

SECOND DIVISION

[G.R. No. 131924, December 26, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. CARLITO CORTEZ AND GERRY ESPAÑA, ACCUSED-
APPELLANTS.**

D E C I S I O N

BELLOSILLO, J.:

CARLITO CORTEZ and GERRY ESPAÑA along with two (2) John Does were charged before the Regional Trial Court of Cagayan de Oro City^[1] with the murder of Dominador Bislig. Both Cortez and España were found guilty as charged and sentenced to life imprisonment.^[2] They were also ordered to pay the heirs of the deceased the sum of P50,000.00 for indemnity and actual damages and P100,000.00 for moral damages.

At ten o' clock in the evening of 20 August 1992 at Zone 9 Macanhan, Carmen, Cagayan de Oro City, M/Sgt Estefanio C. Anobling was in his yard. From there he saw Carlito Cortez playing billiards with an unidentified person. A meter away stood Gerry España and another unidentified person. They were about six (6) meters away from Anobling. Carlito, Jerry and the two (2) John Does appeared to be exchanging glances and signals that Anobling decided to place them under surveillance. About forty-five (45) minutes later, Dominador Bislig and his nephew Ismael Ledesma arrived at the neighboring store. Ledesma ordered beer. Upon seeing Bislig and Ledesma, the four (4) accused went inside the house of *Vicky*, a neighbor of Anobling, and further observed Bislig and Ledesma from there some five (5) meters away. According to Anobling, the accused "waiv(ed) their hands pointing to Bislig and his nephew."^[3] Cortez then approached the two (2) and conversed with them. While they talked Gerry España would join them now and then.

Apprehensive, Anobling went to the store to make sure that no untoward incident would happen. As he approached Ledesma and Bislig, the latter offered Anobling a softdrink. Anobling accepted the offer. As it was already past midnight, Anobling asked them to leave before they disturb the neighborhood, and Bislig promised to do so after finishing his beer. With that promise, Anobling returned home. Shortly after, he overheard one (1) of the four (4) accused ask Ismael Ledesma where he was going, to which Ledesma replied that he was accompanying Dominador Bislig home. Anobling again rushed out of his house, taking the street parallel to where the accused were. He saw accused Carlito Cortez and Gerry España four (4) meters away holding Bislig by his coat. Then Cortez stabbed Bislig with a knife while one of the "John Does" held a jungle bolo. Upon seeing Anobling, one of the assailants shouted, "*Si Master, si Master!*" and the four (4) fled. Anobling chased them and apprehended the man wielding the bolo and disarmed him although he was able to escape later. Anobling returned to Bislig and helped him into a motorcab that took him to the hospital.

Meanwhile, the people milling around the crime scene told Anobling that the culprits were still holding out in the house of Gilbert Cortez, Carlito's brother. Anobling proceeded to that house with *Barangay Kagawad* Lando Coro and apprehended Carlito Cortez who was pretending to be asleep, and Gerry España who was standing in the yard.

On 21 August 1992 Assistant City Prosecutor Romualdo E. Galarrita filed an Information alleging among others that at about midnight of 21 August 1992 at Zone 9, Macanhan, Carmen, Cagayan de Oro City, the accused Carlito Cortez, Gerry Espana and two (2) John Does conspiring and mutually helping one another, with intent to kill, evident premeditation and treachery, and taking advantage of superior strength, armed with a bladed weapon did then and there willfully and feloniously attack, strike and stab Dominador Bislig with the weapon thus inflicting upon him mortal wounds which were the direct and immediate cause of his death, contrary to Art. 248 in relation to Art. 14 of *The Revised Penal Code*.

Dr. Apolinar Vacalares who autopsied the body of Dominador Bislig testified that the victim sustained two (2) stab wounds, one (1) located at the front anterior chest measuring 5.5 cm. in length, and the other, at the backside below the right scapula, 3 cms. long. Cause of death was "massive hemopneumothorax due to stab wound," meaning that the stabbing caused a puncture in the lung that filled the thoracic cavity with blood. The doctor also testified that the front wound was caused by "a sharp, with three edges, rectangular knife,"^[4] while the back wound was caused by a knife "with three edges and were rounded."^[5] He also opined that based on the nature and shape of the wounds it was possible that they were caused by two (2) different weapons.

Accused-appellant Carlito Cortez testified in his defense. He claimed that on the night of the incident he was asleep in the house of his brother Gilbert Cortez in Macanhan, Carmen, where he also lived. It was only some fifty (50) meters away from the crime scene. According to him, he spent the whole day taking care of his brother's child and was only awakened by noise at midnight.

Gerry España, for his part, stated that he arrived at the house of Gilbert Cortez at eleven o'clock in that evening to fetch Carlito because they were going to do routine surveillance in a nearby *barangay* as *barangay tanods*.

Gilbert Cortez testified that on the night of the incident he arrived home from work at about eight o'clock in the evening. He had supper with his wife and children together with his brother Carlito Cortez, after which they all went to sleep. At about eleven o'clock, Gerry España arrived to fetch Carlito. He (Gilbert) was about to wake Carlito up when Anobling and a certain *Kagawad* Lando Coro arrived to arrest Carlito and Gerry. In fact a minor altercation ensued but the two (2) were prevailed upon to go to the police station and they did quietly.

In their four-page brief, accused-appellants argue that the trial court erred "in giving credence to the testimony of the prosecution's alleged lone eye-witness, M/Sgt Estefanio Anobling, who was merely attempting to make himself look important, like claiming to have been orally designated by Mayor Pablo P. Magtajas, to take care of the peace and order of *Barangay* Macanhan, Cagayan de Oro City."

The trial court pointed out that prosecution witness, M/Sgt Anobling, testified in a "straight forward, categorical, spontaneous and frank manner and has remained consistent." It was convinced that Anobling was a credible witness. Factual findings of trial courts, particularly the assessment of the credibility of witnesses, are accorded weight and highest respect on appeal. This is so since trial courts have the opportunity to observe firsthand the demeanor and conduct of witnesses and to examine other proofs as well, and thus are better situated to form accurate impressions and conclusions.^[6] Anobling revealed all the details of the assault, from the time before the aggression even started, to the identity and clothes of the assailants and, finally, the pursuit and capture of the two (2) accused-appellants. Such vivid narration leads this Court to lend much credence to his testimony. It is very unlikely that a witness could have related all the details of a crime with such clarity and lucidity unless he himself was present at the time the killing transpired.^[7]

Accused-appellants invoke alibi. But the positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial.^[8] Furthermore, for the defense of alibi to prosper, it must be established by positive, clear and satisfactory proof that (a) the accused was somewhere else when the offense was committed, and (b) it was physically impossible for the accused to have been present at the scene of the crime or its immediate vicinity at the time of its commission.^[9] If there was even a chance for the accused to be present at the crime scene, the alibi will not hold.^[10] Carlito Cortez testified that he was in his brother's house sleeping at the time the incident occurred. Gerry España testified that he arrived at the house at eleven o'clock in the evening. However, the house is only fifty (50) meters away from the crime scene. Hence, the defense of alibi is unavailing, since the presence of both men in that house did not necessarily preclude their presence at the *locus criminis*. It becomes even less plausible as a defense when it is mainly established by accused-appellants themselves and their immediate relatives.^[11]

The defense attempted to corroborate the testimony of the two (2) accused-appellants by presenting Gilbert Cortez. While ordinarily relationship *per se* does not affect the credibility of a witness, in this case the Court believes that Gilbert Cortez was highly biased in favor of his brother. Indeed, blood relatives tend to be naturally protective of each other and are not above giving false testimonies in favor of one another, especially a relative in danger of being convicted. Hence, Gilbert's testimony, although prompted by understandable reasons, is entitled to very little weight and cannot prevail over the positive, unbiased testimony of Anobling.

Accused-appellants endeavor to assail the credibility of prosecution witness Anobling. In their brief, they stated that "[i]n counsel's own assessment of M/Sgt Estefanio C. Anobling, he is nothing but a braggart. He is used to blowing his own horn or patting his own back as no one else did." They even went as far as to state that the witness "exudes the appearance of a multiple familial ignoramus." Such *argumentum ad hominem* only serves to emphasize the lack of merit of the cause of the defense. However, even if defense counsel is partially correct, this is merely his own assessment and is not supported by any evidence on record. In fact, all defense witnesses including the two (2) accused-appellants admitted that Anobling did not

bear any grudge against them, nor was there any bad blood between them. When there is no evidence to show any dubious reason or improper motive why a prosecution witness would falsely testify against an accused or implicate him in a heinous crime, his testimony is worthy of full faith and credit.^[12]

Accused-appellants likewise point out the following inconsistencies in the testimony of Anobling: (a) If indeed he ran parallel to the road taken by the assailants, he would not have caught up with them and would not have recognized them because it was dark; (b) The assailant he caught could not have escaped since according to him he was a black belt in *karate*; (c) He was lying when he said he knew Carlito Cortez before the incident because he mistakenly called him "Sander," which is actually the nickname of Carlito's brother Alexander; and, (d) If Carlito was pretending to be asleep in the room in the second floor of his brother's house, then Gerry España should have also been with him pretending to sleep and not out in the yard. They also raise the argument that the bolo that Anobling recovered from the unidentified assailant could not have been the weapon that caused the fatal wound.

We do not see how it would be impossible for Anobling to catch the unknown assailant if Anobling had taken the street parallel to the one taken by the malefactors. Anobling testified that he was merely four (4) meters away from the assailants when the stabbing took place and that he was a "runner."^[13] Given the a short distance, it was possible for a physically fit pursuer to overtake a slower quarry. Strangely enough, accused-appellants answered their own query in their reply brief when they said, "Macanhan's peripheral area is actually underdeveloped so that the houses are not fenced which explains the reason why M/Sgt Estefanio Anobling was able to run parallel to the route taken allegedly by the assailants of Dominador Bislig."

Likewise untenable is the assertion that it was impossible to identify the assailants because it was dark. Anobling testified that he was able to see the faces of accused-appellants clearly as the place was well lighted^[14] and he was only four (4) meters away when the incident occurred. Furthermore, he identified one of the attackers as wearing a yellow jacket. It is easy to spot a yellow jacket and follow the person wearing it even in the dark.

The arguments that the unknown assailant could not have escaped a *karate* expert and that España like Cortez should have also been feigning sleep, are *non-sequitur* and deserve scant attention, except for the observation that such asinine arguments have no place in a lawyer's brief. As for Anobling's mistake that Carlito Cortez's nickname was "Sander," we agree with the Solicitor General's observation that "what matters is that Estefanio Anobling was referring to one and the same person in identifying the assailant who stabbed the victim." Anobling categorically pointed out Carlito Cortez in open court as the person who stabbed Dominador Bislig. Such positive identification is not affected by whether the witness knew the person's nickname correctly.

Lastly, accused-appellants contend that the bolo M/Sgt Anobling presented in court was not the one used to stab Dominador Bislig. They rely on the testimony of the examining pathologist, Dr. Apolinar Vacalarez -

Q: Doctor, you have described the wounds inflicted on the alleged victim, could you tell the court, Doctor, if it is possible that this

weapon could have caused the wound inflicted on the alleged victim? x x x

A: May I have the bolo x x x x In the drawing there are three edges, meaning that the wounding instrument had three (3) sides. But this one (bolo), one edge is only sharp and one side is dull and the tip of the bolo is dull and it is slippery. To my mind this is not the weapon.

Again, we do not see how this could affect the credibility of Anobling's testimony. Nowhere did he intimate that the bolo he wrested from the unidentified assailant was the same weapon used to stab Domingo Bislig. On the contrary, when asked what Gerry España was doing during the stabbing, Anobling testified, "(t)his Gerry España was holding Dominador Bislig on his coat while the other one is (sic) holding a jungle bolo."^[15] This clearly indicates, according to Anobling, that the jungle bolo was not the "knife" that was used to stab Bislig. Therefore, the pathologist's finding that the jungle bolo was not the knife used to stab Dominador Bislig does not conflict with Anobling's testimony.

Although the lower court correctly held Carlito Cortez and Gerry España criminally liable for the death of Dominador Bislig, it erred in its appreciation of the qualifying circumstances of the crime. The Information alleged three (3) aggravating circumstances, namely, treachery, evident premeditation, and use of superior strength. However, mere allegation will not suffice. The circumstances that qualify the killing as murder must be proved as indubitably as the killing itself.^[16] The prosecution failed to prove these circumstances; neither did the trial court discuss these alleged qualifying circumstances in its 11-page decision. Hence, they should not have been convicted of murder but only of homicide.

Article 14, par. (16), of *The Revised Penal Code* provides that there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specifically to insure its execution without risk to himself arising from the defense which the offended party might make. The testimony of Anobling, although sufficient to prove that accused-appellants did indeed kill Dominador Bislig, is nevertheless wanting as far as proof of treachery is concerned.

FISCAL QUILISADO: Were you able to catch Dominador Bislig?

M/SGT ANOBLING: I was about (4) meters away because I was able to see Sander thrust his knife to Dominador Bislig on the left chest.

Q: Who is this Sander you are referring to?

A: It's Carlito Cortez and his nickname or "Angga" is Sander.

Q: What were the three other accused doing while a certain "Sander" stabbed Dominador Bislig?

A: This Carlito Cortez or "Sander" was holding Dominador Bislig by the coat because Dominador Bislig is (sic) wearing a coat at that time.