

## SECOND DIVISION

[ G.R. No. 139693, January 24, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FREDDIE CATIAN, SAMUEL SUMALPONG AND ROGELIO  
CALUNOD, ACCUSED-APPELLANTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

FREDDIE CATIAN, SAMUEL SUMALPONG AND ROGELIO CALUNOD were convicted of murder by the trial court<sup>[1]</sup> for the violent death of one Willy Ondo for which they were each sentenced to *reclusion perpetua* and to jointly indemnify the heirs of the victim P50,000.00 as death indemnity, P50,000.00 as actual damages and to pay the costs of suit.

Acting on an earlier report that Willy Ondo was missing since 27 December 1996 and was already believed to be dead, Barangay Captain Admir Sabado<sup>[2]</sup> sounded the alarm on his *tanods* on 2 January 1997 and called them to search for Willy. Their efforts would have been futile had it not been for the chance discovery on 7 January 1997 of Willy's skeletal remains by a child who was pasturing his cow near a peanut plantation in Barangay Poo, Lazi, Siquijor. Upon hearing the information, Barangay Captain Sabado immediately notified the police and went to the site where the cadaver was found. With a throng of onlookers, Sabado saw the disjoined bones of Willy scattered around. Sabado also noticed marks of a recent bonfire near the vicinity. Those who knew the victim, particularly his uncle Feliciano Duque, recognized the remains as those of Willy because of a stainless steel found on his leg which was surgically inserted to support a fractured leg as a result of an accident.

Dr. Franco Arcamo, the Medical Officer of Lazi, examined the skeletal remains of Willy Ondo and confirmed that there was no noticeable decomposition as the body had probably been feasted on by animals roaming the area. Dr. Arcamo also found no traces of bloodstains in the remains; consequently, he surmised that the victim could have been dead five (5) to seven (7) days earlier as the bones were already dried up with no foul odor. In his expert opinion, the principal cause of death was asphyxia secondary to burning.<sup>[3]</sup>

Jeofrey Abe<sup>[4]</sup> narrated that on 27 December 1996 at 9:00 o'clock in the evening he went out of his house to watch a television show at the residence of a certain Anselmo Ymbol. A couple of hours later or at about 11:00 o'clock that evening Jeofrey returned home traversing the same route he took earlier. On the way home, he chanced upon a group of three (3) persons whom he readily recognized as Freddie Catian, Samuel Sumalpong and Rogelio Calunod. The three (3) were "ganging up" on a man whom he also identified as Willy Ondo. Jeofrey easily recognized them as they were all his barriomates and the road was not that dark

despite the lateness of the hour because it was a moonlit night.

From a distance of about twelve (12) meters, Jeofrey saw Catian repeatedly striking Willy with a "chako"<sup>[5]</sup> on the head, causing Willy to fall on his knees. Calunod seconded by striking the victim with a piece of wood on the face. When Willy finally collapsed, Sumalpong picked him up, carried him over his shoulder, and walked away carrying him to an undisclosed destination. Overcome with fear, Jeofrey went running towards home.

Jeofrey admitted that he did not inform anybody about the startling occurrence that he witnessed for fear that the news would spread around and the assailants would hunt him down. In fact, he did not dare divulge anything to the police or to his relatives even when he knew that the barangay *tanods* were looking for the victim. Actually, according to him, he was waiting for a more opportune time to tell the family of the deceased, which opportunity came when the victim's sister Myrna Ondo and her husband arrived from Iligan to attend the wake of their departed kin. At the wake, Jeofrey intimated to Myrna that he had something to tell her but would do so only at the police station because Sumalpong, one of the accused, kept on following him. Jeofrey waited until Sumalpong had gone home before he and Myrna went to the Lazi police station to execute an affidavit. That affidavit which was dated 10 January 1997 contained an eyewitness account of the dreadful event of 27 December 1996.

Teodosia Daque also testified that on 3 January 1997 she and some companions were walking back to Barangay Poo after attending a town fiesta in Capalasanan when they saw by the wayside a dirty blood-stained white t-shirt which they recognized to be that of Samuel Sumalpong. The particular t-shirt was familiar to her because on many occasions she had seen Sumalpong wearing the same t-shirt everytime the latter would gather tuba in his coconut plantation.

Marlito Patadlas, testifying also for the prosecution, recalled that before 27 December 1996, or specifically on 18 December 1996, while he and his friends were playing billiards, Rogelio Calunod barged into the room. He was bleeding on the face. When asked what happened to him, Rogelio replied that he had a spat with Willy Ondo who hit him on the face with a piece of stone.

On the other hand, accused-appellant Freddie Catian vigorously denied the charges against him, explaining that on the day that the incident allegedly took place he was working as a laborer on a project at the Capalasanan public market. When his work ended at 5:00 o'clock in the afternoon of that day, he immediately proceeded home. At around 8:00 o'clock in the evening, after some household chores, he retired for the evening. Freddie denied having met his co-accused Samuel Sumalpong and Rogelio Calunod on 27 December 1996, much less had he been informed by the accused Calunod of his quarrel with Willy Ondo. In his account, Freddie stated that he learned about the death of Willy only on 10 January 1997 when he was arrested by the police. Freddie further testified that although he and his two (2) co-accused were blood relatives they were not particularly close because it was not his habit to visit them in their place. He opined that perhaps the reason why Jeofrey implicated him in the murder was because Jeofrey being an inveterate gambler, was bribed into accusing anybody and he being from Capalasanan was a most convenient fall guy.<sup>[6]</sup>

On his part, accused Samuel Sumalpong<sup>[7]</sup> testified that at 7:00 o'clock in the morning of 27 December 1996 he was gathering *tuba* when Jeofrey Abe, Willy Ondo and two (2) others went to his place to buy *tuba*. After giving them five (5) gallons of the beverage, he went to the farm of a certain Angot to plant rice, afterwhich, he went back home to gather some more tuba. He went home at about 6:30 in the evening and took his supper half an hour later. He spent the night in his house with his wife and children and never left until dawn of the following day to gather *tuba*. He also denied having met his co-accused on 27 December 1996 but remembered having had an encounter with them during the town fiesta of Barangay Poo on 17 November 1996. Unlike Catian, he heard about the death of Willy Ondo on 3 January 1997. He disowned the bloodied t-shirt which was identified to be his by Teodosia Daque who claimed to have found it on the road.

In his defense, accused Rogelio Calunod vigorously insisted that he was working in his farm from morning until 6:00 o'clock in the evening of 27 December 1996. According to him, after finishing his work in the farm he returned home and never left his house until the following morning. Like his other co-accused, he also disavowed having seen them nor talked to them on 27 December 1996. He admitted that Willy Ondo boxed him on 17 November 1996 which prompted him to report the matter to the Barangay Captain. Despite what the victim did to him, it never crossed his mind to take revenge, much less kill Willy.<sup>[8]</sup>

The defense also presented Merlyn Sumalpong,<sup>[9]</sup> wife of accused Samuel Sumalpong, and Lily Calunod,<sup>[10]</sup> sister of accused Rogelio Calunod, whose testimonies corroborated the claim of their accused kin that on the day of the supposed killing of Willy Ondo they were at home with their respective families and never left their houses until the following morning.

The trial court gave full credit to the testimony of prosecution witness Jeofrey Abe, characterizing his testimony as credible, unwavering, categorical and straightforward. As to the alleged inconsistencies in his testimony, the trial court opined that they were inconsequential and minor which, far from weakening its veracity, bolstered and strengthened it instead. The trial court further emphasized that the defense of alibi interposed by the accused which, aside from being inadequately corroborated, also failed miserably to measure up to the required quantum of evidence considering that the accused were not able to prove that it was physically impossible for them to be at the scene of the crime at the time the killing took place.

On the matter of the modifying circumstances, the trial court found that the killing was attended by treachery, evident premeditation, cruelty and ignominy, and that there was conspiracy among the accused. As the trial court explained, there is no doubt that there was treachery as the three (3) accused ganged up on their quarry while the latter was helpless and defenseless, obviously resorting to nighttime to facilitate the commission of the crime and where no one could come to the rescue of the victim. There was evident premeditation as the killing was well planned and perpetrated in such a way that there could be no obstacle or impediment to the accomplishment of their purpose. The killing was done with cruelty and ignominy by burning the victim or boiling his remains probably to erase any trace of their criminal act.

On the angle of conspiracy, which the trial court also found to have attended the commission of the crime, there was clearly a unity of purpose when they ganged up on Willy Ondo; consequently, the act of one is considered the act of all for which they must all be equally liable.<sup>[11]</sup>

Accused-appellants assail before us the decision of the trial court, arguing that it erred (a) in finding accused-appellants guilty as charged despite the weakness of the prosecution evidence, particularly the testimony of Jeofrey Abe, and (b) in appreciating the qualifying circumstances of treachery and evident premeditation as well as cruelty and ignominy.

Accused-appellants contend that the failure of Jeofrey Abe to reveal to the authorities as soon as possible or to the nearest relatives of the victim what he (Jeofrey) allegedly saw on the night of 27 December 1996 irreversibly sullied his credibility. They stress that if indeed Jeofrey saw and knew the assailants, then why did he not even volunteer to pinpoint to the barangay *tanods* the place where the alleged incident took place. More importantly, according to accused-appellants, the testimony of the witness that at around 9:00 o'clock on the night of the killing he watched *Power Rangers* on television in the house of Anselmo Ymbol was subsequently belied by the latter who not only doubted Abe's presence in his house but also stated that *Power Rangers* was shown at 7:00 o'clock in the evening and not at 9:00 o'clock as declared by the witness.

Accused-appellants' quibbling over inconsequential matters should not be countenanced. It is of common knowledge that the initial reluctance and vacillation of a witness to volunteer information is more telling of his fear of being embroiled in a criminal investigation and expose himself and his family to reprisal than an intent to suppress the truth or muddle an investigation. Delay in reporting the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where such witness gives a sufficient explanation. For the Court to unreasonably discredit a witness' account for the reason that it was delayed is to permanently seal the lips of reluctant and timorous witnesses.<sup>[12]</sup> Despite the searing examination by the defense, Abe satisfactorily explained himself when he said-<sup>[13]</sup>

Q: As a matter of fact you keep (sic) the information to yourself, you did not tell anybody?

A: I did not tell anybody, sir, because the person I might tell the incident might spread the rumor and they might hear it and they might escape. They might take revenge on me.

Q: Did you know that after December 27, 1996, the relatives of Willy Ondo as well as the Barangay Captain of the place were looking for the body of Willy Ondo?

A: Yes, sir.

Q: As a matter of fact you yourself was one of those who were looking for the body of Willy Ondo?

A: I did not go with those who were looking for the body of

Willy Ondo, sir. I just keep (sic) myself at home because I was afraid I was scattered (sic) of what I have seen.

Q: That's why you did not volunteer to tell the information to the Barangay Captain or to the relatives of Willy Ondo of what you have seen?

A: No, sir.

Q: In fact when the body of Willy Ondo was already recovered, you still did not inform anybody of what you have seen?

A: I did not tell anybody because I waited for the brothers and sisters of Willy Ondo whom I would tell the incident which I have seen.

The inanity of accused-appellants' defensive posture becomes more pronounced with each passing argument. Now they assert that Jeofrey was less believable merely because some other television program, and not *Power Rangers*, as he claims was being shown at the time he was supposed to be watching television at 9:00 o'clock in the evening of 27 December 1996. Being battered by the defense counsel on the matter, Jeofrey explained that he was so riveted to the television program *Power Rangers* that he failed to keep track of the title of the other programs or of the exact time they were actually shown. The triviality of the alleged "inconsistencies" can hardly affect either the substance or the veracity and weight of Jeofrey Abe's testimony which, on the contrary, can serve to reinforce rather than weaken his credibility.<sup>[14]</sup>

The fact that Ymbol failed to confirm the presence of Jeofrey in his house on the night of 27 December 1996 does not cast suspicion on Jeofrey's testimony. The uncertainty of Ymbol's denial of Jeofrey's presence in his house became apparent when Ymbol clarified that, with the exception of a few, he could not recall the identity of the twenty (20) or so individuals who were also watching television at that time. He was unsure whether Jeofrey was among those viewing the television. Not being sure of Jeofrey's presence does not discount the possibility that he was in fact present at the place.

The alibi of accused-appellants cannot persuade this Court especially so since they failed to prove by clear and convincing evidence that it was impossible for them to be at the scene of the crime at the time it was committed. Nonetheless, positive identification by the principal eyewitness, in conjunction with other evidence for the prosecution, i.e., blood-stained shirt found and identified by other witnesses, leaves no room for doubt that the three (3) accused-appellants authored the gruesome murder of Willy Ondo.

The court *a quo* appreciated treachery for the reason that the three (3) accused-appellants "ganged up on their quarry while the latter was helpless and defenseless and committed on a nighttime x x x x" <sup>[15]</sup> It correctly took into account the qualifying circumstance of treachery although for the wrong reasons. In order that treachery may be appreciated the following requisites must concur: (a) the culprit employed means, methods and forms of execution which tended directly and specially to insure the offender's safety from any defensive or retaliatory act on the