

THIRD DIVISION

[110873, September 23, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEONARDO FRANCISCO ALIAS "YOLING" AND ESTELITO
FRANCISCO ALIAS "BOBOY", ACCUSED. LEONARDO FRANCISCO,
ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

Accused-appellant Leonardo Francisco (hereafter LEONARDO), together with Estelito^[1] Francisco (hereafter ESTELITO) and Alex Dacutara (hereafter ALEX), were charged before Branch 6 of the Regional Trial Court of Palo, Leyte, with the crime of murder in an information which reads:

That on or about the 4th day of June, 1986, in the Municipality of Pastrana, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another, with deliberate intent to kill, with treachery and evident premeditation, with abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, stab and wound one Ricardo Mendoza with the use of a bolo and bamboo (Patong) which the said accused had provided themselves for the purpose, thereby hitting and inflicting upon said Ricardo Mendoza wounds which caused his death.

Contrary to law.^[2]

Upon their arraignment, all three accused pleaded not guilty to the crime charged.

^[3] On December 3, 1987, during trial, ALEX died and consequently, the case against him was dismissed on January 12, 1988.

The evidence for the prosecution consists primarily of the testimony of Veronica Mendoza (hereafter VERONICA), the wife of the victim, who claims that she personally witnessed the killing of Ricardo Mendoza (hereafter RICARDO) by the three accused. According to VERONICA, on June 4, 1986, at around 4:30 in the afternoon, she, together with RICARDO and their children, Jesus and Richard, aged nine and six respectively, were walking along a path on their way home from the house of a neighbor. RICARDO was walking slightly ahead, while VERONICA and the children followed behind at a distance of approximately two arm's length. Suddenly, LEONARDO, ESTELITO and ALEX appeared behind RICARDO, coming from the sides of the path, which were lined with coconut trees and tall cogon grass.^[4] LEONARDO and ALEX were each armed with bolos, while ESTELITO wielded a piece of bamboo about one meter long. LEONARDO delivered the first blow, hitting RICARDO on his back. This was followed by ESTELITO who hit the victim at the back of his head with

a bamboo stick. Finally, ALEX hacked at RICARDO's back with a bolo. RICARDO fell face down on the ground. VERONICA rushed her children home and cried for help. Several policemen rushed to the scene of the crime, namely Benjamin Montanejos, Wilfredo Nierva, Arnulfo Tan, Antonio Diminico, and Benedicto Sequito. They brought the lifeless body of RICARDO to his house.^[5]

According to the testimony of Benjamin Montanejos, upon their arrival at the crime scene they interrogated VERONICA regarding the killing of RICARDO. VERONICA reported to the policemen that LEONARDO, ESTELITO and a certain "Baby" had killed her husband.^[6] On June 7, 1986, ESTELITO surrendered to the mayor of Pastrana, admitting that he and ALEX killed RICARDO.^[7]

The post-mortem report revealed that the cause of the victim's death was "shock secondary to a blow over the head."^[8] Dr. Verisimo Opiniano, who conducted the autopsy, testified that out of the four wounds inflicted upon RICARDO, two were probably caused by a sharp bladed instrument and one by a heavy and blunt instrument, like a large piece of wood. Dr. Opiniano further testified that, based on the location of these three wounds, it may be safely assumed that there were two or more assailants and that they inflicted the wounds while standing right behind the victim. The fourth wound was actually a contusion which the victim probably sustained by falling to the ground.^[9]

As a possible motive for the killing of RICARDO, the prosecution claims that LEONARDO might have harbored some resentment against the Mendozas because sometime in October, 1985, LEONARDO and his parents went to the house of the victim and challenged them to a fight for allegedly throwing rat poison in their rice field. However, the entire matter was amicably settled in a confrontation before the barangay captain.^[10]

LEONARDO's defense consists of an alibi. He claims that he was in his house the whole day of June 4, 1986 entertaining visitors as it was the barangay fiesta. Among his visitors were Iluminado Daynata (hereafter DAYNATA), Jose Bigoy, Ricky Cornista, and Pacifico Nayan. DAYNATA was the last to leave LEONARDO's house at 5 p.m. After all his guests had left, LEONARDO went to sleep at 6:30 p.m. as he felt tired. He learned of the killing of RICARDO only the following day.^[11]

In direct contradiction of the prosecution's account, the defense claims that it was RICARDO and his wife who were angry with LEONARDO since some of their chickens died after eating the rat poison which he placed in his rice field. RICARDO challenged LEONARDO to a fight, causing the latter to have him summoned before the barangay captain. LEONARDO wanted RICARDO to execute an affidavit, but the barangay captain did not deem it necessary.^[12]

As regards ESTELITO, although he admits that he and ALEX killed RICARDO, he invoked the justifying circumstances of self-defense and defense of stranger. According to ESTELITO, on June 4, 1986, he and ALEX were walking to Barangay Sapsap to watch a cockfight when they met RICARDO on the road. RICARDO challenged ALEX to a fight and immediately drew his bolo and delivered a hacking blow at ALEX, which the latter was able to avoid. In defense of ALEX, ESTELITO hacked RICARDO with his bolo, hitting him just below the neck. ALEX was then able

to pick up a piece of wood and he used it to strike RICARDO on the head. ESTELITO and ALEX hit RICARDO several more times until he fell to the ground.^[13]

The trial court^[14] found LEONARDO and ESTELITO guilty of murder qualified by treachery and sentenced them as follows -

WHEREFORE, finding accused Leonardo Francisco alias "Yoling" and Estilito Francisco alias "Boboy" guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code and applying the Indeterminate Sentence Law, sentences Leonardo Francisco to an imprisonment of from TEN (10) YEARS and ONE (1) DAY to SEVENTEEN (17) YEARS and FOUR (4) MONTHS. The Court after appreciating the mitigating circumstance of surrender without any aggravating circumstance to offset the same in favor of accused Estilito Francisco, sentences said accused Estilito Francisco to an imprisonment of from SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum to TWELVE (12) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of Reclusion Temporal as maximum. Accused Leonardo Francisco and Estilito Francisco are hereby condemned to pay the heirs of Ricardo Mendoza an indemnify (sic) the sum of P30,000.00, without subsidiary imprisonment in case of insolvency.

SO ORDERED.^[15]

The trial court held that the defense of alibi cannot prevail over the positive identification of the accused by the wife of the victim. The evidence for the defense sought to establish that it was impossible for LEONARDO to be at the scene of the crime at the time of its commission, but the trial court was unconvinced. First of all, the place where the killing took place is only about 400 meters from LEONARDO's house and can be reached by a few minutes walk. Secondly, the fact that the killing allegedly took place at 4:30 p.m., as testified to by VERONICA, coupled with the testimony of DAYNATA that he was at LEONARDO's house until 5 p.m., which is 30 minutes after the crime took place, does not help the theory of the defense since all the times testified to were mere estimates of the witnesses.

The trial court pointed to LEONARDO's dissatisfaction with the outcome of his confrontation with the Mendozas before the barangay captain as his motive for wanting to harm or kill RICARDO. Also, if the theory of the defense is followed that RICARDO had the intention of harming LEONARDO because of the death of his chickens, there would be no plausible explanation for RICARDO's allegedly challenging ALEX to a fight, although they were not together with LEONARDO.

The court did not give credence to ESTELITO's claim of self-defense and defense of stranger because it found it quite unbelievable that he and ALEX did not sustain a single scratch if RICARDO indeed attempted to hack at them several times with his bolo.^[16]

Only LEONARDO appealed the trial court's decision to the Court of Appeals. Basically, he asserted in his appellant's brief that the testimony of VERONICA should not have been given credence by the trial court because she is obviously a biased witness, being the wife of the victim, and it is uncorroborated. LEONARDO claims that his testimony is more convincing since it was corroborated by the testimonies

of DAYNATA, who asserted that he was in LEONARDO's house at the approximate time of the killing, and by ESTELITO's declaration that LEONARDO did not take part in the killing of RICARDO. Moreover, even if VERONICA's testimony is to be believed, it does not support the finding of treachery because she said that the deceased was accosted by the accused, thereby precluding any treacherous initial attack. Finally, LEONARDO claims that the trial court erred in imposing the penalty which, taking into consideration the Indeterminate Sentence Law and the fact that there are no aggravating or mitigating circumstances, should have been TEN (10) YEARS and ONE (1) day to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY only. [17]

The appellate court [18] affirmed the conviction of LEONARDO for murder, but it increased the penalty imposed by the trial court to *reclusion perpetua* and the civil indemnity to P50,000. It ruled that VERONICA's testimony bears the credibility necessary to establish the guilt of the accused beyond reasonable doubt. The fact that she is RICARDO's wife is not an indication that she testified falsely since mere relationship to the victim is not a ground for disbelieving a witness. Also, her testimony could not have been corroborated by any other witnesses since there were no other persons around when the killing took place, except for her very young children.

The appellate court also stated that the defense of alibi cannot prevail over positive identification of the accused by a witness. For the defense of alibi to prosper at all, it must be proven by the accused that it was physically impossible for him to be at the scene of the crime or its vicinity at the time of its commission. Accused LEONARDO failed to discharge this burden.

Finally, the appellate court upheld the trial court's finding that treachery attended the commission of the crime since the attack was sudden, upon an unarmed victim who had absolutely no inkling of the impending tragedy, and it was made from behind the victim, insuring the absence of any risk to the assailants. [19]

The determination of LEONARDO's guilt depends mainly on whether or not the positive identification of the accused by VERONICA shall prevail over the denial and alibi offered by the accused. Alibi is the weakest defense, being easy to fabricate and difficult to disprove. [20] A 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. [21] When there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit. [22]

The lower courts were fully justified in believing VERONICA's testimony. Her clear and direct testimony regarding the details of the assault, including the identity of the assailants, the weapons used, the order in which the blows were delivered and the parts of the victim's body where the blows landed, [23] which very closely corresponded with the descriptions of RICARDO's wounds detailed in the post-mortem report, is worthy of credence. It is most unlikely that a witness could have related all the details of a crime with such clarity and lucidity unless she was herself present at the time the killing transpired.