

FIRST DIVISION

[G.R. No. 130603, August 15, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL GALLEGO, ACCUSED-APPELLANT.

D E C I S I O N

PUNO, J.:

In a sea of nameless faces, can one's memory of an encounter or two with a stranger suffice to identify him as the assailant of one's kin?

Raul Gallego was charged with the crime of murder in an information that reads:

"That on or about the 8th day of February 1995 in the municipality of Jordan, Province of Guimaras, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with evident primiditation (sic) and treachery, taking advantage of night time (sic), armed with a knife did then and there willfully, unlawfully and feloniously assault, attack and stab one Wilfredo Lamata, hitting the said Wilfredo Lamata on the left breast which caused his instantaneous death.

CONTRARY TO LAW."^[1]

The records show that at about 7:30 p.m. on February 8, 1995, Raul Gallego appeared at the residence of spouses Wilfredo and Lucia Lamata in Barangay Sebaste, Jordan, Guimaras. At that time, the Lamata spouses' 12-year old granddaughter, Avelyn Lamata, and their daughter, Lina Echavez, were watching television in the living room. A flourescent lamp lighted the living room. Lucia was also inside the house sewing clothes while Wilfredo was ill and in bed in a room upstairs. From outside the Lamata abode, Gallego called Avelyn's attention through a window. Avelyn asked him who he was and he replied that he was a relative from Negros.^[2] Avelyn opened the main door of the house, but Gallego remained standing outside.^[3] Avelyn informed Lucia that a relative of her grandfather was looking for him, then continued watching television.^[4] Lucia stepped out and asked Gallego who he was. The latter replied that he was a military man named Col. Latumbo. He also said that he was Wilfredo's relative from Negros and he was eager to see Wilfredo whom he had not seen for seven years. Lucia invited him to come in and talk with Lina while she (Lucia) fetched Wilfredo upstairs. Gallego remained outside the house.^[5] Lina opened the main door a bit wider. The light coming from the living room illuminated the area outside the main door where Gallego stood. Lina stepped out and talked to him. They were about two feet apart. She asked Gallego who he was, and the latter repeated that he was a relative from Negros and a military man. Lina invited him inside the house because he said he was a relative but he preferred to wait for Wilfredo outside.^[6]

Meanwhile, Wilfredo, got up from bed and together with Lucia went downstairs and headed for the main door.^[7] Lina and Gallego were still standing by the main door with Gallego facing the living room. As the Lamata spouses were approaching, Lina invited Gallego to come in and opened the door wider.^[8] Upon seeing Wilfredo from a distance of about five feet, Gallego rushed to him saying, "(h)ere is my relative whom I am very anxious to see". With his left hand, Gallego embraced Wilfredo and held him on his right shoulder. All of a sudden, with his right hand, Gallego drew a knife and stabbed Wilfredo on the lower left chest.^[9] Lucia, who was by Wilfredo's left side, embraced her husband to protect him from Gallego but it was too late. She was slashed in the upper left arm when Gallego withdrew the knife from Wilfredo. Wilfredo uttered, "I have no fault, why did you do it to me?" and ran to the kitchen.^[10]

Lina also saw Gallego stab her father. After opening the main door for Gallego to come in, she headed for the kitchen. But before she could reach the kitchen, she turned back towards the direction of her father. With Gallego to her left, she was standing at an angle in front of her father about one meter away. Suddenly, she saw Gallego stab Wilfredo on the left breast. Taken aback, Lina shouted, "Guinbuno si Tatay!" ("Tatay was stabbed!").^[11] Gallego then ran out of the house and Lina immediately closed the door after him. He fled on a motorcycle.^[12]

Lucia shouted for help from her neighbors. Her son from a neighbor's house arrived. Lina, her brother, her friend, and Lucia brought Wilfredo to the hospital. Unfortunately, when they got there, he was pronounced dead-on-arrival.^[13] Policemen arrived in the hospital to investigate the stabbing incident.^[14]

Dr. Edgardo Jabasa, medico-legal expert and Provincial Health Officer 1 of Guimaras, examined the cadaver of Wilfredo Lamata. As reflected in the Post-Mortem Findings he prepared, the cause of Wilfredo's death was the stab wound on his left chest which could have been inflicted by a sharp, bladed and pointed instrument.^[15]

The following day, Lucia was informed by a relative that her husband's assailant had been caught. At about 1:30 p.m., she went to the Jordan police station. There she was asked to identify her husband's assailant. At that time, the accused was sitting at the porch of the police station along with other people.^[16] She identified him as the culprit and later on found out that his name was Raul Gallego. She executed an affidavit narrating the killing of Wilfredo.^[17]

Subsequently, Lina Echavez also went to the Jordan police station upon invitation of a relative named Ramon Galve. Raul Gallego was then already behind bars. She identified Gallego as the man who stabbed her father.^[18] On February 10, 1995, Lina Echavez also executed an affidavit regarding the stabbing incident.^[19]

Avelyn Lamata testified that while on a jeep headed for Iloilo, she passed by Gallego in his prison cell and also recognized him as Wilfredo Lamata's assailant. The jeep was about ten meters from the detention cell.^[20] On February 22, 1995, Avelyn executed an affidavit regarding the killing of her grandfather.^[21]

When Lina Echavez took the witness stand, she recalled that prior to that night when her father was stabbed, during the February 3, 1995 fiesta, she encountered Raul Gallego for the first time. Lina was in her brother's house with her cousin.

Gallego rode on a motorcycle and stopped in front of the house of Lina's brother. Gallego asked Lina's cousin where Wildy (referring to Wilfredo Lamata) lived. Lina asked him who he was and he answered that he was a relative from Negros.^[22]

Lucia Lamata, Lina Echavez, and Aveiyn Lamata all positively identified Raul Gallego as Wilfredo Lamata's assailant when they took the witness stand.^[23]

The accused Gallego posed the defense of denial and alibi.

Francisco Mesa, a good friend of Gallego, testified that Gallego is from Negros, but he has relatives in Barangay Dasal, Jordan, Guimaras. On February 5, 1995, Mesa met Gallego in the Barangay Dasal market. Gallego told him that he was in Barangay Dasal visiting his relatives.^[24] Thereafter, during the whole day of February 8, 1995 up to 7:00 p.m., Mesa saw Gallego sitting alone outside the store of a certain Lydia Gallego at the Barangay Dasal market where Mesa was a fish vendor. The distance between Lydia Gallego's store and Mesa's vending place was about 30 meters. At 7:00 p.m., he walked with Raul Gallego to the house of the latter's cousin, Lorio Gallego. There were many people holding a family reunion in the said house in Barangay Dasal.^[25] While there, Mesa talked with Raul Gallego. He did not see him leave the house until he (Mesa) went home at past 11:00 p.m.^[26]

Mesa also testified that Barangay Dasal and Barangay Sebaste (where Wilfredo Lamata lives) are about three kilometers, apart and are connected by a rough road where trucks, jeeps, cars, tricycles, and motorcycles can pass. By jeep, the distance can be traversed in ten minutes, and by motorcycle, about 30 minutes.^[27]

Lorio Gallego testified for the defense. On February 8, 1995, he was at home hosting a dinner on the occasion of the first death anniversary of his daughter. There were about 50 people in his house, among whom were Raul Gallego and Francisco Mesa who arrived together at about 6:30 to 7:00 p.m. Raul did not leave his house until the next morning.^[28] He likewise testified that the distance between Barangay Dasal and Barangay Sebaste is about eight kilometers. These barangays are connected by a road where a passenger jeepney plies once or twice a day. If a passenger misses the jeepney, motorcycles are available for hire to negotiate the distance. Otherwise, one would have to travel by foot to get to Barangay Sebaste.^[29]

Reynaldo Gallego, brother of Raul Gallego, also saw Raul drinking at Lydia Gallego's store between 4:00 to 7:00 p.m.^[30] At about past 7:00 p.m. on February 8, 1995, Raul went to the house of Lorio Gallego. Later that night, at around 10:00 p.m., the Chief of Police, two policemen named Rudy Ronzales and George Galon, along with two other unnamed policemen went to Reynaldo's house looking for Raul. Reynaldo informed them that he was in Lorio's house, then inquired why they were looking for him. Ronzales replied that Raul killed Wilfredo Lamata.^[31]

Reynaldo also testified that Barangay Dasal is about seven kilometers away from Barangay Sebaste. They are connected by a good road which can be negotiated in 20 minutes by passenger motorcycle. A feeder road also connects the two barangays.^[32]

Lydia Tanaleon corroborated the testimonies of the defense witnesses. She narrated that Raul Gallego was in her store drinking from 4:00 to 7:00 p.m. on February 8, 1995.^[33] At past 7:00 p.m., Raul, Lydia and her sister Josa Elsana went together to have dinner at Lorio Gallego's house on the occasion of a death anniversary. From the time they arrived in Lorio's house until she left at past 10:30 p.m., she did not see Raul Gallego leave the said house.^[34]

Raul Gallego took the witness stand. He testified that he was a resident of Binalbagan, Negros, Occidental, but was born in Barangay Dasal, Jordan, Guimaras^[35] and grew up there until he was nine years old.^[36] He returned to Guimaras in 1978 when his mother died then went back to Negros. On February 6, 1995, his brother from Mindanao, Rodolfo Gallego, fetched him to go to Guimaras for a vacation. They arrived in Guimaras on February 8, 1995.^[37] On that day, at around 4:00 to 7:00 p.m., he was at Lydia Tanaleon's store in front of the Barangay Dasal market. He, along with his relatives including Francisco Mesa, had a drinking spree because his brother Rodolfo had just arrived from Mindanao. Mesa would, however, sometimes go out of the store because he was selling fish. Raul did not leave the store until past 7:00 p.m. when he, along with Lydia Tanaleon, Johnny Galon, his aunties Margarita Gallego and Rosario Gallego, and Francisco Mesa stopped by Rey Gallego's residence, then proceeded to Lorio Gallego's house to have dinner on the occasion of the first death anniversary of his child. Raul Gallego stayed there until 8:00 the following morning when he went to the market to have coffee. He then went back to Lydia Tanaleon's store to drink. Some policemen arrived and invited him to go with them to the police station because he was informed that he was a suspect in the killing of Wilfredo Lamata. He denied the killing and told them that he did not know Wilfredo Lamata, but nevertheless went with the policemen to the police station. There, he was investigated and asked whether he killed Wilfredo Lamata. He reiterated that he did not kill Wilfredo Lamata and that he did not even know him. He then stayed at the balcony of the police station at around 11:00 a.m. At around 12:00 noon, some women came and conversed with the police. The police pointed to Gallego as the suspect. A woman then stood up and told Gallego, "So it was you who killed my husband. Why did you do it?" Gallego replied, "I did not kill your husband because I did not know you and I did not also know your husband."^[38]

The trial court gave credence to the evidence of the prosecution. It convicted Raul Gallego of the crime of murder and sentenced him to suffer a penalty of imprisonment of *reclusion perpetua* with all its accessory penalties and to pay the heirs of Wilfredo Lamata the amount of P50,000.00 as damages plus the costs of suit. Hence this appeal with the lone assignment of error, viz:

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT RAUL GALLEGO GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER."

The bone of contention in the case at bar is the identity of Wilfredo Lamata's assailant. There is no doubt that a man mortally stabbed Wilfredo on the left chest on that fateful night in the Lamata abode. To establish the identity of Wilfredo's assailant, the prosecution relies on Lucia and Avelyn Lamata's and Lina Echavez' positive identification of Raul Gallego as the assailant. On the other hand, Raul Gallego cries foul and alleges that Lucia and Lina identified him as the culprit upon suggestion of the policemen at the police station. He has not adequately proven this

allegation. The police investigators are presumed to have performed their duties regularly and in good faith,^[39] and in the absence of adequate proof to overthrow this presumption, his positive identification remains free from any taint of irregularity.

In *People v. Teehanke, Jr.*,^[40] we explained the procedure for out-of-court identification and the test to determine the admissibility of such identification, viz:

"Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description, given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure."

Using the totality-of-circumstances test, we find that the identification of Raul Gallego as Wilfredo Lamata's assailant through a show-up is credible as borne out by the following salient facts.

Raul Gallego appeared at the house of the victim, Wilfredo Lamata, at around 7:30 p.m. At that time, prosecution witnesses Avelyn Lamata and Lina Echavez were watching television in the living room while Lucia Lamata was sewing clothes. A fluorescent lamp lighted the living room. With the main door of the house opened, the light from the living room also illumined the area immediately outside the main door where Raul Gallego stood. Prior to the stabbing incident, Lucia' and Lina spoke with Raul Gallego who stood right outside the main door. Both of them also saw Gallego stab Wilfredo in the brightness of their living doom. Lucia was right beside her husband when he was attacked, giving her a full frontal view of Gallego. Lina, for her part, was about one meter beside Gallego when he stabbed her father. Avelyn also identified Raul Gallego as her grandfather's assailant as she saw him standing by the door before the stabbing and also saw him running away from the scene of the crime right after the attack. There is no doubt that the prosecution witnesses were able to have a clear view of Raul Gallego on the night the dastardly act was committed in the sanctity of their abode.

Lucia Lamata went to the police station the day following the stabbing incident to identify her husband's assailant. Even without knowledge of Raul Gallego's name and likewise without prodding from anybody, she identified Raul Gallego as the assailant from several men staying in the balcony of the police station. She identified him without hesitation, viz:

"Q: You said you saw the accused for the second time at the police station of Jordan? .

A: Yes, sir.