

## FIRST DIVISION

[ G.R. No. 126036, September 07, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PASCUAL BALINAD ALIAS "DACULO" AND CENON BALINAD,  
ACCUSED-APPELLANTS.**

### D E C I S I O N

**KAPUNAN, J.:**

It is evidentiary rule that the testimony of a single witness, if found credible, is sufficient to convict an accused. In the case at bar, the trial court, as well as the Court of Appeals, imposed upon the appellants the penalty of *reclusion perpetua* for the crime of murder on the basis solely of the testimony of an alleged eyewitness to the crime. However, a scrutiny of the records reveals that such testimony is gravely flawed and contains discrepancies with his previous Sworn Statement on material points. It is a mere concoction unworthy of belief; and hence, cannot be the basis of herein appellant's incarceration.

Appellants seek a review of the Decision of the Court of Appeals<sup>[1]</sup> promulgated on September 4, 1996<sup>[2]</sup> affirming *in toto* the judgment of the Regional Trial Court of Iriga City, Branch 35, the dispositive portion of which reads:

WHEREFORE, this court finds the accused GUILTY beyond reasonable doubt of the crime of Murder for having killed Marcelino Dura, qualified by the aggravating circumstance of treachery. The penalty for Murder is reclusion temporal in its maximum period to death. In view of the mitigating circumstance of voluntary plea of guilt and in the absence of any aggravating circumstance, accused Pascual Balinad alias "Saday" is hereby sentenced to an indeterminate penalty of from ten (10) years and six (6) months of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum.

Accused Cenon Balinad and Pascual Balinad alias "Daculo" are hereby sentenced to suffer imprisonment of Reclusion Perpetua.

All the above-accused shall jointly and severally, pay unto the heirs of the deceased Marcelino Dura, the following sums:

1. P1,000.00 as actual damages;
2. P30,000 as moral damages; and
3. P50,000 as death indemnity and to pay the costs

The accused shall be entitled to the period of preventive imprisonment

under Art. 29 of the Revised Penal Code, as amended.

SO ORDERED.

However, the Court of Appeals certified the case to this Court for review pursuant to Section 13, Rule 124 of the 1985 Rules on Criminal Procedure, as amended, because the penalty imposed on the accused-appellants Cenon Balinad and Pascual Balinad alias "Daculo" is reclusion perpetua.

Appellants Pascual alias "Daculo" and Cenon Balinad and two others namely Pascual Balinad alias "Saday" and Antonio Balinad, were charged in an information for Murder<sup>[3]</sup> that reads:

That on or about the 3rd day of September 1992 at about 9:00 o'clock in the evening in Sitio Inorogan, Sto. Domingo, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually aiding one another, with treachery, with intent to kill, did, then and there, willfully, unlawfully and feloniously strike one MARCELINO DURA on his nape with a piece of wood and then slash his neck with a bolo and as a result thereof, the said Marcelino Dura died instantly, to the damage and prejudice of the heirs of said victim in such amounts as may be proven in court.

CONTRARY TO LAW.<sup>[4]</sup>

On October 1, 1993, appellants were arrested by virtue of an Alias Warrant of Arrest. Upon arraignment, they pleaded not guilty to the charge. They waived the pre-trial conference, thus paving the way to trial proper.

On December 13, 1993, accused Pascual Balinad alias Saday was arrested and when arraigned pleaded guilty to the murder charge.

Accused Antonio Balinad has remained at-large.

The prosecution offered in evidence the testimonies of Basilio<sup>[5]</sup> Alanis, alleged eyewitness to the incident; Margarita Dura, widow of the victim; and, Dr. Loreto Leonido, City Health Officer, who conducted the post mortem examination of the victim. The documentary evidence consisted of the death certificate of Marcelino Dura as Exhibit "A" and the *post mortem* examination of said deceased (with sub-markings) as Exhibit "B."

The prosecution's version of the incident is, as follows:

Alleged eyewitness, BASILIO ALANIS testified that on September 3, 1992, he was at the copra kiln of one Romeo Oliva located at Inorogan, Sto. Domingo, Iriga City. He was there at the invitation of Marcelino Dura to assist the latter in gathering coconuts from the coconut trees with the use of a pole with scythe and to process the coconuts into copra.<sup>[6]</sup>

At around 9:00 o'clock in the evening of the same day, while he and Dura were sleeping at the mezzanine of the copra kiln, he (Alanis) heard a voice which he recognized as that of his nephew, Pascual Balinad alias Saday, saying, "bayaw,

bayaw, wake up.”<sup>[7]</sup> Upon hearing the same, Dura took his flashlight as it was totally dark and while going down focused the light on the arrivals comprised of Pascual Balinad Saday and three other persons, namely Pascual Balinad alias Daculo, Cenon Balinad and Antonio Balinad. Looking down from the mezzanine of the kiln, Alanis saw from a distance of two-and-a-half meters that Dura sat with crossed legs on a coconut trunk while the visitors were seated around him. Suddenly, he saw Cenon Balinad stand up and take a piece of wood with his two hands and hit Dura on the nape with it. While Dura fell in a stooping position on the floor, Pascual Balinad alias Saday slashed Dura’s throat with a bolo. Then Cenon Balinad stamped his foot on Dura’s side. At that time, Pascual Balinad alias Daculo was standing in front of Dura while Antonio was standing near the door of the kiln.<sup>[8]</sup> Daculo and Antonio Balinad did not do anything to Dura.<sup>[9]</sup> They threatened to kill Alanis should he report the matter to the police authorities and they were about to climb the mezzanine when he jumped from the window and ran away.<sup>[10]</sup> He witnessed all these actions because there was illumination from the flashlight on the floor of the copra kiln.<sup>[11]</sup>

Alanis proceeded directly to the house of his brother-in-law, Agustin Balinad, who is the father of Pascual Balinad alias Saday, and then to the house of his sister Apolonia and took his parents and hid them in a shack where they stayed overnight. The following morning, they went to San Ramon, Buhi, Camarines Sur.<sup>[12]</sup> 12 12

Alanis did not report the incident because he learned from his brother-in-law, Domingo Tadeo, that Pascual “Saday” and Pascual “Daculo” threatened to kill him and his parents should he report the matter to the police.<sup>[13]</sup> 1

He was picked up by the military in San Ramon, Buhi, Camarines Sur and was later investigated by the police whereby he gave his statement voluntarily.<sup>[14]</sup>

LORETO G. LEONIDO, the health Officer of Iriga City, testified that on September 4, 1992, she conducted the postmortem examination on the victim’s corpse which was already in a state of rigor mortis and that per her findings, as contained in a written *post mortem* examination report, Marcelino Dura died of a massive hemorrhage due to a hack wound in the neck. She opined that the wound was caused by a sharp instrument. Such wound, she said, was the “only injury” on the body of the deceased.<sup>[15]</sup>

MARGARITA DURA testified that she is the widow of the late Marcelino Dura who was killed on September 3, 1992 at Sitio Inorogan, Sto. Domingo, Iriga City. She has five (5) children with Marcelino, aged 23, 20, 18, 15 and 12. Out of the five children, three were dependent upon the deceased for support at the time of his death. For the death of her husband, she spent P500.00 for food during the wake, P300.00 for the rental of a vehicle, P90.00 for the burial lot and P50.00 for burial expenses. Her husband was earning a monthly income of P3,000.00 as copra maker and abaca stripper.<sup>[16]</sup>

On the other hand, the defense presented as witnesses Pascual Balinad alias Saday, Roger Lucena and Salvador Tabayag. Appellant’s defense consisted of alibi.

According to PASCUAL BALINAD alias SADAY, on August 3, 1992 he was at the

house of his cousin Pascual Balinad alias "Daculo." From there, he was fetched by Basilio Alanis to cut open husked coconut at the kiln in Sitio Inorogan, Sto. Domingo, Iriga City which they reached at about 7:00 o'clock in the evening. While in said place, the two of them, together with Marcelino Dura, engaged in a drinking spree. After they had consumed a bottle of gin, Basilio Alanis, without any warning and for no apparent reason suddenly struck Marcelino Dura with a piece of wood which landed on the latter's nape. Dura fell on the floor in a "diving position." Thereafter, Alanis directed him to slash the neck of Dura. Feeling threatened by reason of Alanis' membership in a gang of bandits known as "Doce Pares" (Twelve Pairs) who are cattle rustlers, he obeyed and slashed Dura's neck. Saday also harbored a grudge against Dura as his (Saday's) wife had earlier confided to him that Dura had raped her on September 1, 1992. He said there was a kerosene light which they used that night. Asked if Pascual Balinad alias Daculo and Cenon Balinad were present at the kiln at the time of the incident, Saday said, "they were not there."<sup>[17]</sup>

ROGER LUCENA testified that he was a laborer in the Reforestation Area situated at Sitio Katabog, Sto. Domingo, Iriga City. On September 3, 1992 at about 9:00 o'clock in the evening, he was with Cenon Balinad, Salvador Tabayag and Pascual Balinad alias Daculo at the latter's house in Sitio Sto. Domingo, Iriga City. They had a drinking session from 7:00 until 11:00 o'clock in the evening of said date after which all of them slept side by side in one of the two rooms of the house of Pascual Balinad alias Daculo until the morning of the following day.<sup>[18]</sup>

SALVADOR TABAYAG, a farmer, corroborated the testimony of Roger Lucena. He testified he was a member of the Civilian Intelligence Unit of the Armed Forces of the Philippines. He stated that on September 3, 1992, he left his house at about 3:00 o'clock in the afternoon and climbed the mountain and went to the house of Pascual Balinad alias Daculo at Sitio Katabog, Sto. Domingo, Iriga City to gather information from Daculo and Cenon Balinad, who are members of the Barangay Intelligence Net, concerning men being hunted by the military, namely: Francisco Gulpe, Jr., Basilio Alanis and Marcelino Dura. He hiked more than three (3) kilometers because there was no road nor other means of transportation. He reached Daculo's house at about 5:30 in the afternoon. He saw at the house Pascual Balinad alias Daculo, Cenon Balinad and Roger Lucena. They had a drinking spree up to about 10:00 o'clock in the evening, had supper and then retired at about past 1:00 o'clock a.m. Daculo and Cenon told him that they had not gathered any information as to the wanted persons because they were still busy with their reforestation work. He and all his companions slept in one room at the house of Daculo until 7:00 o'clock in the morning of the following day. The wife of Cenon and their children also slept in the other room of the house together with the family of Daculo. The following morning, he heard that Agustin Balinad, father of Pascual Balinad alias "Saday" had arrived in the house and informed Daculo and Cenon of the death of Marcelino Dura and thereafter he (Agustin) left in a hurry.<sup>[19]</sup>

A meticulous review of the evidence on record convinces the Court that appellants are entitled to acquittal on the ground of reasonable doubt.

Noteworthy are several material inconsistencies between the Sworn Statement and court testimony of the alleged eyewitness, Basilio (or Rogelio) Alanis.

In his Sworn Statement,<sup>[20]</sup> Alanis declared that it was Pascual Balinad alias Saday who struck Marcelino Dura on the nape with a piece of wood. However, in his testimony in court, Alanis stated that it was Cenon Balinad who hit Dura at the back of his head.<sup>[21]</sup>

Alanis also stated in his Affidavit that Pascual Balinad alias Daculo, Cenon Balinad and Antonio Balinad held Dura while Pascual Balinad alias Saday slashed the throat of the victim. But, in his court testimony, Alanis stated that all the time Saday slashed the throat of Dura, Pascual Balinad alias Daculo and Antonio Balinad “did nothing” as Daculo was just standing in front of Dura while Antonio was standing by the door.<sup>[22]</sup>

Alanis testified that after Saday slashed the victim’s neck he saw Cenon stamp his foot on the side of the victim’s body.<sup>[23]</sup> This act, however, does not appear in the affidavit.

Moreover in his affidavit, Alanis stated that Cenon Balinad tried to grab him and shouted to him as he escaped through the window of the mezzanine that he and his parents would be killed if he reported the matter to the police. Testifying in court, Alanis merely stated that the assailants threatened to kill him should he report the incident to the police authorities and tried to climb the mezzanine to get him but he escaped by jumping through the window<sup>[24]</sup> and that he later learned from his brother-in-law, Domingo Tadeo, that Daculo and Cenon Balinad had threatened that he and his parents would be killed if he reported the matter to the police authorities.<sup>[25]</sup>

Further, in his Sworn Statement, Alanis stated that he heard Antonio Balinad say, “*Iba ngaya kami kin ma-ungot*” (We are different when we got mad.) after Saday slashed the throat of Dura. But, in his testimony, he declared that Antonio Balinad and Pascual Balinad alias Daculo did not do anything to the victim. Alanis did not mention such remark allegedly made by Antonio Balinad.

Alanis mentioned a motive for the killing of Dura in his affidavit, i.e., that maybe the assailants (Balinads) resented Dura when they learned that he wanted to marry their adopted sister Elena, when in fact Dura was already a married man.<sup>[26]</sup> Again in his testimony, Alanis denied knowledge of any motive on the part of the alleged assailants. However, when reminded of his statement of such motive in his affidavit, he said that he merely “forgot it.”<sup>[27]</sup>

Finally, in his Sworn Statement, Alanis said that after he escaped from the copra kiln, he went directly to the house of his brother-in-law, Agustin Balinad, husband of his sister Lourdes, to fetch his parents whom he later brought to San Ramon Buhi, Camarines Sur. However, in his testimony in court, he stated that he went directly to the house of his sister Apolonia, wife of Felicisimo Vargas, and denied having gone to the house of his brother-in-law, Agustin Balinad, father of Pascual Balinad alias Saday or having met Agustin. He even claimed that his statement was made voluntarily only to claim later that he was “tortured” in giving such statement and eventually taking back his word and volunteering to tell the truth. His testimony reveals his propensity to lie, as shown by the following pertinent part of the records, to wit: