

## FIRST DIVISION

[ G.R. No. 123397, October 13, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BENJAMIN M. DE LA CRUZ (P) AND FERNANDO M. DE LA CRUZ  
(AT LARGE), ACCUSED, BENJAMIN M. DE LA CRUZ, ACCUSED-  
APPELLANT.**

### D E C I S I O N

**BELLOSILLO, J.:**

BENJAMIN M. DE LA CRUZ was convicted of murder by the RTC-Br. 129, Kalookan City, for the death of Rolando Millan and meted out an indeterminate prison term of fourteen (14) years of *reclusion temporal* as minimum to *reclusion perpetua* as maximum.<sup>[1]</sup> The Court of Appeals affirmed his conviction but modified the penalty to *reclusion perpetua*. It was found that only treachery as a qualifying circumstance attended the perpetration of the crime.<sup>[2]</sup> In view of the penalty imposed, the case was certified to us for review.<sup>[3]</sup>

These are the facts on which the conviction of accused-appellant Benjamin de la Cruz was based: On 24 January 1992, at 12:00 o'clock midnight, Rogelio Millan, then in the company of his brother Danilo, was waiting for his girlfriend at the corner of San Jose and B. Santos Streets, Isla San Juan, Kalookan City. Suddenly, Rogelio saw his other brother Rolando being blocked by accused-appellant Benjamin de la Cruz while Rolando was walking along the unlighted portion of B. Santos Street near the house of one Benjamin de la Cruz. Rogelio estimated that he was about three arms' length from Rolando and Benjamin. For almost twenty (20) minutes Rogelio was stunned, almost motionless, as Benjamin hit Rolando thrice with a shovel. While Rolando attempted to parry the attack with his left arm, he was nevertheless smashed in the right forehead. Then accused-appellant's brother Fernando de la Cruz stabbed Rolando five (5) times, mostly on the chest, and felled him. Fernando, who was accordingly charged together with his brother Benjamin M. de la Cruz, however has remained at large since the issuance of the warrant of his arrest on 26 March 1992.<sup>[4]</sup>

During the assault of Rolando by the De la Cruz brothers, Rogelio was unable to shout for help nor rush to his brother's aid. It was not until Benjamin and Fernando fled that Rogelio and Danilo brought the wounded Rolando to the hospital where he was pronounced dead on arrival.

Apparently, the trial court believed the narration of Rogelio on how his brother was killed. On the other hand, in rejecting accused-appellant's alibi expressed through his grandmother Concepcion Menes, who supported the former's claim that he was at home asleep when the slaying took place, the court below emphasized that the requisite of physical impossibility for the accused to be at the *locus criminis* was

lacking.<sup>[5]</sup> In finding accused-appellant guilty of murder, the court *a quo* appreciated treachery as a qualifying circumstance taking into consideration how the De la Cruz brothers conspired to attack suddenly the unarmed Rolando with fatal blows without provocation on the part of their hapless victim.<sup>[6]</sup>

Dr. Renato C. Bautista, NBI Senior Medico-Legal Officer, in his post-mortem examination of the victim, confirmed Rogelio's account of the infliction of the injuries on Rolando and concluded that the latter died from multiple stab wounds.

On appeal to the Court of Appeals, accused-appellant Benjamin de la Cruz assailed the verdict of the trial court on four (4) grounds: (a) that the prosecution evidence was inherently incredible; (b) that there was no sufficient evidence to establish his guilt beyond reasonable doubt; (c) that the court *a quo* decided the case on the weakness of the defense evidence and not on the strength of the prosecution evidence thus shifting the burden of proof on the accused; and (d) that since his guilt was not duly proved he should not be held liable for compensatory damages and for funeral and related expenses.<sup>[7]</sup>

Finding no reversible error in the factual findings and conclusions of the court *a quo*, the Court of Appeals affirmed the conviction of accused-appellant and modified the penalty imposed to *reclusion perpetua*.

After a thorough review of the records, we also affirm the conviction of accused-appellant but reduce his prison term in view of the presence of voluntary surrender, a mitigating circumstance which was not considered in his favor. Extant on record is the fact that accused-appellant immediately presented himself to the authorities before midday of 24 January 1992 upon learning that he was a suspect in the killing of Rolando, or barely twelve (12) hours after the killing.<sup>[8]</sup>

Once more we evaluate the prosecution evidence to respond to accused-appellant's query whether his guilt was proved beyond reasonable doubt.

In criminal cases, it is elementary that the accused is entitled to an acquittal unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.<sup>[9]</sup> Ultimately, what the law simply requires is that any proof against the accused must survive the test of reason for it is only when the conscience is satisfied that the perpetrator of the crime is the person on trial should there be a judgment of conviction.<sup>[10]</sup>

Prosecution witness Rogelio Millan who was present during the startling occurrence positively identified accused-appellant as one of the two (2) assailants of his brother Rolando, the other being appellant's brother Fernando de la Cruz. On direct examination, Rogelio testified-

**COURT:**

- Q** You were waiting for your friend and you were with Danilo Millan?
- A** Yes, your Honor.

**Q** And then your brother Rolando Millan was "hinarang"?

**A** Yes, your Honor.

**FISCAL:**

**Q** Do you know who blocked him?

**A** Yes, Ma'am, he is here (Witness pointing to a person who when asked of his name of Benjamin dela Cruz).  
x x x x

**Q** How long have you known Fernando dela Cruz?

**A** For a long time, ma'am.

**Q** Will you please give us more or less how long was that "matagal na"?

**A** More or less five years, ma'am.

**Q** What about Benjamin dela Cruz, do you know him?

**A** Yes, ma'am.

**Q** How long have you known Benjamin dela Cruz?

**A** Long time also ma'am.

**Q** How long is that long time?

**A** Five years, more or less.

**Q** Is this Benjamin dela Cruz you are telling us now the same Benjamin dela Cruz, the accused in this case?

**A** Yes, ma'am.

**Q** Where is he? Will you please identify him by pointing to him?

**A** (Witness pointing to a person whom when asked answered to the name of Benjamin dela Cruz).<sup>[11]</sup>

Accused-appellant argues that if Rogelio was truly present at the scene of the crime, his act of not aiding his brother whose life was in danger in the hands of accused-appellant was not in accord with the natural reactions and impulses of blood relations. Not necessarily; on the contrary, we view the cowardice of Rogelio, regretful as it may seem, as an earmark of truth. It is well-settled that people react differently when placed under emotional stress.<sup>[12]</sup> And that was how Rogelio reacted while admitting his own cowardice.

Rogelio's faintheartedness again surfaced when Danilo, instead of Rogelio, executed the affidavit upon which the criminal complaint was based. This according to accused-appellant further shows that Rogelio was not an eyewitness to the attack on the victim Rolando. Rogelio however gave the following explanation regarding this matter:

**CROSS-EXAMINATION BY ATTY. ONGTECO:**

**Q** Do we get it right that you were the only one who witnessed the whole incident because you said Danilo went back home?

**A** Yes, sir.

**Q** Why did you allow Danilo to give his statement when you said that Danilo was not present when your

brother Rolando was being attacked by the De la Cruz brothers?

**FISCAL:** Objection, that calls for conclusion.

**COURT:** No, I'm interested to know.

**WITNESS:**

**A** I told him, sir. I narrated to him.

**ATTY.**

**ONGTECO:**

**Q** Because you do not want to be disturbed or bothered by this case, you forced Danilo Millan to give statement?

**A** Yes, sir.

**Q** Based on what you saw?

**A** Yes, sir.<sup>[13]</sup>

During the trial, Rogelio clarified that he was only one who saw the incident because Danilo who was initially with him left and went him shortly before the incident. Rogelio testified that he only fetched Danilo after the fatal attack on their brother Rolando so that they could carry the latter and bring him to the hospital.<sup>[14]</sup>

Obviously, the affidavit of Danilo was submitted for the purpose of determining probable cause, that is, whether there was sufficient ground to engender a well-founded belief that a crime had been committed and that the respondent was probably guilty thereof and should be held for trial.<sup>[15]</sup> Accused-appellant's conviction was a result of the positive identification and eyewitness account supplied by Rogelio at the trial when he finally mustered sufficient courage to recall in court what he had seen on the fateful night of 24 January 1992. As assessed by the trial court, Danilo's affidavit did not affect Rogelio's credibility. At any rate, the misrepresentation contained in Danilo's affidavit only reinforced the regrettable impression that Rogelio did not want to get involved in his brother's case. The defense had every opportunity to disprove Rogelio's story but in the process only enabled the lower court to ascertain that Rogelio simply related things as they happened. It bears reiterating that the initial reluctance of witnesses and their willingness to be involved in criminal investigations are common and have been judicially declared not to affect credibility.<sup>[16]</sup>

We see no cogent reason to reverse the trial court's finding that the prosecution eyewitness categorically identified accused-appellant as one of the culprits. It cannot be gainsaid that a distance of three arms' length from a lighted post provided enough visibility for positive identification of a person long known. In *People v. Obello*,<sup>[17]</sup> we had occasion to rule-

x x x x Indeed, the testimony of a single witness, when positive and credible, is sufficient to support a conviction even of murder. Testimonies are to be weighed, not numbered, hence, a finding of guilt may be based on the uncorroborated testimony of a single witness when the trial court finds such testimony positive and credible (cited cases omitted).