

SECOND DIVISION

[G.R. No. 118707, February 02, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO VIOVICENTE Y GONDESA, ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

In an information dated August 8, 1991 accused-appellant Fernando Viovicente y Gonsesa, together with John Doe, Peter Doe, and Mike Doe, was charged with murder, as follows:^[1]

That on or about the 21st day of July, 1991, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo and an icepick, conspiring together, confederating with and mutually helping one another, did, then and there, wilfully, unlawfully and feloniously with intent to kill, with treachery and evident premeditation and by taking advantage of superior strength, attack, assault and employ personal violence upon the person of FERNANDO HOYOHYO Y VENTURA, by then and there, stabbing him on the chest with the use of said bolo and icepick, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Fernando Hoyohoy y Ventura, in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW.

Fernando Flores testified that while he was on his way to work at 6 a.m. on July 21, 1991, he saw his co-worker Fernando Hoyohoy attacked by four men. Hoyohoy was buying cigarettes at a store located in an alley of Tatalon Street, Quezon City when, according to Flores, two persons emerged from behind the store. Flores identified the two as accused-appellant Fernando Viovicente, alias "Macoy," and one "Balweg." The two approached the victim and seized him by the shoulders (accused-appellant held the victim's right shoulder, while "Balweg" held him by the left). Then, Flores said, two other persons, whom he identified as Maning and Duras, came up to the victim and stabbed him in the left side of the chest. The victim was struck first by Maning with a bolo, followed by Duras who stabbed Hoyohoy with an icepick.^[2] The four then fled from the scene.

During the whole incident, Fernando Flores was ten steps away from the victim.^[3] Flores testified that he knew accused-appellant because both of them had worked in a department store in Sta. Mesa.^[4] He said that two weeks after the incident, his sister saw accused-appellant in their neighborhood and told him. The two of them then informed the victim's brother who then tried to apprehend accused-appellant.

Accused-appellant resisted and drew his knife, but neighbors joined in subduing him. Later, they turned him over to the barangay captain.^[5] On August 6, 1991, Flores gave a statement regarding the incident to the police.^[6]

Tomas Hoyohoy, the victim's brother, testified^[7] that after Fernando had been stabbed he ran to their house and identified Maning Viovicente, Duras Viovicente, accused-appellant Fernando "Macoy" Viovicente, and Romero "Balweg" Obando as his assailants. The four were neighbors of theirs in Tatalon.

Fernando Hoyohoy was taken to the National Orthopedic Hospital where he died at 11 a.m. of the same day (July 21, 1991). A death certificate^[8] and certificate of postmortem examination^[9] were later issued. For the victim's funeral, the family incurred P9,000.00 in expenses.^[10]

Cpl. Iluminado Combalicer of the Galas Police Sub-Station 4 testified^[11] that, upon receipt of the report of the incident, he went to the National Orthopedic Hospital where he was able to talk to the victim. This was at 8 a.m. of July 21, 1991. Hoyohoy told him that he had been stabbed by Maning. Cpl. Combalicer took down the victim's statement and made him sign it.^[12] The pertinent portion of the statement reads:

Tanong: Anong pangalan mo?

Sagot: Fernando Hoyohoy y Ventura, 25 taong gulang, binata, empleyado, tubo sa Manila, nakatira sa No. 11, Bicol Brigade, Tatalon, Q.C.

02 T: Bakit ka narito sa hospital?

S: Sinaksak po ako ni "Maning" at "Duras" roon ring nakatira sa may likod ng bahay namin.

03 T: Anong dahilan at ikaw ay sinaksak?

S: Hindi ko po alam.

Accused-appellant's defense was alibi.^[13] He claimed that on July 21, 1991, the day of the incident, he was in Bataan. According to him, two weeks later he returned to Manila because he did not like his job in Bataan. He went to his mother's house and, after eating, went to the house of his cousins, Maning and Duras. It was there where he was arrested. Accused-appellant's mother, Filomena Canlas, corroborated his alibi.^[14]

The Regional Trial Court of Quezon City (Branch 92)^[15] convicted accused-appellant of murder and sentenced him to 17 years, 4 months, and 1 day of *reclusion temporal*, as minimum, to 20 years of *reclusion temporal*, as maximum, and ordered him to pay the heirs P9,000.00 as burial expenses, P50,000.00 moral damages, and the costs. On appeal, the Court of Appeals^[16] thought the penalty

should be increased to reclusion perpetua because of the absence of mitigating and aggravating circumstances and, in accordance with Rule 124, §13, certified the case to this Court for final review. The Court gave accused-appellant the opportunity of filing an additional appellant's brief but he found it unnecessary to do so. The case was therefore submitted for resolution on the basis of the briefs of the parties in the Court of Appeals and the record of the trial court.

Accused-appellant's brief contains the following assignment of errors:

I

THE COURT A QUO ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II

THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANT FERNANDO VIOVICENTE GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE CHARGED DESPITE OF THE FAILURE OF THE VICTIM FERNANDO HOYOHYOY TO IDENTIFY ACCUSED-APPELLANT AS ONE OF THE ASSAILANTS IN HIS ANTE-MORTEM STATEMENT HE HAD GIVEN TO THE POLICE INVESTIGATOR AT THE HOSPITAL.

First. Accused-appellant contends that it was error for the trial court to rely on the *ante mortem* statement of the deceased which he gave to his brother Tomas, in which the deceased pointed to accused-appellant and Balweg as his assailants. He argues that the alleged declaration cannot be considered a dying declaration under Rule 130, §37 of the Rules on Evidence because it was not in writing and it was not immediately reported by Tomas Hoyohoy to the authorities. Instead, according to accused-appellant, the trial court should have considered the statement (Exh. F) given by the victim to Cpl. Combalicer also on the day of the incident, July 21, 1991. In that statement, the victim pointed to the brothers Maning Viovicente and Duras Viovicente as his assailants. This contention is without merit. The Revised Rules on Evidence do not require that a dying declaration must be made in writing to be admissible. Indeed, to impose such a requirement would be to exclude many a statement from a victim in extremis for want of paper and pen at the critical moment. Instead Rule 130, §37^[17] simply requires for admissibility of an ante mortem statement that (a) it must concern the crime and the surrounding circumstances of the declarant's death; (b) at the time it was made, the declarant was under a consciousness of impending death; (c) the declarant was competent as a witness; and (d) the declaration was offered in a criminal case for homicide, murder, or parricide in which the decedent was the victim.^[18] These requisites have been met in this case. First, Fernando Hoyohoy's statement to his brother Tomas concerns his death as the same refers to the identity of his assailants. Second, he made the declaration under consciousness of an impending death considering the gravity of his wounds which in fact caused his death several hours later. Third, Fernando Hoyohoy was competent to testify in court. And fourth, his dying declaration was offered in a criminal prosecution for murder where he himself was the victim.

Nor is there merit in the contention that because Tomas Hoyohoy, to whom the

alleged *ante mortem* statement was given, reported it to the police on August 5, 1991, after accused-appellant had been arrested, it should be treated as suspect. Delay in making a criminal accusation however does not necessarily impair a witness' credibility if such delay is satisfactorily explained.^[19] Tomas testified that he knew Cpl. Combalicer had talked to his brother Fernando at the hospital^[20] implying that he did not then make a statement because the matter was under investigation.

Second. Actually, the trial court's decision is anchored mainly on the testimony of Fernando Flores. Flores was an eyewitness to the killing of Fernando Hoyohoy. This witness pointed to accused-appellant and to three others (Balweg, Maning Viovicente, and Duras Viovicente) as the assailants, describing the part each played in the slaying of Fernando Hoyohoy. Flores testified:

FISCAL REYES:

Q While you were along that Alley at Tatalon, Quezon City, what happened if any, Mr. Witness?

A I saw Fernando Hoyohoy buying cigarette.

Q What happened while he was buying cigarette?

A Four (4) persons went near him while he was buying cigarette and two (2) held him by the hand.

Q Mr. witness you said that Fernando Hoyohoy at the time was buying cigarette where was he facing at the time?

A He was facing the store.

Q How far were you from Fernando Hoyohoy?

A Ten (10) steps away.

Q You said that four (4) persons appeared and two (2) held Fernando Hoyohoy by the shoulder, from where did these two (2) come from?

A The two (2) persons came behind the store.

Q Who held Hoyohoy by the right shoulder if you know, Mr. witness?

A Fernando Viovicente and Alias Balweg.