

## EN BANC

[ G.R. No. 137281, April 03, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VIRGILIO LUCENA Y SANTIAGO, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

For the fatal hacking of Urbano U. Dulay and Lazaro U. Dulay, Sr., accused-appellant Virgilio Lucena y Santiago was charged with Double Murder in an Information<sup>[1]</sup> which alleges:

That on or about the 18th day of July 1995 in the Municipality of Aringay, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and being armed with a bolo, did then and there, by means of treachery and with evident premeditation and taking advantage of his superior strength, wilfully, unlawfully and feloniously attack, assault and use personal violence on one URBANO DULAY y ULAT and LAZARO DULAY, Sr. y ULAT, by hacking them to death with the said bolo and inflicting upon them mortal wounds which were the direct and immediate cause of their deaths, to the damage and prejudice of their heirs.

Contrary to law.

Accused-appellant pleaded not guilty at his arraignment.<sup>[2]</sup> The case thereafter proceeded to trial. Subsequently, the court *a quo* rendered judgment as follows:

WHEREFORE, this Court finds accused VIRGILIO LUCENA guilty beyond reasonable doubt of the crime of MURDER for killing Lazaro Dulay and Urbano Dulay on July 18, 1995. This Court appreciated the presence of *alevosia* as an aggravating circumstance in the killing of Lazaro Dulay. This court could have appreciated the aggravating circumstance of dwelling but it was not alleged in the Information. Evident premeditation qualified the killings to Murder. Taking advantage of his superior strength was also present considering the ages of the victims and the perpetrator.

Evidently, the Prosecution is of the view that this incident presents a continuous offense on the theory that there was only one criminal resolution on the part of the accused. Hence, the charge is double murder.

This is a heinous crime.

This Court sentences him to suffer the penalty of death (Art. 63, par. 1, Revised Penal Code).

He is also ordered to pay the heirs of Lazaro Dulay, a civil indemnity of P50,000.00 and P25,000.00 for expenses in connection with his death. Further, he is ordered to pay the heirs of Urbano Dulay a civil indemnity of P50,000.00 and P15,000.00 for expenses in connection with his death.

[3]

On automatic review before this Court, accused-appellant alleges that:

## I

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF ROSALINA DULAY AND DISBELIEVING THE THEORY OF THE DEFENSE.

## II

EVEN ASSUMING THAT APPELLANT IS GUILTY FOR THE DEATHS OF URBANO DULAY AND LAZARO DULAY, THE COURT NONETHELESS ERRED IN APPRECIATING AGAINST HIM THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION AND TAKING ADVANTAGE OF SUPERIOR STRENGTH.

The prosecution's version of the incident is summarized thus in the People's Brief:

At about 2:00 in the afternoon of July 18, 1995, Rosalina Dulay was inside her house in Barrio Sta. Cecilia, Aringay, La Union. She was washing clothes near the entrance of the kitchen. Her brother-in-law Lazaro Dulay, also known as *Saroy*, was sleeping on the kitchen table while her husband, Urbano Dulay, was sleeping in the second storey of the house with their two children.<sup>[4]</sup>

Appellant arrived inside the house and said something to Rosalina. Appellant who was carrying a long and straight bolo, suddenly hacked the sleeping Lazaro. After hacking Lazaro, appellant went upstairs, awakened Urbano and hacked him. Rosalina brought her two children to the corn field to hide. Urbano later ran towards the corn field where he died due to his wounds. Lazaro died inside the house.<sup>[5]</sup>

Dr. Armando Avena, Municipal Health Officer of Aringay, La Union, conducted the autopsy on the remains of Urbano and prepared a Post-Mortem Examination Report<sup>[6]</sup> stating that the cause of death of Urbano was the massive loss of blood secondary to multiple hacked and stab wounds. The weapon used in the killing of Urbano could have been a bolo which penetrated six (6) centimeters (cm) and hit the heart. Another wound, a hack wound, measuring seven (7) cms. in length was found at the right scapular region with the depth of about three (3) cms. at the posterior aspect.

Dr. Avena also conducted the autopsy on Lazaro or Pertolino Dulay. He prepared a Post-Mortem Examination Report<sup>[7]</sup> on the death of Lazaro stating the following findings:

There is a wound hacked 14 cm. linear hitting the anterior neck down to the left lower breast about 6 cm. in depth hitting the ribs and anterior lower pillars.<sup>[8]</sup>

Accused-appellant had a different story. He testified that in the morning of July 18, 1995, he was at his house in Sta. Cecilia, Aringay, La Union, repairing its roof since 7:00 o'clock.<sup>[9]</sup> At noon, he went to the house of Rosalina Dulay, which was about 100 meters away, to have lunch.<sup>[10]</sup> He usually ate lunch at Rosalina's house.<sup>[11]</sup> He reached the house at around 1:30 o'clock in the afternoon.<sup>[12]</sup> Rosalina was outside the house.<sup>[13]</sup> When accused-appellant entered the house, he found the brothers, Urbano and Lazaro Dulay, hacking each other with bolos.<sup>[14]</sup> Since Urbano, who was older, was being attacked by the younger Lazaro, accused-appellant intervened to restrain the latter.<sup>[15]</sup> While accused-appellant was pacifying Lazaro, Urbano was able to run away.<sup>[16]</sup> Lazaro, however, turned to accused-appellant and hacked him with the bolo five (5) times, hitting him in the head and on his left foot above the ankle.<sup>[17]</sup> Accused-appellant ran away but was pursued by Lazaro. In order to defend himself, accused-appellant picked up Urbano's bolo and hacked Lazaro with it.<sup>[18]</sup> Accused-appellant then left the Dulay residence,<sup>[19]</sup> leaving Lazaro lying on the floor, and went home. He brought with him the bolo which he used to defend himself.<sup>[20]</sup> Accused-appellant was seen by his brother and was brought to the Health Center in Agoo to have his bloodied head treated.<sup>[21]</sup>

In sum, accused-appellant insists that it was Lazaro Dulay who hacked Urbano Dulay and that when he intervened, Lazaro turned to him, thus forcing him to defend himself. Furthermore, accused-appellant attempts to destroy the credibility of prosecution eyewitness, Rosalina Dulay, pointing to "material and notable points which engender serious doubts in the truthfulness of the prosecution's version and evidence,"<sup>[22]</sup> to wit: (1) Rosalina was threatened by the relatives of her husband to testify against accused-appellant; (2) Rosalina's testimony that her husband was hacked by accused-appellant was not indicated in the testimony of the doctor who conducted the autopsy on the cadaver of her husband; (3) She testified on direct examination that when Lazaro was attacked he was downstairs near the table, but on cross-examination she declared that he was sleeping on top of the table; and (4) The prosecution failed to establish any motive for the accused to kill the two victims.

The issues raised by accused-appellant boil down to a question of credibility. In this connection, it has been consistently held by this Court that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge,<sup>[23]</sup> who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected in the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch - these can reveal if the witness is telling the truth or lying through his teeth.<sup>[24]</sup>

For the reasons stated above, findings of the trial court on matters of credibility are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.<sup>[25]</sup>

In the case at bar, the trial court, which had the unique opportunity to directly hear the testimony of the prosecution eyewitness Rosalina Dulay, gave credence to her assertion that she saw accused-appellant hacking the victims. Accused-appellant has not shown sufficient grounds to deviate from the aforesaid doctrine.

Accused-appellant asserts that Rosalina Dulay's testimony was not voluntarily given. He points to a statement elicited during cross-examination that the relatives of her deceased husband threatened to kill her if she was "going to testify on (*sic*) the other party."<sup>[26]</sup> Accused-appellant also makes capital of the fact that Rosalina admits to have never been threatened by his relatives, while at the same time acknowledging that she stayed twice in the house of the same relatives when she went to Aringay, La Union sometime after the incident.

This lone discordant note in the testimonial declarations of Rosalina, as adverted to by accused-appellant, will not extricate accused-appellant from his predicament. The controlling rule in this regard is that the testimony of a witness may be believed in part and disbelieved in part depending upon the corroborative evidence and the probabilities and improbabilities of the case.<sup>[27]</sup> By itself, prejudice against an accused cannot warrant the disqualification of a witness or the total disregard of the witness's testimony.<sup>[28]</sup> Indeed:

The maxim *falsus in uno, falsus in omnibus* deals only with the weight of evidence and is not a positive rule of law; the rule is not an inflexible one of universal application. Modern trend in jurisprudence favors more flexibility when the testimony of a witness may be partly believed and partly disbelieved depending on the corroborative evidence presented at the trial. Thus, where the challenged testimony is sufficiently corroborated in its material points, or where the mistakes arise from innocent lapses and not from an apparent desire to pervert the truth, the rule may be relaxed. It is a rule that is neither absolute nor mandatory and binding upon the court, which may accept or reject portions of the witness' testimony based on its inherent credibility or on the corroborative evidence in the case.<sup>[29]</sup>

There is, furthermore, no standard of human behavior for a person confronted with a shocking incident. One may immediately report the incident to the proper authorities while another, in fear and/or avoiding involvement in a criminal investigation, may keep to himself what he had witnessed.<sup>[30]</sup> Others may come forward to reveal the identity of the perpetrators of the crime only after the lapse of a considerable length of time.<sup>[31]</sup>

In this case, it should be noted that right after the incident, Rosalina voluntarily executed a sworn statement implicating accused-appellant. That she later showed some hesitation should not be taken against her, because the reluctance of a witness to testify in criminal actions due to reprisal is of judicial notice,<sup>[32]</sup> and does not impair the witness's credibility.<sup>[33]</sup> The pertinent excerpts of Rosalina's testimony reveal that while her husband's relatives did threaten her to take the witness stand, it was not for the purpose of falsely testifying against the accused-appellant, viz:

Q. While you were in Tarlac, Tarlac you were visited by the

- relatives of your husband, Urbano Dulay?
- A. Yes, sir.
- Q. *And they were asking you to testify against the accused Virgilio Lucena, is that correct?*
- A. ***They did not tell that, sir.***
- Q. And when they visited you in Tarlac, Tarlac, what was then the reason for their visit?
- A. They delivered to me the subpoena, sir.
- Q. And they asked you also to testify?
- ATTY. CALOZA:  
Already answered, Your Honor.
- COURT:  
Sustained.
- ATTY. GAYMAN:  
Is it not a fact that you were also threatened by them to come and testify against Virgilio Lucena?
- ATTY. CALOZA:  
Objection. No basis, Your Honor.
- COURT:  
Witness may answer.
- A. Yes, sir. They were threatening to kill me if I am going to testify on the other party.
- ATTY. CALOZA:  
May we move to strike out the answer of the witness, on the other party, Your Honor.
- COURT:  
Remain on record the answer of the witness, on the other party.
- Q. *Were the relatives of your husband threatening you to testify?*
- A. ***They were not telling me that, sir.***<sup>[34]</sup>

Accused-appellant further contends that Rosalina's testimony as to his having attacked Urbano many times was contrary to the medical findings. This is likewise bereft of merit. On the contrary, her assertion is consistent with the findings of Dr. Armando Avena that the cause of death was the "massive loss of blood secondary to *multiple* hacked wounds and stab wounds."<sup>[35]</sup> It must be remembered in this regard that the detailed testimony of a witness in a murder or homicide case acquires greater weight and credibility if it corresponds with the autopsy report.<sup>[36]</sup>

So, too, must fall accused-appellant's argument as to the alleged inconsistency in Rosalina's testimony on direct examination that Lazaro Dulay was near the table