

THIRD DIVISION

[G.R. No. 105284, July 08, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS.IGNACIO ZUMIL, ACCUSED-APPELLANT.**

D E C I S I O N

FRANCISCO, J.:

The facts of this case as succinctly summarized by the Solicitor General and which we hereunder reproduced with approval are as follows:

"At about 3:00 o'clock x x x [in the] afternoon [of September 23, 1990], Rosita Emperio and her son Leopoldo, Jr., were watching television in their house with some neighbors. Momentarily, they were surprised to see her husband Leopoldo Emperio, Sr. home from work that early. Leopoldo, Sr. had earlier been informed that Rosita got into a quarrel. However, after he learned that the information was false, he set out to return to work. But before he could step out, Nicolas Oliver barged into the house armed with a hunting knife, and without warning, tried to stab Leopoldo. Sensing the peril he was in, Leopoldo backtracked to evade the thrust. He lost his balance and fell down on the floor. However, he managed to get hold of a bolo which he used effectively to stave off Oliver's attack. Oliver ran out of the house pursued by Leopoldo. As soon as Leopoldo stepped out of his house, appellant attacked from the right side and struck Leopoldo's right eye with a bamboo pole. The blow caused Leopoldo to fall from the makeshift bridge where he stood (tsn, Nov. 6, 1991, pp. 4-8; 23-25).

"Herminigildo Magsalay, a neighbor, tried to help Leopoldo, but, he too was attacked and struck by appellant at the back. Seeing his advantage, Oliver also pounced on the hapless Magsalay and stabbed him several times. Thereafter, Oliver moved over to where Leopoldo lay unconscious and, mercilessly, stabbed him. Both Leopoldo and Magsalay died on the spot (ibid., pp. 8-9; 26-29)."

On the bases of the separate sworn statements executed by Rosita Emperio, Arlyn Entension and Gener Diabordo, appellant Ignacio Zumil and Nicolas Oliver were charged with murder^[1] for the death of Leopoldo, Sr.. When arraigned, Oliver pleaded guilty to a lesser offense of homicide and was accordingly sentenced by the trial court.^[2] Appellant, on the other hand, entered a plea of not guilty. Full dress trial thereafter ensued against appellant culminating in this assailed verdict of conviction sentencing him "to suffer reclusion perpetua x x x and x x x pay the heirs of Leopoldo Emperio [the sum of] P50,000.00 as death indemnity."^[3]

Appellant is now before us contending that:

"1. The Lower Court erred in finding the Prosecution to have established beyond question that the environmental circumstances recited in the information had indeed taken place;

"2. The Lower Court erred in giving credence to the testimonies of the widow of the deceased victim, Leopoldo Emperio and of the boy-witness, Gener Diabordo, while, in the same breathe, it discredits the testimonies of the same said widow's very own son, the other boy-witness, Leopoldo Emperio, Jr.;

"3. The Lower Court erred in finding that there is any judicial admission by the defense witness that the improbable did happen;

"4. The Lower Court erred in finding that the accused-appellant treacherously struck the victim, Leopoldo Emperio, while the latter was engaged in a death struggle with Nicolas Oliver y Dumanjug;

"5. The Lower Court erred in finding that the accused-appellant had incapacitated the other deceased Magsalay from helping the deceased, Leopoldo Emperio, by striking also Magsalay treacherously;

"6. The Lower Court erred in concluding that the leaving by the accused-appellant, after the killings, his residence for Pagadian City is a sign of guilty."^[4]

It is indubitable that the trial court's judgment of conviction was based principally on Rosita and Gener's^[5] testimony narrating appellant's actual participation in the commission of the crime. Claiming that Rosita has "an entirely different version" of the incident from those of Gener and Leopoldo, Jr., appellant now insists that the testimony of the prosecution witnesses are unworthy of belief.^[6] Specifically, appellant cites the following alleged inconsistent portions of their respective testimonies:

Rosita Emperio: Direct Examination

"x x x x x x x x x

Q When your husband fell down, what did you notice?

A My husband found a bolo and then he brandished that bolo to Nicolas Oliver in order that Nicolas Oliver will be out.^[7]

x x x x x x x x x."

Leopoldo Emperio, Jr.: Direct Examination

"x x x x x x x x x

Q While he was stepping backward trying to evade the thrust of Nicolas Oliver, what happened to your father?

A He got a bolo from the kitchen and brandished that bolo.^[8]

x x x x x x x x x."

Gener Diabordo: Direct Examination

"x x x x x x x x x

Q What did Leopoldo Emperio do while moving backward evading the thrust of Nicolas Oliver?

A He fell down and after that he stood up and got a bolo in the kitchen and brandished that bolo."^[9] (Underscoring Ours)

While there appears to be an inconsistency between the testimony of Rosita, and of Gener and Leopoldo, Jr., as to how Leopoldo, Sr. was able to get a bolo which he used to repel Oliver's assault, the same is nonetheless inconsequential. This is so because, referring as it does to only a minor detail of the incident, such inconsistency will not cast serious doubt on witnesses' credibility,^[10] but even suggests that their testimony were unrehearsed.^[11] Moreover, we do not expect the testimony of the witnesses regarding the same incident to be consistent all throughout because different persons may have different impressions and recollections of the same incident.^[12]

We must stress that appellant has been positively identified by no less than three (3) prosecution eyewitnesses as the one who struck a bamboo pole with a protruding nail^[13] upon Leopoldo, Sr.'s face when the latter was chasing Oliver out of his (Leopoldo, Sr.) house.^[14] That as a consequence thereof, Leopoldo, Sr. fell from the makeshift bridge, plunged into the water underneath and was finally stabbed to death by Oliver.^[15] The trial court, though entertaining its misgivings on Leopoldo Jr.'s credibility,^[16] found that Gener passed the "acid test of cross-examination",^[17] and that Rosita's testimony "rang with the fervor truth".^[18] We uphold these findings of the trial court considering that its findings on the matter of credibility of witnesses are given weight and the highest degree of respect on appeal.^[19] Furthermore, their testimony was corroborated by Dr. Pedrita J. Rosauo -- the Assistant Health Officer of Ozamiz City -- who conducted a post-mortem examination on the cadaver of Leopoldo, Sr. Thus:

Q Upon examination of the body of Leopoldo Emperio, what did you find?

A One stab wound and a lacerated wound at the head and there is a very small puncture wound here.

Q On the right eye?

A Yes, this a stab wound, this is a lacerated wound and this a pinpoint wound.

Q Can you tell the Court what must have caused the wound found above the right eye of the victim?