims might put up. Alfonsa Patnon and her son, Romeo Patnon, were totally unprepared for the surprise assault, Barely had Alfonsa lighted the lamp in the sala when she was hacked by appellants. Romeo, roused from his sleep, unarmed and unaware, was next pounced upon by them as he went out of his room. Thus, treachery, which was alleged in the Information and duly proved, qualifies the crimes to Murder and Frustrated Murder.

5. **ID.; ID.; ID.; ABSORBS NOCTURNITY.**— Nocturnity is inherent in treachery and cannot be separately considered.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

In a joint Decision of the Court of First Instance of Oriental Mindoro, Branch II, Pinamalayan, in Criminal Case No. P-639 for Murder, and in Criminal Case No. P-640 for Frustrated Murder, both entitled "People of the Philippines *vs.* Gregorio Pacada, Sr., Cesario Maur, Gregorio Pacada, Jr. and Avelino Pacada," Gregorio Pacada, Sr. and Cesario Maur were acquitted, but Gregorio Pacada, Jr. and Avelino Pacada were convicted of both charges and sentenced to death for the Murder charge and an indeterminate prison term for the Frustrated Murder charge.

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The prosecution has narrated the incident involved as follows:

"At about 8:00 o'clock in the evening of September 9, 1974, Alfonsa Patnon was asleep in her house at Oring, Sta. Maria, Mansalay, Oriental Mindoro in the company of her son, Romeo Patnon, her daughter-in-law, Ofelia Dris Patnon, and the latter's child (pp. 7, 8, t.s.n., Feb. 13, 1975). The barking of dogs awakened her, and looking outside through the window, she saw two persons running towards their kitchen (p. 9, t.s.n., *Ibid.*). Alfonsa lighted a lamp and proceeded to the sala to verify who the persons were and she was met by appellants Avelino Pacada and Gregorio Pacada, Jr. who suddenly hacked her with their bolos on the head and other parts of her body (pp. 10, 11, t.s.n., *Ibid*). As she laid prostrate on the floor, her son, Romeo Patnon, came out of their room but he was also met and hacked by appellants until he fell down (pp. 14, 15, t.s.n., *Ibid*).

"Meanwhile, Romeo's wife, Ofelia Dris Patnon, was inside the room, and witnessing what appellants did to her husband and mother-in-law, she hurriedly picked up her child, jumped out of the window and ran towards the house of her brother-in-law Nathaniel Patnon to whom she reported the incident (pp. 42-48, t.s.n., March 13, 1975). Nathaniel immediately rushed to his mother's place and as he approached the house, he saw through the window appellants Gregorio Pacada, Jr. and Avelino Pacada hacking somebody on the floor (pp. 2, 3, t.s.n., March 14, 1975). At the same time, he overheard somebody saying, 'Patayin na ninyo.' He beamed his flashlight towards the place and saw Gregorio Pacada, Sr. and Cesario Maur standing at the foot of the stairs some 8 meters away from him (p. 4, t.s.n, *Ibid*). The two chased Nathaniel who, however, was able to escape. When Nathaniel and his relatives whose help he had sought returned to the place later, the assailants were already gone. They saw Alfonsa and Romeo both critically wounded so they placed them in hammocks and rushed them to the hospital at Bongabon, Oriental Mindoro (pp. 7, 8, t.s.n., *Ibid*).

"Romeo Patnon died five minutes after his arrival at the hospital (p. 11, t.s.n., April 4, 1975). His mother Alfonsa was treated of her hacked wounds on the head and other parts of her body by Dr. Leovegildo Comia who testified that had it not been for the emergency surgical treatment administered to her, Alfonsa Patnon would have died (p. 8, t.s.n., *Ibid*). Alfonsa was hospitalized for two months and spent P1,700.00 for her hospitalization (p. 24, t.s.n., Feb. 13, 1975). The body of Romeo Patnon was autopsied by Municipal Health Officer

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Belen Cusi Buenconsejo who thereafter prepared the Necropsy Report Exhibit 'L' (pp. 7-9, t.s.n., July 16, 1975; Exh. 'L', p. 28, rec.).

"It appears that prior to the incident in question, Alfonsa Patnon instituted a land case in court against Cesario Maur who is an uncle of the appellants (p. 13, t.s.n., Feb. 13, 1975)."[1]

The PACADA brothers' defense, on the other hand, is one of denial and alibi.

AVELINO Pacada, 24, a farmer, married, testified that at the time of the incident, he was at home praying with his wife, two children, and a visitor, Violeta Gramo, who corroborated his testimony. Their prayer and bible study lasted for three hours. The next day, at about 5:00 A.M., he was likewise at home when Patrolman Rotao arrived and asked him for the residence of his brother GREGORIO. At the patrolman's instance, together they went to GREGORIO's house.

For his part, GREGORIO Pacada, 22, a farmer, single, narrated that on September 9, 1974, at 8:00 P.M., he was at home with his father, mother, brothers and sister. He did not leave the house that night. The following morning, his brother AVELINO, Pat. Rotao and another individual fetched him at his (GREGORIO's) house and together, they all went to the house of the Barrio Captain where Ofelia Dris was present and was asked to identify him and his brother as the assailants but Ofelia remained silent. He and his brother were then taken to the Municipal Building where they were incarcerated for a week as the alleged authors of the crime and investigated. Thereafter, they were taken to the hospital where one of the victims, Alfonsa Patnon, was confined. A photograph was taken showing Alfonsa lying in bed and pointing to them as the culprits (Exhibit "B"). GREGORIO, however, maintained that Alfonsa was able to raise her hand to point at him and his brother because her son, Nathaniel, held her arm and pointed it towards their direction.

After assessing the evidence, the Trial Court rendered judgment as follows:

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[1] Brief for the Appellee, pp. 3-5.

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"WHEREFORE, accused Gregorio Pacada, Sr. is hereby acquitted for insufficiency of evidence while accused Cesario Maur is likewise acquitted on the ground of reasonable doubt in both cases, and are therefore ordered immediately released; Gregorio Pacada, Jr. and Avelino Pacada are, however, found guilty beyond reasonable doubt of the crime of murder as defined and penalized in Section 248 of the Revised Penal Code as principals by direct participation, with the qualifying circumstances of treachery and evident premeditation and the attendant aggravating circumstances of nocturnity and dwelling, without any mitigating circumstance, so that they should be as they are hereby sentenced to suffer the capital punishment of DEATH and to indemnify the heirs of Romeo Patnon in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, in view of the nature of the principal penalty.

"Both accused Gregorio Pacada, Jr. and Avelino Pacada are also found guilty beyond reasonable doubt of the crime of frustrated murder as defined and penalized in Article 248 of the Revised Penal Code in relation to Article 50 of the same Code, with the qualifying circumstances of treachery and evident premeditation and aggravated by the circumstances of nocturnity and dwelling, with no mitigating circumstance, so they are accordingly sentenced to suffer the penalty of TWELVE (12) YEARS, of *prision màyor*, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *reclusion temporal* as maximum, and to indemnify the offended party, Alfonsa Patnon, in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency. They are entitled to the full credit of their preventive imprisonment and are hereby condemned to pay the proportionate costs in both cases.

"IT IS SO ORDERED."[2]

Appellants now assign the following errors:

I.

"The Trial Court erred in believing the evidence for the prosecution, especially with respect to the identification of the defendants-appellants.

II.

"The Trial Court erred in not believing the defenses of alibi of the defendants-appellants.

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[2] pp. 231-232, *Rollo*.

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III.

"The Trial Court erred in finding the defendants-appellants guilty beyond reasonable doubt of the crime of murder and frustrated murder.

IV.

"The Trial Court erred in sentencing the defendants-appellants to the supreme penalty of death."

Upon review of the evidence, we find that the three (3) prosecution witnesses, namely, Alfonsa Patnon, the first victim attacked, Ofelia Dris, her daughter-in-law, and Nathaniel Patnon, her son, positively and satisfactorily identified appellants as the culprits.

Alfonsa, who lived to tell her tale, testified that she was in the sala of her house to verify the identity of the two persons whom she saw running towards their kitchen when she was suddenly hacked by appellants on her head and on different parts of her body severing a portion of her thumb; that while she lay prostrate on the floor, appellants also attacked with their bolos her son, Romeo, who came out of the room to help her. She could identify appellants as she had known them for approximately seven (7) years and the sala was illuminated because of the lamp she had lit.

Ofelia Dris Patnon, Romeo's wife, awakened by the destruction of part of the buri walls of the house, also recognized appellants hacking her mother-in-law, Alfonsa, and later, her husband, Romeo, and terrified, she jumped out of the window approximately four feet from the ground (Exhibit "E") to call for help from her brothers-in-law Nathaniel and Abraham whose houses were nearby.

Nathaniel and Abraham Patnon, responded immediately. As they approached their mother's house, Nathaniel even saw appellants through the open window of the house hacking someone on the floor.

Alfonsa, Ofelia, and Nathaniel Patnon knew appellants even before the incident, Alfonsa for seven years, Ofelia for three

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years. Alfonsa and Ofelia knew the Pacada house to be on the other side of the mountain and Alfonsa and Ofelia used to pass by the Pacada place. Appellant, AVELINO, himself testified that his house was approximately half a kilometer from Alfonsa's; that he knew Alfonsa and her son Romeo for ten years, and that when they (the Pacadas) started to reside in the vicinity, Alfonsa's family was already residing thereat. Thus, Alfonsa, Ofelia and Nathaniel could not have been mistaken in their identification of appellants. Pat. Rotao's testimony that Ofelia remained silent when he asked her to finger appellants is contradicted by his earlier testimony that when he had interviewed her she said that the members of the PACADA family were the culprits.[3]

GREGORIO's testimony that Alfonsa's hand was merely held by her son Nathaniel when she pointed to appellants in the hospital is belied by the photograph taken at the time (Exhibit "B"). On rebuttal, Alfonsa also denied that imputation.

While it may be that the lower Court disbelieved Alfonsa Patnon's identification of accused Cesario Maur, who was acquitted, it does not follow that the Court should have discredited her entire testimony under the principle of "*falsus in uno falsus in omnibus*". Suffice it to state that the rule is not an absolute one, and it is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts.[4] The rule is not mandatory but permissive and the Courts may or may not draw the inference, depending on the circumstances,[5] such as, the corroborative evidence, the probabilities and improbabilities of the case, the general character of the witness, his manner and demeanor on the stand, his intelligence and means of knowledge, and his willingness to speak the truth.[6] In fact, in respect of Alfonsa

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[3] T.s.n., July 30, 1975, p. 7.

[4] *People vs. Dasig*, 93 Phil. 618 (1953).

[5] *People vs. Dasig, supra.*

[6] *People vs. Tabadero*, 115 SCRA 756 (1982); *People vs. Pacabes*, 137 SCRA 158 (1985).

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Patnon's and Ofelia Dris' credibility, the Trial Court assessed their testimony thus:

"x x x the direct participation of accused Gregorio Pacada, Jr. and Avelino Pacada has been sufficiently ventilated by the testimonies of the victim herself, Alfonsa Patnon, and that of Ofelia Dris, both of whom saw and witnessed both incidents. Their testimony is almost flawless in important details and the Court is convinced from their demeanor while testifying that they were telling the truth, so that it is inevitable that they should be as they are hereby found guilty as charged in the information for murder and frustrated murder by direct participation. x x x"[7]

It is likewise significant that early in the morning of the day after the incident the police already invited appellants for questioning. That circumstance lends veracity to Abraham Patnon's testimony that his brother Romeo, as he lay wounded after the assault, revealed to him that the PACADA brothers were the authors of the crime.[8] That disclosure was in the nature of a dying declaration. Thus, it was in the same evening of the incident that Nathaniel informed the Barrio Captain,[9] and the next morning Pat. Eleazer Rotao,[10] of the identity of the perpetrators, so much so that when the Chief of Police released appellants from detention on the alleged ground that proof against them was insufficient, Nathaniel forthrightly sought help from the Provincial Fiscal,[11] who thereupon asked the CIS through Agent Bernardo C. Esquilona, to conduct the investigation and who thereafter took appellants to custody on September 20, 1974. These actuations negate the defense contention that it was merely "suspicion" that led to the "incarceration" of appellants and resulted in their "identification" and eventual "conviction."

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[7] p. 230, *Rollo*.

[8] T.s.n., April 4, 1975, pp. 8-9.

[9] T.s.n., March 14, 1975, p. 32.

[10] *ibid.*, p. 8.

[11] *ibid.*, p. 13.

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Appellants' defense of alibi must fail as it is overturned by their positive identification by prosecution witnesses, who had known them for several years. Moreover, the governing rule is that it is not enough to prove that the accused were somewhere else when the crime was committed but it must likewise be demonstrated that it was physically impossible for them to have been at the scene of the crime at the time of its commission,[12] The evidence discloses that appellant's homes, wherein they allegedly were during the incident, were only one kilometer away in so far as GREGORIO was concerned, and half a kilometer away as to AVELINO, from the crime scene.[13]

Contrary to their contention, appellants were not without motive for the killing. In 1973, Alfonsa Patnon had filed Civil Case No. R-292 against Cesario Maur, appellants' uncle, for the recovery of a parcel of land of 22 hectares, and the incident involved occurred three days before the scheduled date of the hearing.[14] The Patnons were in actual possession of the land and were cultivating it as early as 1952[15] but the Pacadas took possession of the land[16] and Cesario Maur erected a house thereon.[17] And at one instance, Alfonsa had stopped the Pacadas from cutting her bananas on the disputed property. But even in the absence of a known motive, the time-honored rule is that motive is not essential to convict when there is no doubt as to the identity of the culprit.[18]

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[12] *People vs. Dalusag*, 133 SCRA 15 (1984); *People vs. Rosario*, 134 SCRA 496 (1985).

[13] T.s.n., September 18, 1975, p. 10; December 17, 1975, p. 27. .

[14] T.s.n., March 13, 1975, p. 33.

[15] T.s.n., February 13, 1975, p. 36.

[16] *ibid.*, p. 34.

[17] T.s.n., September 17, 1975, p. 23.

[18] *People vs. Almeda*, 124 SCRA 486 (1983); *People vs. Beltran*, 137 SCRA 508 (1985).

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In fine, the conclusion we draw from the evidence is that appellant's identity and guilt have been proven to a moral certitude.

The Trial Court correctly categorized the crimes as Murder and Frustrated Murder. True, evident premeditation was not attendant, absent proof of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit had clung to its determination; and (3) sufficient time elapsed between the determination and the execution to allow him to reflect upon the consequences of his act.[19]

However, treachery has to be taken into account since the attack by appellants against the victims was sudden and unexpected in such a manner that there was no risk to themselves arising from the defense the victims might put up.[20] Alfonsa Patnon and her son, Romeo Patnon, were totally unprepared for the surprise assault, Barely had Alfonsa lighted the lamp in the sala when she was hacked by appellants. Romeo, roused from his sleep, unarmed and unaware, was next pounced upon by them as he went out of his room. Thus, treachery, which was alleged in the Information and duly proved, qualifies the crimes to Murder and Frustrated Murder.

Only the generic aggravating circumstance of dwelling may be appreciated. Nocturnity is inherent in treachery and cannot be separately considered.[21]

The crime in Criminal Case No. P-639 is Murder, qualified by treachery, and attended by the aggravating circumstance of dwelling. With no mitigating circumstance to offset the same,

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[19] *People vs. Lorenzo*, 132 SCRA 17 (1984); *People vs. Daniel*, 136 SCRA 92 (1985).

[20] *People vs. Tirol*, 102 SCRA 558 (1981); *People vs. Moral*, 132 SCRA 47 (1984); *People vs. Beltran*, 137 SCRA 508 (1985).

[21] *People vs. Gueron*, 121 SCRA 115 (1983); *People vs. Balane*, 123 SCRA 614 (1983).

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the maximum penalty provided in Article 248 of the Revised Penal Code is imposable upon each of the appellants. However, for lack of the required number of votes to impose the capital punishment, the penalty should be commuted to *reclusion perpetua*. The indemnification to be paid for the death of the victim should be increased to P30,000.00.[22]

As recommended by the Solicitor General, the Court has opted to reduce the penalty for the crime of Frustrated Murder for being too high.

WHEREFORE, the judgment under review is hereby MODIFIED in that (1) in Criminal Case No. P-639 for Murder, the penalty is reduced to *reclusion perpetua* and the indemnity for the death of the victim increased to P30,000.00; and (2) in Criminal Case No. P-640 for Frustrated Murder, the penalty is reduced to eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.

Costs against appellants.

SO ORDERED.

Teehankee, C.J., Abad Santos, Feria, Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr., Cruz, and *Paras, JJ.*, concur.

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[22] *People vs. Yurong*, 133 SCRA 26 (1984).