

TWENTY-THIRD DIVISION

[CA-G.R. CR HC NO. 00990-MIN, February 06, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANASTACIO AGBAY, ACCUSED-APPELLANT.**

DECISION

CONTRERAS, J.:

This is an appeal from the Decision^[1] of the Regional Trial Court, Branch 6 in Iligan City finding appellant Anastacio Agbay guilty beyond reasonable doubt of Murder and sentencing him to suffer the penalty of *Reclusion Perpetua*.

The Facts

On July 12, 2002, an Information^[2] filed with the Regional Trial Court, Branch 6, Iligan City, and docketed as Criminal Case No. 06-9588, charged appellant Anastacio Agbay (hereafter appellant) with Murder, thus:

That on or about June 22, 2002, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with deadly weapons, to wit: a scythe and a bolo, by means of treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, hack and hit one Freddie Agbay thereby inflicting upon him the following physical injuries to wit:

Cardio respiratory arrest Hypovelemia Multiple wounds

which caused his death.

Contrary to and in violation of Article 248 of the Revised Penal Code, with the aggravating circumstances of treachery and evident premeditation.

At the time of the filing of Criminal Case No. 06-9588, appellant was at large and cannot be located; thus, the case was ordered archived by the trial court.^[3]

On May 14, 2009, appellant was arrested. After he was placed into custody, the criminal charge against him proceeded.^[4] Hence, on June 5, 2009, appellant entered a plea of "not guilty" in Criminal Case No. 06-9588.^[5]

Thereafter, trial on the merits ensued.

The facts, as established by the prosecution, are summarized by the Office of the Solicitor General in this wise:

On June 22, 2002, around 1:00 in the morning, the victim, Freddie Agbay, and Rudy Bahian, were walking along the road towards Lambaguhon after their duty at Pillsbury Milling Corporation (PILMICO) where both worked. Some 30 meters from the victim's house, they were waylaid by appellant, Anastacio Agbay, brother of the victim. Suddenly, appellant hacked the victim from behind thrice with the use of a scythe. The victim was first hit on the left shoulder blade, then the right elbow, followed by a blow on the head.

Rudy, who was standing one (1) meter away, attempted to disrupt appellant's attacks on the victim by throwing a dried banana leaf unto appellant. However, appellant directed his assault towards Rudy and tried to hack him as well. Then, Rudy opted to flee and ask for help.

Rudy went to the house of Barangay Kagawad Tranquilino Alivio shouting "Please help me, Yo (tiyo or uncle) because Freddie was hacked." Tranquilino immediately proceeded to the house of Celestino Agbay, father of both the victim and appellant, which was a mere two (2) meters away. Together with Celestino, Tranquilino went to the scene of the crime.

Upon reaching the crime scene, Tranquilino witnessed appellant continuously hacking the victim. For fear of their lives, both Tranquilino and Celestino ran away to call for police help.

It was nearing morning when Tranquilino was able to go back to the scene of the crime with Purok President Jaime Cortes, Peddy Romina and Rudy Alivio. The victim was lifeless then and appellant was gone.

Dr. Elton Jay Canoy, a physician at the Iligan City Health Office, conducted post mortem examination on the victim and concluded that the cause of death of the victim was cardio-respiratory arrest secondary to hypovolemia and observed that the victim sustained multiple incise wounds at the following parts of the body: 1) back of the head, 2) back of the neck, 3) chest bone, 4) right scapular area, 5) right arm, 6) upper lip, and 7) left anterior thigh; all resulting in severe bleeding.^[6]

For his part, appellant advanced the defense of denial and alibi. He claimed that he had nothing to do with the death of the victim Freddie Agbay, his brother, and that he was nowhere near the *locus criminis* when the killing occurred. He maintained that a few days prior to the killing of the victim, he left for Medina, Misamis Oriental to work.^[7] He alleged that he stayed in Medina from the year 2002 until the year 2009 and never had any communication with his family in Iligan City.^[8] Hence, all those years that he stayed in Medina, he had no inkling that his brother Freddie was brutally killed.^[9]

After weighing the evidence presented by both parties, the trial court rendered Judgment^[10] finding appellant guilty beyond reasonable doubt of murder; imposed upon him the penalty of *reclusion perpetua*; and ordered him to pay the heirs of the victim the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P50,000.00 as temperate damages and P30,000.00 as exemplary damages, without

subsidiary imprisonment in case of insolvency.

Hence, the present appeal where appellant claims that the trial court erred in finding appellant guilty beyond reasonable doubt of murder.^[11]

Our Ruling.

Appellants stand charged with, and convicted of, Murder defined and penalized under *Article 248 of the Revised Penal Code*.

In the present appeal, appellant's defense hinges mainly on denial and alibi.

Appellant contends that on the fateful night of the killing of Freddie at Lambaguhon, Iligan City, he was in Medina, Misamis Oriental. He asserts that he stayed in Medina from the year 2002 until the year 2009, and was nowhere near the victim at the time of the latter's killing. Thus, the trial court erred in holding him liable for Freddie's death.

At the outset, the controversy in this case is reduced to one essentially of credibility, a weighing of the evidence of the prosecution against that of the defense. It is well-entrenched in this jurisdiction that findings of facts of the lower court are accorded due respect and weight unless it has overlooked material and relevant points that would have led it to rule otherwise. The time-honored rule is that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between truth and falsehood. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be clearly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.¹² In the present case, the trial court gave credence and probative weight to the eyewitness account of Rudy Bahian and Tranquilino Alivio. After careful consideration of the records of the case, We find no justification to deviate from the findings of the trial court.

It bears to stress that appellant's guilt is primarily anchored on the respective testimonies of Rudy and Tranquilino.

In the instant case, Rudy positively and categorically testified that on that fateful morning of June 22, 2002, appellant, without any provocation, unjustifiably hacked and killed Freddie with a scythe. Rudy's eyewitness account specifically and unerringly points to appellant as the author of the crime charged. He testified, as follows: that at the time of the killing, he was living with Freddie and the latter's family in Lambaguhon, Iligan City; that he worked with Freddie at PILMICO; that on that fateful morning, he and Freddie were on their way home after their shift at PILMICO; that when they were about thirty (30) meters from Freddie's house, appellant waylaid his brother, Freddie, and proceeded to repeatedly hack the latter with a scythe; that he clearly saw appellant hack his brother on the left shoulder blade, then the right elbow followed by a blow on the head because the *locus criminis* is sufficiently illuminated; and that he attempted to stop appellant but when the latter also tried to hack him, he was forced to run and ask for help.^[13]

Rudy's testimony is further corroborated in its material points by another eyewitness, Tranquilino, who likewise categorically identified appellant as Freddie's assailant. He testified, in this wise: that he is a barangay kagawad; that at 1 o' clock in the morning of June 22, 2002, he was at home resting just after arriving from a barangay-sanctioned disco party; that he was disturbed by the calls for help of Rudy, who immediately informed him that Freddie is being hacked; that upon hearing about Freddie's attack, he rushed towards the neighboring house of Celestino Agbay, Freddie and appellant's father, to inform him about the incident; that he and Celestino immediately rushed towards the *locus criminis*; that since the *locus criminis* is well illuminated, he and Celestino saw appellant continuously hack his brother, Freddie; that he and Celestino got scared and ran away to seek police help.^[14]

In both eyewitness accounts, Rudy and Tranquilino specifically and unerringly point to appellant as the author of the crime charged. Accordingly, this Court finds that there is scarcely any contest between appellant's feeble and self-serving asseverations and the prosecution witnesses' categorical and unwavering declaration that appellant committed the crime charged.

It must be reiterated that the respective testimonies of Rudy and Tranquilino were direct, clear, and candid. They were able to identify appellant as Freddie's assailant. They appear to be well acquainted with appellant, being the brother of Freddie and likewise a resident of Lambaguhon, Iligan City. Nothing in the record allows the presence of any distraction that would have disrupted Rudy, as well as Tranquilino's attention during the occurrence of the incident because they have consistently testified that the *locus criminis* was well illuminated thus enabling them to clearly see and identify Freddie's assailant. More importantly, Rudy and Tranquilino never wavered in their identification of appellant as the victim's assailant. Well-settled is the rule that the testimony of a single eyewitness, if credible and positive, is sufficient to support a conviction, even in a charge of murder.^[15]

In contrast, the defenses of denial and alibi proffered by appellants fail to inspire belief. It bears to stress that in this jurisdiction the defenses of denial and alibi are negative and self-serving and are always received with caution — not only because they are inherently weak and unreliable, but also because they are easy to fabricate. They cannot prevail over, and are worthless in the face of, positive identification by a credible witness or the positive and categorical statements of the victim.^[16]

To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit.^[17] This is especially true in this case since We find no motive on the part of Rudy and Tranquilino to prevaricate and testify falsely against appellant. Where there is nothing to indicate that a witness was actuated by improper motives on the witness stand, his/her positive declarations made under solemn oath deserve full faith and credence.¹⁸

The defense of alibi proffered by appellant must likewise fail. It cannot be gainsaid that appellant's alibi is futile, in the wake of the two (2) eyewitness account positively identifying him as the author of Freddie's death. To make matters worse, appellant's alibi is rendered more dubious by the fact that such alibi was sought to

be established by appellant himself, supported only by the testimonies of Celestino Agbay, his father, and Roberto Tagalog, brother-in-law of appellant's common-law wife. In fine, appellant's alibi is not buttressed by uninterested, unbiased persons, who would, in the natural order of things, be best situated to support the tendered alibi. It has been repeatedly observed that alibi is a defense easily fabricated especially among parents, children and relatives, or even among those not so related, so that great caution must be exercised in accepting it.^[19] Furthermore, alibi becomes less plausible as a defense when it is corroborated by relatives whose motive is suspect.^[20] Unfortunately, to Our mind, the respective testimonies of Celestino and Roberto are tainted with bias on account of their close relations to appellant.

Significantly, it is well-entrenched that for alibi to prosper, appellants must prove that they were somewhere else when the crime was committed and that they were so far away that they could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission,^[21] the reason being that no person can be in two places at the same time.^[22]

Regrettably, appellant himself established that Medina is just a mere four (4)-hour drive from Iligan City.^[23] The foregoing, coupled by the fact that appellant appears to have been born and bred in Lambaguhon, Iligan City - where his family still maintains residence, does not preclude the possibility that appellant could have committed the felony. Notably, appellant took flight and went into hiding immediately after the killing of Freddie.^[24] In fact, a warrant of arrest against appellant was issued on July 24, 2002,^[25] but said warrant was never served because appellant had already absconded and was already at large. It was only on May 14, 2009, that appellant was taken into custody.^[26] For a considerable period of time, appellant disappeared from view, until the long arm of the law caught up with him. As pointed out by the trial court, "the court is not convinced that he did not know about the death of Freddie. The accused was not telling the truth when he testified [that] he did not contact his wife or any member of his family for a span of seven years. Taking into consideration that the distance between Medina, Misamis Oriental and Iligan City is less than 200 kilometers, he could have easily gone home to visit his family if he wanted to. To the mind of the court, the accused did not intend to return to Iligan and purposely went into hiding for several years because he knew that there was a standing warrant of arrest issued against him."^[27] Indeed, in a catena of cases, the flight of the accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence." Flight evidences guilt and guilty conscience: the wicked flee, even when no man pursues, but the righteous stand fast as bold as a lion.^[28]

Finally, this Court agrees with the trial court in appreciating treachery as a circumstance qualifying the killing of the victim.

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden and