

## THIRD DIVISION

[ G.R. No. 105292, April 18, 1997 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,  
VS. REYNALDO "REGIE" SUMBILLO, ALEX VELARGA AND  
ABRAHAM "ABLING" ADORACION, ACCUSED-APPELLANTS.**

### DECISION

For their defense, appellants plead denial and alibi. However, such defenses are inherently weak and cannot overturn clear and positive testimony locating them at the *locus criminis* and identifying them as the assailants.

This rule is reiterated in this appeal certified and elevated by the Court of Appeals to this Court pursuant to Section 13, Rule 124<sup>[1]</sup> of the Rules of Court. Appellants assail the Decision, dated May 20, 1992 of the Appellate Court in C.A.-G.R. CR. No. 06251, affirming the conviction of Appellants Reynaldo "Regie" Sumbillo, Alex Velarga and Abraham "Abling" Adoracion for the crime of murder and increasing the penalty imposed to *reclusión perpetua*.

Appellants were charged with murder under an Amended Criminal Complaint which reads:<sup>[2]</sup>

"That on or about 7:00 o'clock in the morning of July 30, 1983 at Brgy. Tigbauan, Municipality of Maasim, Province of Iloilo, Philippines and within the preliminary jurisdiction of this Honorable Court the above-named accused, with evident premeditation (sic), conspiring and helping with one another, with deliberate intent to kill, with treachery and with the use of superior strength, did then and there, willfully, unlawfully and feloniously, armed with the long guns, attacked, assault and shot CESAR CLABEJO, thereby hitting the latter at the different parts of his body, causing his immediate death.

Death Certificate is hereto attached.

CONTRARY TO LAW."

Upon arraignment, the accused pleaded "not guilty" to the charge.<sup>[3]</sup> After trial, the Regional Trial Court of Iloilo City, Branch 29,<sup>[4]</sup> rendered a decision convicting them of murder. The dispositive portion of the decision reads:<sup>[5]</sup>

"WHEREFORE, finding the three (3) herein accused, Reynaldo 'Regie' Sumbillo, Alex Velarga and Abraham 'Abling' Adoracion, GUILTY beyond reasonable doubt of the killing of Cesar Clavejo, qualified by treachery to murder, without any mitigating or aggravating circumstance, they are hereby sentenced to suffer an indeterminate penalty of fourteen (14) years, ten (10) months and twenty (20) days as minimum to twenty (20)

years as maximum; to indemnify jointly and severally the heirs of the said Cesar Clavejo in the amount of P30,000.00, plus P4,150.00 as actual damages; and to pay the costs.

SO ORDERED.”

On appeal, the Twelfth Division of the Court of Appeals<sup>[6]</sup> affirmed appellant’s conviction, but modified the penalty by sentencing the appellants to *reclusion perpetua*. Instead of entering judgment, however, the Court of Appeals correctly certified the case and elevated the entire record thereof to this Court. The dispositive portion of the CA Decision reads:<sup>[7]</sup>

“WHEREFORE, finding no reversible errors committed by the trial court, We AFFIRM the conviction of all accused-appellants but the appealed decision is hereby MODIFIED to the effect that accused-appellants are sentenced to suffer imprisonment of *reclusion perpetua* and ordered to indemnify the heirs of the deceased Cesar Clavejo in the amount of P50,000.00. However, instead of entering judgment and pursuant to Section 13, Rule 124 of the Rules on Criminal Procedure, as amended, let the entire records of the above-entitled case be certified and elevated to the Honorable Supreme Court for review.

SO ORDERED.”

Hence, the appeal is now before this Court.

### **The Facts**

#### **According to the Prosecution**

The facts as presented by the prosecution and adopted by both the trial and the appellate courts, are as follows:<sup>[8]</sup>

“Evidence for the prosecution principally revolved around its two witnesses, namely: Basilia Clavejo and Erlinda Estares, the sister-in-law and the sister of deceased victim Cesar Clavejo, respectively. The trial court based the conviction of accused-appellants on the testimonies of said witnesses, to wit:

'xxx xxx

xxx

The testimonies of these two witnesses, in common, show that in the morning of July 30, 1983, at about 7:00 o’clock, while they and Cesar Clavejo were walking single file in Barangay Tigbauan, Maasin, Iloilo, to the ricefield of one Caridad Mates Salcedo which they were to weed that Saturday, there was suddenly a gunshot and Cesar Clavejo shouted that he was hit. x x x (He) held his stomach and was stooping or bent forward. Then there followed successive gunshots. The three accused, Reynaldo ‘Regie’ Sumbillo, Alex Velarga and Abraham ‘Abling’ Adoracion with one Dionito Mata (who is still at large) then went near xxx Clavejo where he lay. They were all armed with long firearms. After having gone near and after Reynaldo ‘Regie’ Sumbillo told Erlinda Estares not to tell anyone that they killed Cesar Clavejo, otherwise she also would be killed, the four ran away. Cesar Clavejo

died with wounds stated in Exhibit 'A'. That same day, Rudy Clavejo went to the poblacion of Maasin, Iloilo, to report the killing and went back to Barangay Tigbauan with policemen and army men that same morning. Also on the same day the three accused were arrested for the killing of Cesar Clavejo.

Basilia Clavejo testified that all the three (3) accused whom she pointed out in court, are known to her being all residents of, and are her neighbors in, Tigbauan, Maasin, Iloilo; that Dionito Mata approached Cesar Clavejo and shot him; that there were successive gunfire and she ran and hid behind a banana tree in a grove by bank of the creek and saw Erlinda go to Cesar who she held in her lap; and that she saw the three (3) accused approach Erlinda and Cesar and heard the statement to Erlinda that she should not tell anyone that they killed Cesar or she would be killed.

Erlinda Estares testified that she knows all the three (3) accused who are her neighbors, Reynaldo 'Regie' Sumbillo having been her classmate, and Dionito Mata who is her first cousin, their fathers being uterine brothers; that after the first gunshot she looked around and saw Dionito Mata, and the three (3) herein accused all with long firearms; that Dionito Mata went near Cesar Clavejo; that she did not actually see who shot Cesar; that Reynaldo Sumbillo went near her and told her not to tell anybody that they killed Cesar Clavejo; and that they ran away. She testified also that the police that same day interviewed her in Tigbauan about the killing of Cesar Clavejo.'

(Decision, pp. 2-3, Original Records)

Dr. Vivencio Tobias, Senior Resident Physician of the Pang-alalang Pagamutan Ramon Tabiana of Cabatuan, Iloilo, issued a certification which reads:

'August 11, 1983

#### C E R T I F I C A T I O N

##### TO WHOM IT MAY CONCERN:

This is to certify that on examination of the cadaver of Cesar Clavejo on July 30, 1983 at the Somo Funeral Homes, Ma-asin, Iloilo the following physical injuries were noted:

1. Gunshot wound, point of entrance, mid cheek right with surrounding powder burns
2. Gunshot wound, point of exit, left occipital area
3. Gunshot wound, point of entrance, anterior abdominal wall 4 cms. to the right and 2 cms. below the umbilicus
4. Gunshot wound, 11 cms. to the left of the umbilicus

All gunshot wounds of entrance measure 9 mm. in diameter.

This certification is issued upon the request of p/Sergeant Reynaldo E. Sorongon, INP Sub-Station Commander, Ma-asin, Iloilo.

VIVENCIO S. TOBIAS, M.D.

Senior Resident Physician'

(Exhibit 'A' & 'A-1-)'"

### **Version of the Defense**

Appellants deny shooting the deceased, raising alibi as their defense. Appellant Velarga testified that at about 7:00 a.m. of July 30, 1983, he was at his uncle Wenceslao Moreno's house, where he was staying while helping at his uncle's farm. It was more than one kilometer away from the scene of the crime<sup>[9]</sup> with no connecting road.<sup>[10]</sup> Witness Herminigildo Adoracion corroborated this, testifying that at about the same time, he saw Appellant Velarga at Moreno's house.<sup>[11]</sup>

Appellant Adoracion also denied killing Cesar, stating that he was clearing rice paddies with his brother Pablo in the farm at the time of the shooting. Their farm was about one kilometer from the crime scene.<sup>[12]</sup> His story was corroborated by his father Doroteo, who testified that, on the day and time of the killing, from his house which was 120 meters away, he saw his sons, Pablo and Appellant Adoracion, clearing rice paddies. He said that this was 200 meters away from the crime scene, but that it was inaccessible because there was no connecting road.<sup>[13]</sup>

Appellant Sumbillo testified that on that day, at about 7:00 a.m., he was with his uncle Jose Jarden, harrowing the latter's ricefield.<sup>[14]</sup> This was corroborated by Witnesses Jesus Alforo, Jose Jarden, and Felomino Masculino. According to Jarden, his farm was more than one kilometer from the scene of the crime.<sup>[15]</sup>

Alforo, the owner of a field adjoining Jarden's, testified that at about 7:00 a.m. of that day, while plowing his farm, he saw Appellant Sumbillo plowing Jarden's field.<sup>[16]</sup> Felomino Masculino also testified that, at about 6:30 a.m. of that day while he was cutting bamboo on the upper portion of an overlooking hill, he saw Appellant Sumbillo working on Jarden's field. Appellant Sumbillo was still in the field when Masculino heard gunshots; the latter even shouted to the former, "What is that gunfire?"<sup>[17]</sup>

Appellant Velarga testified that when he was arrested at his house at around 2:00 p.m. of the same day, a certain Sgt. Tabang of the Philippine Army searched their house for any hidden firearm but found none.<sup>[18]</sup>

Witness Marcelino Jarden testified that at about 7:00 a.m. while he was at his farm, he saw Estares and Basilia inside a nipa hut with Gorgonio Clavejo about half a kilometer from the crime scene. Ten minutes after he heard gunshots, the two screaming women ran to the scene of the crime.<sup>[19]</sup>

The appellants also aver that they had been wrongfully arrested by the combined group of the INP and Philippine Army because Rudy Clavejo, who reported the killing and accompanied the arresting officers, had no time to ask Witnesses Estares and Basilia Clavejo about the identity of the victim's killers.

The police blotter (Exh. "5")<sup>[20]</sup> stated that the victim was reported to have been shot dead by an "unknown person or persons" (Exh. "5-b" and "5-b-1"). Policeman Eliseo Lope of the Maasin Police Station testified that Barangay Tigbauan, Maasin, Iloilo, the scene of the crime, was rebel-infested. The police had no suspect and warrant of arrest when they left for Brgy. Tigbauan, and appellants were merely pointed out by Rudy Clavejo.<sup>[21]</sup>

Sgt. Reynaldo Sorongon testified that he had filed an Amended Complaint, dated September 1, 1983 changing one of the co-accused from "Eddie Adoracion" to "Abraham Adoracion."<sup>[22]</sup>

The appellants further contend that they had been falsely accused of killing the victim due to a land dispute between their families. Appellant Sumbillo is third cousin to Dionito Mata (who was and is still at large) and Appellant Velarga, and second cousin to Appellant Adoracion.<sup>[23]</sup>

The families of the victim and of Dionito Mata had a misunderstanding over a parcel of land. Said land, which used to be tilled by the victim's brother, was bought by Appellant Sumbillo's uncle, Silvestre. A relative of Appellant Sumbillo was also killed allegedly by the victim's brother. Two months after, Dionito Mata's father Ramon was also killed allegedly by a relative of the victim.<sup>[24]</sup>

Appellant Sumbillo denied pointing a gun at Prosecution Witness Estares because she was his classmate and aunt in the third degree.<sup>[25]</sup> He also denied killing Cesar as the latter was his uncle.<sup>[26]</sup> Such allegations, he said, were only fabrications because the Clavejos were only trying to get back at his uncle Silvestre with whom he was living.<sup>[27]</sup>

Appellant Adoracion's father, Doroteo, also claimed that when he visited his son in the municipal building in Maasin, Iloilo and again in Cabatuan, he and Victor Sumbillo, father of Appellant Reynaldo, were told by Sgt. Reynaldo Sorongon, the Chief of Police, that their sons' case could be settled for P6,000.00.<sup>[28]</sup> He and Victor refused to pay because their sons were innocent.

### **The Trial Court's Ruling**

The trial court refused to believe appellants' alibi and denial. Even if the situs of the shooting was rebel-infested, it did not necessarily follow that the victim's killing was ascribable to the rebels. Their alibi did not establish complete physical impossibility because the places where appellants allegedly were working/staying, were all within the same barangay and only about one kilometer away from the scene of the crime.

On the other hand, appellants were positively identified by the prosecution witnesses whose story was supported by physical evidence. The prosecution witnesses were not shown to have been falsely motivated to testify, and the apparent inconsistencies in their testimonies were sufficiently explained in open court.

It was proven that appellants conspired in the victim's killing -- they were at the