

## EN BANC

[ G.R. No. 146100, November 13, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOHNNY LOTERONO @ "JUN", ACCUSED-APPELLANT.**

### DECISION

#### **YNARES-SANTIAGO, J.:**

Johnny Loterono, Eric Cacho, Esmar Dato-on, Jonel Daprinal, Larry Anota and Roie Babagonio, were stay-in construction workers at the Sarabia Manor Hotel and Convention Center in Iloilo City. In the early dawn of August 26, 1998, Roie Babagonio was repeatedly stabbed in the chest with a single-bladed weapon locally known as a pinute. Babagonio's cries for help roused Eric Cacho who slept in the same room as the victim but even as he saw the attacker assaulting Babagonio, he was forced to flee when the assailant turned on him. Esmar Dato-on and Larry Anota who were wakened by iron bars being unloaded later came upon the already dead victim lying face up in the stairway with multiple stab wounds on the chest.

For the killing of Roie Babagonio, Johnny Loterono @ "Jun" was charged with Murder. Upon being arraigned on October 7, 1998, accused with the aid of counsel entered a plea of "Not guilty."<sup>[1]</sup> However, during the pre-trial conference on November 4, 1998, accused admitted stabbing the victim to death in self-defense. In view thereof, the pre-trial stage was declared terminated and the court a quo directed that the reverse order of trial shall be followed, setting the hearing of the defense on December 2, 9 and 16, 1998.<sup>[2]</sup>

During the scheduled hearing on December 2, 1998, counsel for accused manifested in open court the desire of his client to withdraw his former plea of not guilty and to enter a plea of guilty to the lesser offense of Homicide. On account thereof, the scheduled hearing was cancelled to give the private complainant time to consult his family on the matter.

On December 9, 1998, counsel for the accused manifested in open court the desire of accused to enter into a plea bargain of the offense from Murder to Homicide, to which private complainant and the public prosecutor expressed their conformity. The prosecutor favorably recommended the offer of accused to plead guilty to the lesser offense of Homicide to the City Prosecutor, who approved the same with the conformity of the parents of the victim.

Upon being re-arraigned on December 16, 1998, accused entered a plea of guilty to the crime of Homicide and the promulgation of the sentence was set for January 5, 1999. However, on January 4, 1999, the day before the scheduled promulgation, counsel for the accused filed a Motion to Withdraw Plea of Guilty. Consequently, accused entered a plea of "Not guilty" on January 22, 1999<sup>[3]</sup> to the charge of Murder in an Information<sup>[4]</sup> which alleges-

That on or about the 26th day of August 1998 in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, herein accused, armed with a knife, with deliberate intent and without justifiable motive, with treachery, evident premeditation and with a decided purpose to kill, did then and there willfully, unlawfully and criminally stab, hit and wound Roie Babagonio with the said knife, which the said accused was provided at the time, thereby causing upon said Roie Babagonio injuries on the vital parts of his body with caused his instantaneous death.

CONTRARY TO LAW.

The case, which was docketed as Criminal Case No. 49652, thereafter proceeded to trial. After trial, the court a quo rendered judgment imposing upon the accused the supreme penalty of death thus:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Sec. 6 of Republic Act 7659 amending Art. 248 of the Revised Penal Code and with the qualifying circumstance of treachery and with evident premeditation attendant in the commission thereof, with the latter being considered a generic aggravating circumstance for purposes of determining the imposable penalty hereby sentences the accused Johnny Loterono to the supreme penalty of DEATH by lethal injection.

Let the entire records of this case be elevated to the Honorable Supreme Court for automatic review pursuant to Sec. 22 of Republic Act 7659 amending Art. 47 of the Revised Penal Code.

SO ORDERED.

On automatic review to this Court, accused-appellant alleges:

I

THAT THE TRIAL COURT ERRED IN GIVING FULL WEIGHT TO THE TESTIMONIES OF ERIC CACHO, JOENIL DAPRINAL, LARRY ANOTA AND ESMAR DATO-ON WHOSE TESTIMONIES ARE NOT ONLY CONTRARY TO HUMAN BEHAVIOR, EXPERIENCE COMING FROM BIASED SOURCES BUT ALSO HIGHLY IMPROBABLE.

II

THAT THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF OSCAR JARO WHO IS IMPARTIAL, DISINTERESTED AND HAS NO MOTIVE OR REASON TO TELL A LIE.

III

THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER AND SENTENCING HIM [TO] THE SUPREME PENALTY OF DEATH BY LETHAL INJECTION.

IV

## THAT THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED.

The prosecution's version of the incident narrates that on August 25, 1998 at around 10:00 p.m., Jonel Daprinal, a laborer at the Sta. Ana Construction Company located at Gen. Luna Street, Iloilo City, was at the company's compound together with his co-workers, herein accused-appellant and Rex Penduday. They were drinking liquor when two of their co-workers, Esmar Dato-on and Larry Anota, passed by. Accused-appellant asked Esmar and Larry to join them but the two declined saying they were going to sleep. Esmar and Larry then went to the second floor of the Sarabia Manor Hotel, a building project of Sta. Ana Construction.<sup>[5]</sup>

During the drinking session, Jonel heard accused-appellant say "I have a plan." He then took out a knife tucked in his waist and showed it to Jonel and Rex. They finished drinking around 11:00 p.m. Accused-appellant, Jonel and Rex then proceeded to the Sarabia Manor Hotel to sleep. Rex slept on the first floor while accused-appellant and Jonel went to their quarters on the third floor. When they were on the third floor, accused-appellant told Jonel he wanted to take a walk. Accused-appellant went to the fourth floor where Eric Cacho and the victim, Roie Babagonio, were supposed to be sleeping.<sup>[6]</sup>

At 12:10 in the morning of August 26, 1998, Eric Cacho was awakened by the sound of a person crying for help. He rose from his bed and went to the other side of the floor where the shout was coming from. There, Eric saw accused-appellant stabbing the victim Roie Babagonio twice on the chest.<sup>[7]</sup>

Eric testified that he was about three (3) to four (4) meters away from accused-appellant, whom he recognized because the room was lighted. Eric saw the victim lying on his back on a makeshift bed while he was being stabbed by accused-appellant.<sup>[8]</sup> When Eric admonished accused-appellant, the latter turned upon him and chased him.<sup>[9]</sup> Out of fear, Eric ran home and narrated the whole incident to his wife.<sup>[10]</sup>

Meanwhile, Esmar and Larry, who earlier declined accused-appellant's invitation to drink, were awakened by the sound of iron bars being unloaded. Esmar saw accused-appellant with blood on his hands, shirt and short pants. Accused-appellant even wiped some of the blood on the building's wall and post. He hurriedly went down the building after telling Esmar that he was going home.<sup>[11]</sup>

Sensing foul play, Esmar and Larry rose from their bed to look for their cousin and co-laborer, Jonel. Esmar went to the third floor and saw Jonel sleeping. He then followed Larry upstairs to the fourth floor. Esmar saw Larry staring at the lifeless body of the victim lying at the middle of the stairs. Esmar and Larry went downstairs and reported the incident to the watchman, Voltaire. While Larry and Voltaire went upstairs, Esmar went to the main gate and saw accused-appellant with his shirt and short pants wet. It was then that Larry and Voltaire arrested accused-appellant. The security guards arrived later and one of them reported the incident to the police authorities.<sup>[12]</sup>

Two (2) police officers arrived and went directly to the crime scene where they recovered a scabbard,<sup>[13]</sup> which Esmar identified as belonging to accused-appellant, and a bloodstained knife.<sup>[14]</sup>

Medical examination revealed that the victim sustained ten (10) stab wounds, six (6) being fatal. The wounds were inflicted using a knife while the victim was lying on his back. The cause of death was hemorrhage due to multiple stab wounds.<sup>[15]</sup>

On the other hand, accused-appellant denied stabbing Roie Babagonio. According to him, Roie Babagonio was his friend, a fact admitted by the prosecution witnesses, and he had no reason to kill him;<sup>[16]</sup> that on August 26, 1998 at around 12:00 midnight, while he was sleeping on the fourth floor of the building that they were constructing, he was awakened by Oscar Jaro, a fellow laborer at the construction project because something happened near the stairs of the fourth floor. Oscar asked him to go to the place where there were many people and when they arrived there he saw the body of Roie Babagonio. Although there were many people, he never saw witness Eric Cacho.

He further testified that when he saw the body of Babagonio full of blood, he felt bad and so he looked for water to drink on the fourth floor. Finding none, he proceeded to the ground floor to look for drinking water. He used both hands in drinking.<sup>[17]</sup> It was after he drank water that a policeman arrested him. He tried to inquire why he was being arrested and was told that he would be investigated.

In his testimony, he denied that while he was drinking with Jonel Daprinal, he revealed to the latter that he had a plan.<sup>[18]</sup> He averred that the knife with a scabbard wrapped in red and green electrical tape is owned by Eric Cacho because he saw it tucked on his waist. Accused-appellant further denied that while they were on the third floor, he was holding the knife with the scabbard.<sup>[19]</sup> He claimed that the wound on his left arm was caused by a G.I. sheet they carried.<sup>[20]</sup> He also explained that he entered a plea of guilty because at that time, he did not know the address of his witness and was advised by his lawyer to admit the killing of the victim, but later his father was able to locate and contact his witness, Oscar Jaro. It was then that he changed his plea to that of "Not guilty."<sup>[21]</sup>

The first and second assigned errors involve the credibility of the witnesses. In the first, accused-appellant claims in sum that the testimonial declaration of the prosecution witnesses is unworthy of belief while in the second he faults the trial court for not giving credence to the testimony of his lone witness.

With regard to the witnesses for the prosecution, he avers that Jonel Daprinal is the second cousin of the victim Roie Babagonio.<sup>[22]</sup> Witnesses Esmar Dato-on and Larry Anota are the second cousins of Jonel Daprinal<sup>[23]</sup> while Eric Cacho is the husband of Celina Aprong, who is also a second cousin of Jonel Daprinal.<sup>[24]</sup> In attacking the credibility of eyewitness Eric Cacho, he claims that Cacho's testimony lacks sincerity because he failed to immediately report the stabbing incident to the police authorities. He also faults Cacho for failing to mention to his wife the victim's name when he initially confided the incident to her. As to witnesses Daprinal, Dato-on and Anota, accused-appellant claims that as second cousins of the victim, "they have an inclination to put color and exaggerate their testimonies."<sup>[25]</sup>

We disagree.

Contrary to accused-appellant's claim that prosecution eyewitness Eric Cacho failed to mention the victim's name to his wife, he in fact specifically told her that Roie,

the victim, was stabbed.<sup>[26]</sup> His failure to immediately report the incident to the police was sufficiently explained. He was afraid.<sup>[27]</sup> It has been time and again held that fear of reprisal and death threats are accepted as adequate explanations for the delay in reporting crimes.<sup>[28]</sup>

The further allegation of accused-appellant that the testimonies of prosecution witnesses Esmar Dato-on, Larry Anota and Jonel Daprinal are biased because they are related to the victim and to each other is likewise unpersuasive. As we pointed out in *People v. Gallarde*,<sup>[29]</sup> “[m]ere relationship of a witness to a party, without more, cannot impair the witness’ credibility.<sup>[30]</sup> On the contrary, a witness’ relationship to a victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.<sup>[31]</sup> It is settled that in the absence of a showing of improper motive on the part of the witnesses, their testimonies are not affected by their relationship with the victim and must be accorded full faith and credit.”<sup>[32]</sup>

Eric Cacho was an eyewitness to the stabbing. He positively identified accused-appellant as the assailant who not only stabbed the victim but also turned upon him when he tried to intervene. The identification was rendered all the more positive by the lighted fifty-watt bulb inside the room where the incident happened, which was further augmented by light coming from the electric posts outside.<sup>[33]</sup> Accused-appellant was likewise seen shortly after the incident by Esmar Dato-on with bloodied hands, shirt and shorts wiping the blood at the cemented wall and post.<sup>[34]</sup> Dato-on’s account was corroborated by Larry Anota who was with him at the time.<sup>[35]</sup> Anota further testified that the next time they saw accused-appellant after informing the security guard of the incident, the latter was wet with little traces of blood, indicating that he tried to wash off the bloodstains.<sup>[36]</sup>

In contrast to the overwhelming evidence pointing to him as the person who killed Roie Babagonio, all accused-appellant could offer in his defense is a denial. However, as has often been said “[T]he defense of denial, like alibi, is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily.”<sup>[37]</sup> Suffice it to state in this regard that the positive identification of the accused, when categorical and consistent without any ill motive on the part of the prosecution witnesses, prevails over alibi and denial which are negative, self-serving and undeserving of weight in law.<sup>[38]</sup>

All told, the Court finds no reason to reverse the ruling of the court a quo insofar as the crime was committed. The core issue raised by accused-appellant centers on the credibility of witnesses. The doctrinal rule is that findings of fact made by the trial court, which had the opportunity to directly observe the witnesses and to determine the probative value of the other testimonies are entitled to great weight and respect because the trial court is in a better position to assess the same, an opportunity not equally open to the appellate court.<sup>[39]</sup> What remains to be determined is the propriety of the penalty imposed on accused-appellant.

This brings us to the two (2) remaining errors assigned pertaining to the imposition of the death penalty upon the accused-appellant, upon a finding that the killing of