

## **FIRST DIVISION**

**[ G.R. No. 119068, July 31, 1997 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE CASTRO, RITO CASTRO, JOEL CASTRO, GEORGE CASTRO AND OSCAR CASTRO, ACCUSED-APPELLANTS.**

### **D E C I S I O N**

**PADILLA, J.:**

An information, dated 14 November 1991,<sup>[1]</sup> was filed by Provincial Prosecutor Alejandro A. Pulido of Cagayan charging Dante, Oscar, Rito, Joel, George, all surnamed Castro, Caridad Menor y Castro alias Caring and Genesia Garcia y Castro with the crime of murder, allegedly committed as follows:

“The undersigned, Provincial Prosecutor, accuses Dante Castro, Oscar Castro, Rito Castro, Joel Castro, George Castro alias Jong, Caridad Menor y Castro alias Caring, and Genesia Garcia y Castro alias Jining of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

That on or about August 22, 1991, in the Municipality of Amulung, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Dante Castro, Oscar Castro, Rito Castro, Joel Castro, Caring and Genesia Garcia y Castro alias Jining, armed with long handled bolos (tabas), spear and gun, conspiring together and helping one another with intent to kill, with evident premeditation, treachery and taking advantage of superior strength did then and there wilfully, unlawfully and feloniously attack, assault, stab, hack and shoot one, Alfonso Sosia, inflicting upon him several injuries on the different parts of his body which caused his death.

Contrary to law.”

On 10 February 1992, the accused, assisted by counsel, were arraigned and pleaded not guilty to the charge. Defense counsel waived pre-trial for the accused and moved for continuous trial which commenced on 2 March 1992 and terminating on 15 February 1994 when both prosecution and defense submitted the case for resolution.

On 10 May 1994, the Regional Trial Court, Branch 02 of Tuguegarao, Cagayan rendered a decision,<sup>[2]</sup> the dispositive part of which reads:

“WHEREFORE, finding the accused Oscar Castro, Dante Castro, Rito Casro, Joel Castro and George Castro guilty beyond all reasonable doubt of the crime of Murder as penalized under Art. 248, of the Revised Penal

Code, they are hereby sentenced separately of [sic] the following penalties:

1. To Oscar, an indeterminate sentence of 10 years and 1 day of prison mayor to 18 years, 8 months and 1 day of reclusion temporal medium;
2. To Dante Castro, Rito Castro, Joel Castro and George Castro, reclusion perpetua;
3. Genecia Castro and Caridad Castro are acquitted of the murder charge.
4. All the accused except Caridad and Genecia Castro are hereby ordered to pay the cost of the suit.

SO ORDERED.”

The facts, as summarized by the Solicitor General in his brief, are as follows:

“In the morning of August 22, 1991, Clodualdo Escobar went to Barangay Bacring, Amulung, Cagayan to supervise the cultivation and preparation of his agricultural property, consisting of 25 hectares (TSN, March 2, 1992, pp. 14-15).

Escobar and his tenant and overseer Alfonso Socia, who was carrying a harrow borrowed from Romulo Garcia, were on their way to the farm when they met appellants Oscar Castro, Joel Castro, Rito Castro, Dante Castro and George Castro. Genecia Castro and Caridad Castro were also with the group(pp. 17-18, Ibid.).

Escobar was ahead of Socia by a distance of four (4) to five (5) meters. Appellant Oscar Castro, the leader of the group asked Escobar and Socia where they were going (Ibid.). Fear gripped Escobar, because appellants Oscar, Rito and Joel were all carrying boloes. Without waiting for an answer, appellant Oscar hit the left hand of Socia who was behind Escobar. Escobar was at that time moving backward, facing the appellants (p. 19, Ibid.). After Socia was hit, he tried to shield himself with the harrow he was carrying. Then came a series of stab and hacking blows from appellants Dante and George. George hacked the shoulder of Socia, while Dante stabbed the right forearm of Socia with a long bolo (Ibid., p. 20).

Appellant George was at the back of Socia at the left side of Dante when he delivered the stab blow. Dante and George came from the back of the house of Ernesto Garcia when they hit Socia. George was carrying a yellow sack, where he got a handgun which he gave to his uncle Rito, who immediately fired it and shot the lying Socia (p. 21, Ibid.).

All the appellants triumphantly shouted “nangabak kamin (meaning: We won.) (Ibid, p. 22). For fear that Rito might shoot him, Escobar retreated twenty-five (25) meters away. On the other hand, Caridad Castro used a spear to block Lourdes Castro [sic] who was calling for help. Genecia

Castro meanwhile was shouting, "Adda pay ni Lakay Escobar, patayen yo pay" (meaning: Here is oldman Escobar, kill him also (Ibid., pp. 23-25).

After Socia fell, he was placed in a hammock and brought to Tuguegarao, Cagayan for treatment but died on the way. The body was brought to the house of one Rodolfo Farinas at Bayabat, Cagayan. The incident was reported to the 111th Philippine Constabulary detachment at Bayabat, Cagayan (Ibid., pp. 29-30)."[3]

In their brief, appellants attempted to show that the testimony of Lourdes Sosia\* (victim's wife) during the trial and the affidavit she executed on 27 August 1991 were contrived and devised. Appellants aver that in an interview by SPO1 Pedrito Catil of Lourdes Sosia on 22 August 1991, right after the incident in question took place, the latter informed the police investigator that it was only Oscar Castro who was the assailant of her husband Alfonso Sosia. According to appellants, such statement which was made on the same day the incident happened, should have been regarded by the trial court as part of the *res gestae* for it was made after startling occurrence before she had time to concoct lies or to fabricate an account.

According to appellants, all the requisites for the admission of said statement as part of the *res gestae* under the Rules of Court are present in this case, to wit:

- (a) That the principal fact, the *res gestae*, be a startling occurrence;
- (b) that the statements were made before the declarant had time to contrive or devise; and
- (c) that the statements must concern the occurrence in question and its immediately attending circumstances."[4]

Appellants further allege that the testimony in court of Lourdes Sosia implicating all the appellants in the crime charged is not the product of a natural and spontaneous reaction or response.

It is then argued by appellants that while admittedly all the appellants (except Oscar Castro) invoked the defense of alibi – usually a weak defense – the same should not be looked upon with disfavor in this case, as the same was amply corroborated on material points by the defense's witnesses. In short, according to appellants, the presumption of innocence standing in their favor has not been adequately overcome by the prosecution.

Appellants' arguments are not impressed with merit.

The testimony of Lourdes Sosia, the victim's widow, during the trial that all the appellants killed her husband prevails over the affidavit she executed after the incident. It has been held that whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight.[5] Moreover, affidavits taken *ex parte* are inferior to testimony given in court, the former being almost invariably incomplete and oftentimes inaccurate.[6]

The record is replete with evidence showing beyond reasonable doubt the guilt of the accused-appellants. Two (2) other prosecution witnesses – Clodualdo Escobar