

FIRST DIVISION

[G.R. NO. 158203, March 31, 2005]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICO CALUMPANG
AND JOVENAL OMATANG, APPELLANTS.**

DECISION

QUISUMBING, J.:

On appeal is the Decision^[1] dated November 29, 2002, of the Regional Trial Court of Dumaguete City, Branch 36, in Criminal Case No. 10152, convicting appellants Rico Calumpang and Jovenal Omatang of two counts of murder and sentencing each of them to suffer the penalty of reclusion perpetua, and ordering them to pay damages to the heirs of the victims.

Appellants were charged under an Information which reads:

That on or about July 14, 1991 at 7:00 o'clock in the evening, more or less, at Pamplona Coconut Plantation, Pamplona, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault, stab and hack ALICIA CATIPAY and SANTIAGO CATIPAY with the use of bolos, with which the said accused were then armed and provided, thereby inflicting upon ALICIA CATIPAY, the following injuries:

1. Hacked Wound -located at the Right Temporal area involving the temporal bones 4 inches in length
2. Hacked Wound -located at the left occipital area involving the occipital bone and the brain tissues
3. Incised Wound - located at the medial part of the left hand
4. Incised Wound - located at the medial part of the left wrist joint
5. Incised Wound - located at the middle medial part of the left forearm

and upon SANTIAGO CATIPAY, the following injuries:

1. Hacked Wound -located at the left side of the face extending from the ear to the lateral part of the orbital bones.

2. Stabbed Wound -located at the antero-lateral part of the left chest wall measuring 4 inches in depth 2 inches in width
3. Stabbed Wound -located at the abdomen 2 inches above the navel protruding the intestines
4. Stabbed Wound -located at the sternal area 3 inches in depth and 1 inch in width
5. Stabbed wound -located at the left lateral part of chest wall 6 (six) inches below the armpit 5 inches in depth, 3 inches in width
6. Incised Wound -located at the left dorsal part of the little and the ring finger.

which wounds or injuries caused the death of said ALICIA CATIPAY and SANTIAGO CATIPAY shortly thereafter.

Contrary to Article 248 of the Revised Penal Code.^[2]

On arraignment, appellants entered a plea of not guilty. Thereafter trial ensued.

The prosecution presented three witnesses: Magno Gomez, Dr. Rogelio Kadili, and Alexander Ebias.^[3] Their testimonies constitute the version of the case according to the prosecution's point of view.

Magno Gomez testified that around 6:30 p.m. of July 14, 1991, he was at Talay, Pamplona, Negros Oriental, walking home to Sitio Makapa, Mangoto, Pamplona. He was with his neighbors, the spouses Santiago and Alicia Catipay. On their way, they stopped at the store of Ana Andagan, located near the Pamplona Coconut Plantation, and decided to have some beer. Magno added that Santiago saw appellants drinking tuba inside Ana's store, and offered them a glass of beer, but appellants refused. Santiago just drank the glass of beer he was offering.^[4] After that, Magno and the spouses left the store and took a shortcut through the coconut plantation.

Magno saw appellants follow them. He suspected that appellants were planning something sinister because they followed too closely and were concealing something at their backs. Magno cautioned Santiago, but the latter just told him not to worry about appellants.^[5] Magno and the spouses simply continued walking for another half-kilometer until they reached the narrow waterway that let water from the river into the plantation. Magno removed his slippers and started to cross ahead of the spouses. Santiago and Alicia stayed slightly behind because Santiago had to remove his shoes.^[6]

When Magno had crossed five feet of the waterway, Magno turned around to wait for his companions and saw appellants attacking the spouses. With a bolo, appellant Calumpang hacked Santiago on the head and stabbed his abdomen. At the same time, appellant Omatang attacked Alicia.^[7]

Scared that appellants would also attack him, Magno ran away. After 50 meters, he reached Alexander Ebias's house. He asked Alexander for a torch then continued walking towards Sitio Makapa, Mangoto, Pamplona. After a kilometer, however, he saw the house of his cousin Rolando Retada.^[8] He decided to spend the night there.^[9]

Magno further testified that he did not tell either Alexander or Rolando about what he saw at the waterway because he was afraid. Magno added that he left Rolando's house around 6:30 the next morning to report the incident at the municipal hall in the *poblacion* of Pamplona, but was arrested for questioning by members of the Philippine Army on his way out of the store of Picio Yan, where he had to attend to some personal business. Magno declared that he did not report to them that appellants killed the spouses.^[10] It was only after he was turned over to the police authorities of Pamplona and brought to the police station that he reported what he saw the day before at the waterway in the plantation.^[11]

Dr. Rogelio M. Kadili, Municipal Health Officer of the Rural Health Unit, Pamplona, Negros Oriental, testified that he conducted the post-mortem examination of the victims at around 7:00 a.m. on July 15, 1991.^[12] The results of his examination showed the wounds on Santiago and Alicia Catipay as follows:

[Santiago Catipay]

1. Hacked Wound - located at the left side of the face extending from the ear to the lateral part of the orbital bones
2. Stabbed Wound - located at the antero-lateral part of the left chest wall measuring 4 inches in depth 2 inches in width
3. Stabbed Wound - located at the abdomen 2 inches above the navel protruding the intestines
4. Stabbed Wound - located at the sternal area 3 inches in depth and 1 inch in width
5. Stabbed wound - located at the left lateral part of chest wall 6 (six) inches below the armpit 5 inches in depth, 3 inches in width
6. Incised Wound - located at the left dorsal part of the little and the ring finger;^[13]

[Alicia Catipay]

1. Hacked Wound - located at the Right Temporal area involving the temporal bones 4 inches in length
2. Hacked Wound - located at the left occipital area involving the occipital bone and the brain tissues
3. Incised Wound - located at the medial part of the left hand

4. Incised Wound - located at the medial part of the left wrist joint

5. Incised Wound - located at the middle medial part of the left forearm.^[14]

Dr. Kadili likewise identified the death certificates of Santiago and Alicia Catipay which showed the cause of death as hemorrhage shock.^[15]

Alexander Ebias, who lives near the waterway at the Pamplona Coconut Plantation, testified that around the time Santiago and Alicia were murdered, he heard noise from the direction of the waterway, but did not do anything to investigate. Moments later, he heard Magno calling from outside the house. Magno wanted some dried coconut leaves to make a torch. He gave Magno what he wanted then asked about the noise from the waterway. Magno said he did not know.^[16]

For its part, the defense contradicted the version of the prosecution and presented Analyn Andagan, Conchito Nilas,^[17] Joseph Rabor and appellants to prove that appellants were nowhere near the waterway at the precise time that Santiago and Alicia Catipay were murdered.

Analyn Andagan testified that on July 14, 1991, she was tending the store of her mother, Ana Andagan, at Talay, Pamplona, Negros Oriental. Around 3:00 p.m. appellants Calumpang and Omatang arrived with one Conchito Nilas. The three ordered a gallon of *tuba* and started drinking. Around 6:30 p.m., Magno and the spouses arrived. They each had one bottle of beer and immediately left after finishing their beers. Analyn further testified that appellants did not follow Magno, Santiago and Alicia when the three left her mother's store. Appellant Omatang stayed until 7:00 p.m. and continued talking with his two companions, appellant Calumpang and Conchito Nilas. He left when his 12-year-old nephew, defense witness Joseph Rabor, came to fetch him for supper. Appellant Calumpang, for his part, stayed until 8:00 p.m. and helped her close the store. He walked home with her and Conchito Nilas.^[18]

Conchito Nilas's testimony dovetailed Analyn Andagan's testimony. He added that he saw his friend appellant Calumpang go inside the latter's house.^[19]

Joseph Rabor corroborated Analyn's testimony that he fetched his uncle, appellant Omatang, from the store around 7:00 p.m. upon the order of his mother. He added that he and appellant Omatang slept in the same room that night.^[20]

Appellant Omatang likewise corroborated Analyn's testimony that he left around 7:00 p.m. with Joseph. He also claimed he had nothing to do with the killing of the spouses and averred that he was at home in the same room with Joseph, sleeping, when the spouses were murdered. He claimed that he learned of the murders only upon his arrest the next day.^[21]

Appellant Calumpang vehemently denied killing the spouses. He declared that Santiago and Alicia had no known enemies and were good people. He corroborated all of Analyn's testimony, and added that Magno and Santiago were arguing when the two came into the store. Appellant Calumpang likewise averred that after helping Analyn close the store, he went home, ate supper, and went to bed.^[22]

In addition to the above witnesses, the defense presented Rolando Retada and Visitacion Rabor. Rolando confirmed that Magno spent the night at his house on July 14, 1991, and left very early the next morning without drinking coffee. Visitacion Rabor, on the other hand, testified that she overheard Santiago berating Magno when they passed her store around 6:30 p.m. on July 14, 1991. Santiago was mad at Magno because Magno did not want to help Santiago clean the dam at Mangoto, Pamplona, as Magno was supposed to. She added that Santiago continued calling Magno useless at Ana's store until Alicia prevailed upon Santiago to go home. When Santiago and Alicia left, Magno followed them.^[23]

The trial court gave credence to the testimony of Magno Gomez and accepted his account of the murders. Said the trial court:

The testimony of the lone eyewitness describing vividly the events prior, during and after the killing offers a complete picture of the incident that only an eyewitness could supply. Moreover, the actuation of witness Magno Gomez of not telling other people of the crime he just experience[d] for fear of his life, and his coming back to town after sunrise. Even declining Retada's offer of a cup of coffee [and] to report to the authorities the incident that he witnessed the night before, is consistent with human behavior and should be accorded great respect and given more weight. (sic) His conduct after the incident added more credibility to his testimony. As to the fear he exhibited after the killing of the spouses, the Supreme Court has this to say "there is no standard form of behavior when one is confronted by a shocking incident especially if the assailant (assailants in this case) is physically near. No standard form of behavioral response, quite often said, could be expected from everyone when confronted with a strange, startling or frightful occurrence."^[24]

In its judgment dated November 29, 2002, the trial court convicted appellants as follows:

WHEREFORE, in view of the foregoing, each accused, RICO CALUMPANG and JOVENAL OMATANG are hereby sentenced to suffer imprisonment of the maximum penalty of *reclusion perpetua*, and further ordered to indemnify jointly and severally the heirs of the spouses Santiago and Alicia Catipay the amount of PhP100,000.00, and to pay moral damages in the amount of PhP100,000.00. The bail bond posted by both accused for their temporary liberty during the trial of this case is hereby cancelled.

SO ORDERED.^[25]

Hence, this appeal.

Appellant now assigns the following as errors:

I

THE TRIAL COURT ERRED IN BELIEVING THE TESTIMONY OF MAGNO GOMEZ SINCE HE WAS A PRINCIPAL SUSPECT HIMSELF. HIS TESTIMONY