

SECOND DIVISION

[G.R. No. 121193, January 22, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS.
AMBITONIO PALMA GIL, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

Accused **Ambitonio Palma** Gil appeals the decision of the Regional Trial Court, 11th Judicial Region, Branch 4, Panabo, Davao convicting him of murder and imposing upon him the penalty of reclusion perpetua with all accessory penalties provided by law.^[1]

It appears that on September 8, 1992, an information^[2] was filed against Ambitonio Palma Gil, to wit:

"That on or about June 4, 1992, in the Municipality of Samal, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, with intent to kill, armed with a bladed weapon, did then and there willfully, unlawfully and feloniously attack, assault and stab one Valeriano O. Martin, thereby inflicting upon him wound which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

"CONTRARY TO LAW."

Accused entered a plea of not guilty. The prosecution's evidence was received by Judge Mariano C. Tupas. On August 4, 1994, Judge Tupas retired and was succeeded by Judge Bernardo Saldares. It was Judge Saldares who received the testimony of accused and his witnesses.^[3]

The prosecution established that the crime at bar was committed on June 4, 1992 at the seashore of Tinangisan, Aundanao, Samal, Davao. On that day, at about three o'clock in the morning, Bonifacio Martizano, together with his 14 year old son, Jorry, went to sea to catch fish. They brought along a petromax, a lamp powered by kerosene, and tied it on the front portion of their banca. To catch a specie of fish called "bolinao", which by nature is attracted to light, Bonifacio removed the cover of the petromax and allowed its light to spread out.

At about four o'clock, the Martizanos returned to the shoreline. At three (3) fathoms^[4] away from the shoreline, they saw accused Gil stab Valeriano Martin at his back with a six-inch knife.^[5] Martin fell on the ground, and the accused immediately paddled away in his banca. Bonifacio Martizano rushed towards the victim with the petromax. Terrified, he repaired to the house of his father-in-law,

Pablo Adlawan, and reported the incident. They returned to the crime scene and found onlookers milling around Martin's body. The body was brought to Adlawan's house. Late in the afternoon, Eleuterio Martin, the victim's brother, informed the Samal Police Station of the incident.^[6]

The victim's wife, Serafia Martin was also informed that her husband had been stabbed to death. At her parents' house, she found that her husband suffered a stab wound at the left back portion of his body. She was told that the accused perpetrated the crime.^[7]

The town's sanitary inspector, Eduardo Parnas drew a sketch of the location of the stab wound.^[8] On the basis of said sketch, Dr. Leonila D. Ferrer, the Municipal Health officer of Babak, Samal, Davao issued a death certificate.^[9]

The following morning of June 5, 1992, SPO2 Henry Bustamante and PO3 Bariga of the Samal Police Station investigated the stabbing report. They failed to inspect the body of the victim as it was already placed inside a coffin. SPO2 Bustamante interviewed Eleuterio Martin, as well as Bonifacio and Jorry Martizano. With the help of Baranggay Captain Virgilio Ang, they arrested the accused at his house.^[10]

To exculpate himself, the accused offered an alibi. He alleged that at three o'clock in the morning of June 4, 1992, he went to the house of Agoncillo Mamontong, some 20 meters away from his house. They proceeded towards the shoreline to perform their duties as members of the Bantay Dagat. They were joined by Crispin Casinto, another Bantay Dagat member.

On June 5, 1992, he was surprised when police officers arrested him in his house. They detained him at the Municipal Building at Penaplata, Samal, Davao. After ten (10) days, SPO2 Bustamante inquired if he was willing to settle the case. He said he was not if it would cost money.^[11]

Crispin Casinto corroborated accused Gil's alibi. Casinto claimed that they were together on duty as members of the Bantay Dagat at the time and date when the victim was stabbed. They were at the seashore of Tagpopong, Babak, Davao with Agoncillo Mamontong on the look out for illegal fishermen upon the orders of Barangay Captain Virgilio Ang. ^[12]

Agoncillo Mamontong also corroborated accused's alibi. He testified that he, Casinto and the accused were together from three o'clock to seven o'clock that morning of June 4, 1992 doing their duty as members of Bantay Dagat.^[13]

The trial court found the accused guilty of murder beyond reasonable doubt. It held that the "alibi of the accused was weak and flimsy and very easy to concoct to suit one's self-serving purpose." It gave credence to the eyewitness accounts of Bonifacio and Jorry Martizano. It also considered the attempt of the accused to settle the case as an implied admission of guilt ^[14] and the existing grudge between the victim and the accused as possible motive for the stabbing.^[15]

The dispositive portion of the Decision of March 3, 1995 states:

"WHEREFORE, consistent with all the foregoing findings, this Court finds the accused Ambitonio Palma Gil y Colong, 52 years of age, married to Rita, a fisherman by occupation and resident of Tagpopongan, Babak, Samal Island, Davao, guilty beyond reasonable doubt of the crime of murder, penalized under Article 248 of the Revised Penal Code, as charged in the information, and is hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalty provided by law, and to indemnify the widow, Serafia Martin, and Heirs (sic) of Valerio the amount of fifty thousand (P50,000.00) Pesos (sic), as indemnity for such death, Twenty Thousand (P20, 000.00) Pesos (sic), as and for moral damages, and Ten Thousand (P10,000.00) Pesos (sic), as and for exemplary damages, and Five Thousand (P5,000.00) Pesos (sic), for burial and necessary expenses in connection hereto, and to pay the costs.

In his appeal, accused assigns the following errors committed by the trial court:

"I

"THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCONSISTENT AND CONFLICTING TESTIMONIES OF THE PROSECUTION WITNESSES.

"II

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

"III

"ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF MURDER INSTEAD OF HOMICIDE."^[16]

In support of his first and second assigned errors, the appellant stresses the inconsistent testimonies of Bonifacio and Jorry Martizanos to prove that they failed to positively identify him as the killer. Appellant also contends that they lied because of their relationship with the victim - Bonifacio is married to the sister of Valeriano's wife while Valeriano is Jorry's uncle.^[17] He further claims that if the Martizanos were at the scene of the crime their natural reaction should have been to help the victim defend himself against the assailant.

In his third assignment of error, appellant contends that assuming he is guilty, he should be convicted for homicide and not for murder for treachery was not established by the prosecution. He claims that the stab wound at the back sustained by the victim was not proved by a proper medical certificate. Dr. Leonila Ferrer who issued the death certificate admitted that she did not see the victim's body.^[18]

On the other hand, the Office of the Solicitor General explains that the alleged inconsistencies in the testimonies of the Martizanos cover minor details. What is telling, according to the Solicitor General, is the weakness of the alibi of the

appellant. Appellant himself admitted that Tagpopong Beach is only 2,000 meters away from the scene of the crime and the distance could be negotiated by banca within 1 1/2 hours if one is going against the current of the sea and only 30 minutes, if one is going with the current. The appellant also admitted that in the early morning of June 4, 1992, the sea was clear, thus, appellant could have paddled his banca from Tagpopong to the scene of the crime. The Solicitor General also justifies the finding of treachery as the attack was sudden, behind the back, and deliberate as it was the result of a prior grudge.^[19]

We find merit in the appeal.

It is a settled rule that the trial court's assessment of the credibility of witnesses deserves great respect. The reason for the rule as often stated is that trial judges have the sole opportunity to observe the demeanor of witnesses on the witness stand.^[20] However, the rule is subject to well-established exceptions. Thus, findings of the trial court which are arbitrary^[21] and misappreciations of material inconsistencies in the testimonies of witnesses are reviewed and corrected on appeal. We have also held that where one judge received the testimonies of witnesses but another judge penned the decision, the rule respecting findings of trial courts will not be rigorously applied since the rationale for the rule does not exist. In said cases, the findings of facts of the trial judge are treated with caution.

We shall now review the case at bar prescinding from these baseline propositions. We rule that the evidence of the prosecution was misappreciated by the trial judge especially the eyewitness account of the Martizanos and that its totality can not convict the appellant for murder.

First, the assertion of the Martizanos that they saw appellant stab the victim is difficult to believe. It is out of the ordinary for the appellant to stab the victim upon chancing upon him at the shore when fishermen were present and the place well-lighted by their petromax. Appellant should have known that he would be identified and his natural reaction after the stabbing would have been to hide. Yet, his actions after the incident were not consistent with one who had just killed a person. SPO2 Bustamante found him unperturbed in his house on the day after the stabbing:

"(Prosecutor Bijis)

"Q: Now, since you were already informed of the name of the accused, what did you do next?

"(SPO2 Bustamante)

"A: I relied on the information of the brother Eleuterio Martin but I also conducted initial investigation to possibly identify the responsible person or the suspect of the said crime.

"Q: And what was the result?

"A: During my investigation, one among the persons I have investigated was Bonifacio Martin and also his son Roy and during my initial investigation they really confessed that the suspect was Ambitonio Palma Gil.

"Q: And what was the last step that you did?

"A: I am basing to (sic) the information given to me by the witnesses and I sought the help of the barangay officials of Aondanao so that we have to proceed to Tinangisan, Babak to get the suspect, and upon our arrival thereat, we also sought the assistance of the Barangay Captain of that place by (sic) one Virgilio Ang and he guided us to the house of the suspect.

"Q: Was the person of the suspect there?

"A: Upon arrival in the house of the suspect, the suspect was upstairs and thereafter we were allowed to enter and immediately I told him that he was under arrest for having committed the crime.

"Q: Did he resist the arrest?

"A: No, he voluntarily submitted himself and thereafter we went to the Samal Police Station.

"Q: While in his house, did you question him why you were there to arrest him?

"A: I told him that he committed a crime.

"Q: What was the answer?

"A: At first he denied but still I effected the arrest because I have probable ground to arrest him based on the information given to me by the witnesses.^[22]

Second, there are material inconsistencies in the testimonies of the Martizanos which make their assertion that they were present at the scene of the crime doubtful.

(1) Jorry Martizano testified that no other person was present in the area when they moved towards the shore except the appellant and the victim: