

SECOND DIVISION

[G.R. No. 116059, July 23, 1998]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL CRISOSTOMO Y CABANBAN, ACCUSED-APPELLANT.**

D E C I S I O N

MARTINEZ, J.:

Accused-appellant Manuel Crisostomo y Cabanban, after having been found guilty by the Regional Trial Court of San Fernando, La Union of the murder of one Nartito Gavina (hereafter, Nartito), was sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the victim's heirs in the amount of P50,000.00.

For the prosecution, the circumstances surrounding Nartito's death were narrated by Susana Gavina and Manuel Gavina, Nartito's parents.

Susana recalled that at about 12:00 o'clock midnight of June 21, 1992, she, her husband Manuel, Nartito and a granddaughter were all inside their house at Brgy. Aludaid, San Juan, La Union. A partition separated Nartito's room from where his mother was lying down on the floor. While mother and son were engaged in conversation, Susana heard a gunshot emanating from Nartito's room. She then darted to the window, peeped and saw, under a bright moonlight and from a distance of less than one meter, appellant running away from underneath their house armed with a gun. After identifying appellant, Susana went to Nartito's room only to find her son's bloodied, lifeless body and brain oozing from his head. Her children-in-law arrived at the scene in response to her and Manuel's cries for help. Three (3) days after, Susana gave a sworn statement at the police station of San Fernando, La Union regarding the incident. On cross-examination, she testified having actually seen appellant insert the barrel of his gun in the hole underneath their house and then fire at Nartito, hitting him on the head.^[1]

Manuel, Nartito's 89-year old father, gave a similar testimony in that after he heard a gunshot emanating from under the flooring of their house, he went to the window and saw appellant running away. He confirmed the identity of the gunman as appellant since the latter is his neighbor. Upon hearing his wife's shouts for help, Manuel rushed to Nartito's room where he saw the gory condition of his son. When his efforts to revive Nartito proved futile, Manuel sought the help of the barangay captain. He likewise executed a sworn statement before the police as to Nartito's death.^[2]

The autopsy report^[3] prepared by Dr. Arturo G. Llavare revealed the following post mortem findings:

"Cadaver, in state of cadaveric rigidity.

"Wound, GUNSHOT: ENTRANCE, Scalp, Parietal region, left side, posterior aspect, 13.5 cms. above and 1.5 cms. behind the left ear, measuring approximately 3.0 x 1.1 cms. in size, elongated, edges inverted, with a surrounding abraded collar widest at its supero-posterior portion, with singeing and gunpowder residues over hair in surrounding area of wound; directed forward, downward, and from left to right; Involving the Scalp, parietal region, left side, the bullet fracturing the left parietal bone and producing a fracture hole measuring 2.0 x 0.6 cm. At its outer table and 2.4 x 1.3 cm. At its inner table (with bevelling), producing radial fracture lines directed anteriorly to the fronto-parietal suture line and the Frontal bone, midaspect, approximately 16.0 cms. long; the bullet lacerating the Parietal lobe of the brain, left, then crossing the midline and lacerating the Frontal lobe, right side, the bullet further directed downward and fracturing the floor of the anterior cranial fossa, right side, producing periorbital hematoma (left, 3.5 x 2.0 cms.; right, 6.5 x 4.0 cms.), the bullet lacerating the soft tissues of the orbital fossa, right, where a slightly deformed copper-jacketed bullet was RECOVERED.

"Hematoma, Scalp: Fronto-temporo-parieto-occipital region, left side, 18.0 x 16.0 cms. in size, massive, extensive.

"Stomach, with about one third full of partially digested rice and other food particles."

On the witness stand, Dr. Llavare theorized that Nartito was shot by his assailant on the head while he was lying down and at very close range – a mere six (6)-inch distance between the gun and the target.^[4]

Appellant sought to parry the accusation with an alibi. He claimed that he was not in Brgy. Aludaid, San Juan, La Union at the time of Nartito's killing but at his residence in San Gabriel, La Union, with the distance between the two municipalities, as per his own account, negotiable by transportation in a matter of twenty (20) minutes, or by foot in about one (1) hour. Appellant would also want it to appear that it was Nartito who had an axe to grind, by testifying that a few days prior to the killing (June 14, to be exact), he confronted Nartito after the latter attempted to steal his carabao the previous night. Obviously incensed, Nartito cursed appellant and threatened to kill him with a bolo. Nartito's threat on his life was the principal reason why appellant and his family decided to transfer to San Gabriel.^[5]

Appellant's alibi was corroborated by his father, Agapito Crisostomo, who confirmed appellant's presence at his house in Brgy. Central, San Gabriel, La Union for almost a week prior to June 21, 1992, and that appellant was already resting as early as 7:30 in the evening of Nartito's murder.^[6]

Three (3) other witnesses were presented by the defense, namely: SPO2 Bienvenido Cacalne Rodriguez, Roger Crisostomo and SPO3 Felix Angala whose testimonies, however, do not support the alibi. The gist of SPO2 Rodriguez's testimony is that at the time he entered in the police blotter on June 23, 1992 the subject incident relayed to him by SPO4 Angala, there was no named suspect yet.^[7] Roger Crisostomo, a DZSO Bombo Radio reporter and first cousin of appellant, testified to the effect that when he went to Brgy. Aludaid on June 22, 1992 to interview the

barangay captain and Nartito's mother, both did not know who the author of the crime was. It was only five (5) days later when he learned that appellant was the suspect.^[8] SPO3 Angala is one of the policemen who investigated Nartito's death upon being informed thereof at about 7:00 o'clock in the morning of June 22, 1992. In that investigation, Nartito's father, Manuel Gavina, disclosed that his son's killer was appellant. SPO3 Angala nonetheless failed to enter appellant's name in his report because of lack of evidence against him.^[9]

Appellant was convicted principally on the basis of Susana and Manuel Gavina's testimonies which the trial court found to be credible. Appellant now comes to us pleading for his acquittal, arguing that the lower court erred:

I.

IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II.

IN GIVING TOO MUCH CREDENCE TO THE BIASED, CONFLICTING AND FORSWORN TESTIMONIES OF THE PROSECUTION WITNESSES TO ARRIVE AT A FINDING OF GUILT BEYOND REASONABLE DOUBT.

III.

IN DISREGARDING THE DEFENSE OF ALIBI AND DENIAL WHERE PROSECUTION'S EVIDENCE IS EVEN WEAKER AND UNRELIABLE.

We find appellant's conviction to be in order.

In an attempt to undermine the credibility of the prosecution witnesses, appellant pounces on what he claims as material inconsistencies in the open court declarations of Susana and Manuel Gavina, and also in relation to their affidavits/sworn statements, in this wise:

"Susana Gavina, 65 years old, mother of victim Nartito Gavina, testified on direct examination that she was lying down and conversing with her son Nartito when the latter was shot at around midnight of June 21, 1992 (TSN – April 15, 1993, pp. 4-5). On cross-examination, which was conducted nearly a month after the direct examination, Susana Gavina testified that she was already asleep when the shooting incident happened (TSN – May 7, 1993, p. 5). Later, the witness seemed to have changed her mind and said that it was only her son who was asleep but she was awake (TSN – May 7, 1993, p. 8).

"On the other hand, Manuel Gavina, 89 years old, father of victim Nartito Gavina, testified that his wife Susana and son Nartito were already asleep for about fifteen minutes when his son was shot at around midnight of June 21, 1992 (TSN – July 16, 1993, p. 19). He claims to be