

EN BANC

[G.R. No. 131805, September 07, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GREGORIO HERMOSA AND GABRIEL ABELINDE, ACCUSED-
APPELLANTS.**

D E C I S I O N

PUNO, J.:

Accused GREGORIO HERMOSA and GABRIEL ABELINDE were meted the death penalty for the crime of murder. The crime was allegedly committed as follows:^[1]

"That sometime on January 11, 1995, at about 1:00 o'clock in (the) morning more or less, at Barangay Gahit, Municipality of Caitingan, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring and confederating and mutually helping one another, **with evident premeditation, use of superior strength and nocturnity (sic)** as cover, **treachery**, did then and there willfully, *unlawfully* and feloniously, with the use of sharp and pointed bolo, **assault, attack, hack and stab a woman named ELEONOR (sic) CONDE MALIPOT** thereby hitting the latter at the different parts of her body which was the direct and logical (cause) of her instantaneous death.

CONTRARY TO LAW."

Upon arraignment, both accused pled "not guilty" to the offense charged.^[2] Trial ensued.

The prosecution presented the testimonies of Macuibelle Malipot, her siblings Marither and Elizalde, and Municipal Health Officer Allen Ching. For its part, the defense presented Bienvenido Habanez, policeman Raymundo Meliton and the accused, Gregorio Hermosa and Gabriel Abelinde.

The records show that in the early morning of January 11, 1995, the residents of Sitio Mayabas found the lifeless body of Eleanor Conde Malipot^[3] near a creek, a few meters behind her house in Sitio Mayabas, Cataingan, Masbate. She was 43 years old. A widow, the deceased was survived by four (4) children, namely: Elizalde, 15 years old, Marither, 12 years old, Macuibelle, 8 years old, and Dexter (Nonoy), 4 years old.

The Medico-Legal Report^[4] of Municipal Health Officer Allen Ching revealed that the

victim sustained the following wounds:

- "1. Hacking wound, neck up to the cervical vertebra multiple.
2. Hacking wound, mouth.
3. Hacking wound, forehead, left superficial.
4. Hacking wound, maxilla left.
5. 5 cm. Lacerated wound, anterior arm right.
6. 6 cm. Lacerated wound, anterior hand around the base of the first finger left."

The victim died due to cardio-respiratory arrest, hypovolemia and multiple hack wounds on the neck. The doctor explained that the multiple hack wounds on the neck had cut the bone and one of the major arteries of the victim. With the said injuries, the victim had no chance of survival and had probably lived for about five (5) minutes.^[5]

The victim's 8-year old daughter, Macuibelle, partially witnessed the tragic incident. She testified that at about 1 o'clock in the morning of January 11, 1995, she was roused by the victim's scream. She peeped through a hole in the wall of their room and saw the victim at the main door of their house, near the stairs.^[6] The victim had a lamp in one hand, and a bolo in the other. The victim was shouting, "Zaldy, help!," referring to her eldest son, Elizalde. At that time, however, Elizalde and Marither had slept in the house of their respective friends.^[7]

Macuibelle also saw the two accused: Gregorio Hermosa was standing in front of the victim while Gabriel Abelinde was at the front yard, clubbing the victim's carabao that was tied some four (4) meters away from the house.^[8] Suddenly, Hermosa stabbed the victim. Thereafter, Hermosa and Abelinde forcibly took the victim from the house and dragged her towards the nearby creek. Macuibelle shouted for help. No one responded. Her only companion then was her 4-year old brother, Dexter. Afraid, she went back to sleep.^[9]

The night before, there was a celebration in the house of the victim's neighbor, Bienvenido Habanez.^[10] It was his son's birthday and a dance was being held in his place. The victim and her 12-year old daughter, Marither, set up a makeshift store in front of Habanez's house selling assorted merchandise such as cigarettes and liquor.^[11]

Hermosa and Abelinde attended the party. They drank *tuba* near the makeshift store of the victim. Abelinde approached the victim and asked, on behalf of Hermosa, if the latter could buy liquor on credit. The victim refused as Hermosa still owed her money. Abelinde went back to Hermosa and they continued drinking the *tuba*. Slighted, Hermosa gave a dagger look at the victim.^[12]

At around midnight, the victim and Marither packed up their things. The victim kept the unsold goods and the proceeds of the sale and headed for home. Marither was left behind to fetch Dexter as he had fallen asleep in the house of Habanez. Marither carried her brother on her way home. Her friend, Glenda, walked with her. As they approached the place where the two accused were seated, Hermosa tapped

Abelinde and commented that the victim was on her way home. Hermosa stared at the victim until she disappeared behind the mango tree.^[13]

When Marither reached their house, she put her brother in their room. At that time, Macuibelle was still awake. With the victim's permission, Marither walked her friend home and spent the night in her uncle's house. The victim and Macuibelle were praying when Marither left.^[14]

Marither woke up at 5:00 a.m. on June 11, 1995. Moments later, she saw her aunt Elsie and uncle Payo running towards their house. A certain Rowena Lonido told her that the victim was killed and that their carabao had been stolen. Marither rushed to the crime scene and found the lifeless body of the victim beside the creek, about seven (7) meters from their house. She embraced the victim and cried.^[15]

Elizalde corroborated the testimony of Marither that the accused tried to get liquor from the victim on credit, but the victim refused.

The two accused were arrested on the day the body of the victim was discovered. Policeman Raymundo Meliton investigated the incident. He proceeded to the house of the victim and talked to Macuibelle and Dexter. They did not immediately reveal the names of the accused as suspects. He then interviewed the people in the neighborhood and those in the house of Habanez. When policeman Meliton returned to the house of the victim a few hours later, Macuibelle revealed to him that the accused were the assailants. He learned that the accused got mad at the victim when she refused to sell liquor to them on credit. Policeman Meliton picked up the accused for investigation. They denied any participation in the killing.^[16] Nonetheless, he prepared the affidavits of the prosecution witnesses and charged the accused.^[17]

The defense proffered was denial and alibi.

Gabriel Abelinde testified that he attended the birthday party of Habanez's son. His companions were his son, his father, and spouses Eulalio and Clementina Pagunsan. At 9:30 p.m., Hermosa joined his group. They engaged in a drinking spree. They consumed four (4) jars of *tuba* until 10:30 p.m.

Abelinde claimed that the victim participated in the dancing and in the drinking spree. Allegedly, the victim approached him and told him to look out for one Ludy Gonzales because the latter owed her money. Strangely, however, Abelinde insisted that the dance took place on the 11th, not on the 10th, day of January. The next day, January 12, he learned through his wife that the victim had been killed.

Abelinde averred that he went home at about 1:00 a.m. after the party. He slept in his house which is approximately 300 meters away from the victim's house. He was with his son, his wife and his father. Hermosa spent the night with him because Hermosa's house was more distant.

Abelinde denied any participation in the killing of the victim. He said he had no quarrel with her prior to the tragic incident. She was also a relative of his father.

Gregorio Hermosa also denied any participation in the crime. He claimed that after

they left the house of Habanez, he passed the night in Abelinde's house. He woke up the next day at 7:00 a.m. and learned of the death of the victim. He went home to inform his mother of the incident. At 9:00 a.m., the policemen arrested him.

After the trial, the court *a quo* found the accused guilty of murder. The dispositive portion of the trial court's decision provides:[18]

"ACCORDINGLY, the court finds the accused Gregorio Hermosa and Gabriel Abelinde guilty beyond reasonable doubt of the crime of MURDER and hereby imposes upon them the supreme penalty of DEATH, and shall indemnify the legal heirs (of the victim) the amount of P50,000.00 in solidum for the death of Eleonor Malipot and P20,000.00 as moral damages.

With costs de officio."

The records of the case were forwarded to this Court for automatic review.

It appears that the appellants were not imprisoned in the New Bilibid Prisons.[19] Appellants escaped from Matipuron Provincial Jail, Milagros, Masbate, on June 14, 1998.[20] They remain at large.

Pursuant to this Court's directive, the Public Attorney's Office and the Office of the Solicitor General filed their Briefs for the appellants and the appellee, respectively.

Appellants' counsel *de officio* contends that:

"I. THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDIT TO THE TESTIMONY OF PROSECUTION WITNESS MACUIBELLE MALIPOT.

II. THE TRIAL COURT ERRED IN HOLDING THAT ACCUSED-APPELLANTS HAD MOTIVE TO KILL THE VICTIM, ELEONOR C. (*sic*) MALIPOT, AFTER SHE REFUSED TO ALLOW THEM TO PURCHASE LIQUOR ON CREDIT.

III. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANTS OF MURDER AND IN IMPOSING UPON THEM THE DEATH PENALTY."

We restate the rule that this Court is not precluded from reviewing the death sentence of an accused who is at large.[21] In line with the rule, we now determine the criminal and civil liabilities of the appellants.

We modify the judgment and hold that the appellants are liable for homicide, not murder.

The oft-repeated rule is that the trial court's evaluation of the testimony of a witness is accorded the highest respect because of its direct opportunity to observe the witnesses on the stand and to determine if they are telling the truth or not.[22] This opportunity enables the trial judge to detect better that thin line between fact and

prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court.^[23] Thus, the trial judge's evaluation of the competence and credibility of a witness will not be disturbed on review, unless it is clear from the records that his judgment is erroneous.^[24]

We have scrutinized the testimony of the lone eyewitness, Macuibelle Malipot. She candidly recounted the events surrounding the killing of the victim as follows:^[25]

"ATTY. NICOMEDES ROMAGOS

ON CROSS-EXAMINATION:

Q: Macuibelle Malipot, you have testified that you were only awoken(ed) by the shout of your mother, Eleonor Malipot, asking assistance from your brother Zaldy, am I correct?

A: Yes, sir.

Q: At what precise moment that you were awoken(ed)

A: Nearing 1:00 o'clock.

Q: Why were you awoken(ed)?

A: Because my mother was shouting.

Q: And because of that you stated that you also stood up and peeped at the hole of your house, am I correct, Macuibelle Malipot?

A: Yes, sir.

Q: And you have also testified at the time you saw your mother, she was already in (*sic*) the main door. Why is it Macuibelle Malipot that you peeped when your mother is on (*sic*) the main door?

PROSECUTOR:

The witness testified that she was at (*sic*) the room.

WITNESS:

A: The door is located at (*sic*) a stair.

ATTY. ROMAGOS:

Q: You mean to tell this Honorable Court Macuibelle, your door could not be seen when you are in the room?

WITNESS:

A: It could be seen.

(ATTY. ROMAGOS):

Q: You said that your mother was carrying a lamp, may we know from you how big is its wick?

INTERPRETER:

Witness demonstrating a small lamp with a height of 6 inches.

COURT:

Q: How did your mother handle the lamp?

A: She was carrying it with her left hand and she was holding a bolo.

Q: Do you know why your mother was holding a bolo? A: I do not know.

ATTY. ROMAGOS:

Q: You did not know why your mother was carrying a bolo on that particular night. But how long was that bolo she was carrying on (*sic*) that moment?

INTERPRETER: