

## THIRD DIVISION

[ G.R. No. 117576, September 18, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ERNESTO SANTIAGO JAMIRO, ACCUSED-APPELLANT.  
D E C I S I O N**

**PANGANIBAN, J.:**

The silence of eyewitnesses for a considerable length of time, if sufficiently explained, does not necessarily destroy their credibility. Neither do minor inconsistencies make their testimonies implausible. Rather, their narration of what transpired on that fateful night when the victim was slain should be weighed and compared with the other pieces of evidence presented, so that truth may be discovered and justice rendered.

**Statement of the Case**

Appellant Ernesto Jamiro, then a member of the Integrated National Police (now Philippine National Police or PNP) assigned to Bacoar, Cavite, was accused of killing a certain Eduardo ("Dado") Mulingbayan. The President waived court martial jurisdiction over his case. Hence, Constabulary Judge Advocate Fortunato M. de Gracia, Jr. referred the case to the provincial prosecutor of Cavite City<sup>[1]</sup> for civil prosecution.

After conducting a preliminary investigation,<sup>[2]</sup> Asst. Provincial Prosecutor Diego C. Agustin filed before the Regional Trial Court of Bacoar, Cavite, Branch XIX,<sup>[3]</sup> an Information dated December 5, 1990 charging Appellant Jamiro of murder allegedly committed as follows:

That on or about the 19th day of December 1989, at Barangay Molino, Municipality of Bacoar, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, being then armed with a short firearm and with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously, shoot one Eduardo Mulingbayan, thereby causing his instantaneous death, to the damage and prejudice of his family."<sup>[4]</sup>

With the assistance of counsel, accused-appellant entered a plea of not guilty at his arraignment on August 12, 1991, during which the information was translated to him "in Tagalog, which he speaks and understands."<sup>[5]</sup>

After pre-trial and trial on the merits<sup>[6]</sup>, the court a quo rendered the assailed Decision<sup>[7]</sup> dated November 15, 1993, the decretal portion of which reads:

WHEREFORE, the Court finds accused Ernesto Santiago Jamiro GUILTY BEYOND REASONABLE DOUBT of the crime of Murder penalized by Article

246 of the Revised Penal Code. He should suffer the prison term of Reclusion Perpetua with the accessory penalties provided by law. He should pay private complainant Felipe Mulingbayan, representing the Heirs of deceased-victim Eduardo Mulingbayan the following:

- a) P50,000.00 as death compensation
- b) P32,500.00 as reimbursements of funeral expenses
- c) P25,000.00 moral damages
- d) P10,000.00 exemplary damages
- e) P10,000.00 attorney's fees for private prosecutor

"The period of detention of the accused at the Bacoor Municipal Jail from August 5, 1991 to August 29, 1991 may be credited in his favor."<sup>[8]</sup>

During the pendency of the trial, the victim's father, Felipe Mulingbayan, initiated an administrative complaint<sup>[9]</sup> with the National Police Commission (NPC) against the accused. In its decision dated June 15, 1992, the NPC Adjudication Board found Jamiro guilty of grave misconduct and ordered his dismissal from the service.<sup>[10]</sup>

#### The Facts Version of the Prosecution

On the night of December 19, 1989, Dado Mulingbayan was shot by a lone assailant in Bacoor, Cavite. Prosecution Witnesses Eduardo Manaois,<sup>[11]</sup> Aries Fuentes,<sup>[12]</sup> and Edmond Allan Ortiz<sup>[13]</sup> testified to having seen appellant shoot Dado from behind while the latter was seated on a bench inside a store and drinking beer.<sup>[14]</sup> The deceased did not converse with, much less provoke, the appellant.<sup>[15]</sup>

Manaois narrated that around 10:30 p.m. of December 19, 1991, he was drinking beer with Lito Gabot and Inggo de los Santos<sup>[16]</sup> at a store owned by a certain Mang Buling.<sup>[17]</sup> While Dado Mulingbayan was seated on a bench inside the store, Jamiro arrived, drew his short firearm and, without saying a word, shot Dado. Thereafter, appellant told those who witnessed the incident to leave the place.<sup>[18]</sup>

On the other hand, Fuentes was on his way home on that fateful night.<sup>[19]</sup> Near the store of Mang Buling,<sup>[20]</sup> he saw appellant shoot Dado. He also heard appellant warn everyone against testifying on what happened.<sup>[21]</sup> He added that the victim was then carried to a tricycle.<sup>[22]</sup>

Ortiz testified that on December 19, 1989, between 10:00 p.m. and 10:30 p.m., he was with Dado, seated on a bench and drinking beer at Mang Buling's store.<sup>[23]</sup> Appellant suddenly appeared with a gun and forthwith shot Dado.<sup>[24]</sup>

The gunshot was fatal. Dado succumbed to death even before his arrival at the Cavinti Clinic in Moonwalk, Las Piñas, Metro Manila.<sup>[25]</sup> The Postmortem Findings of Medico-Legal Officer Roberto V. Garcia of the NBI reads:

Cyanosis, lips and nailbeds.

Abrasion, 1.0 x 0.4 cm., right hand, dorsum.

Wound, healing, 0.8 x 0.2 cm., right palm.

Gunshot wound, ENTRANCE: 0.7 X 0.9 cm., ovaloid, with an abrasion collar widest supero-anteriorly, right auricular region, 1.0 cm. In front and 1.0 cm. below the right external auditory meatus, directed slightly backward, slightly downward and from right to left, involving the soft tissues, fracturing the 2nd cervical vertebra, lacerating the spinal cord at this level, and finally the deformed bullet was lodged on the left side of the 2nd cervical vertebra where it was extracted.

Hematoma, scalp, left parietal region, supero-posterior aspect.

Hemorrhage, interstitial, about the 2nd cervical vertebra.

Visceral organs, congested.

Stomach, contains small amount of light brownish fluid material.

"CAUSE OF DEATH: - Gunshot wound lacerating Cervical spinal cord.

"REMARKS: - One (1) deformed bullet extracted from the deceased, submitted to the NBI Ballistics Section, for examination."<sup>[26]</sup>

The slug extracted from the body of the victim was found to be "a deformed Caliber .38 copper-coated lead bullet. No determination could be made as to the type of firearm used due to lack of basis for identification."<sup>[27]</sup>

### **Version of the Defense**

For his defense, Appellant Jamiro denied authorship of the crime and set up alibi. According to him, on that tragic night he was assigned to the Zapote public market, where he reported for work at seven o'clock in the evening.<sup>[28]</sup> Pfc. Armando Dumali, chief of the operations department of his INP unit, even came to check on him and his colleagues<sup>[29]</sup> and found them at their outpost twice, first around 8:00 p.m. and second at 10:00 p.m. Dumali left the post later at 10:20 p.m. after drinking coffee.<sup>[30]</sup> Consequently, appellant said that it was impossible for him to have been at the crime scene in Queensrow Subdivision, also in Bacoar, Cavite, which was allegedly about 45 minutes away by car from their outpost in Zapote.<sup>[31]</sup>

Defense Witnesses Police Inspector Jose B. Salamante<sup>[32]</sup> and SPO1 Armando Dumali<sup>[33]</sup> substantially corroborated the alibi of appellant.<sup>[34]</sup>

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

The court a quo gave full faith and credit to the testimonies of Prosecution Witnesses Manaois, Fuentes and Ortiz. It found the three witnesses candid and

straightforward, without any ill motive to testify falsely against the appellant.<sup>[35]</sup>

Further, the lower court dismissed the defense of alibi in this wise:

x x x The claim of the accused was that he was not at the scene of the crime as he was assigned at Zapote Public Market Police Outpost, Bacoar, Cavite. The accused and witnesses failed to amply prove the physical impossibility for accused to reach Queensrow Subdivision, Molino, Bacoar, that late fateful night of December 19, 1989 from his place of assignment at Zapote, Bacoar, Cavite. No less than defense witness SPO1 Armando Dumali contended that it would take one-half hour to reach the place of the incident using a private vehicle at night (tsn. October 20, 1992, pp. [sic] 14). It was the same defense witness SPO1 Armando Dumali who contended that accused was a member of the Patrol Division. Moreover, having been a policeman assigned at Bacoar, Police Station since August, 1989 (tsn. January 14, 14, 1993, p. 22). without doubt, he had gained experiences and friends. He could easily hire or secure a vehicle to reach the place of incident and to accomplish his dastard act. His claim that he owns no vehicle and rides on a public conveyance (tsn. id., 48) would not in any way be a deterrent from accomplishing his evil scheme.”<sup>[36]</sup>

The court a quo qualified the killing to murder, finding that there was treachery when Appellant Jamiro suddenly appeared from behind his unwary victim and shot the latter. It held: “The accused had consciously shot the right front ear of the victim to ensure the demise of the victim. It is stressed herein that the accused was unarmed, defenseless, unsuspecting and unaware of the impending assault done to him by the accused-policeman.”<sup>[37]</sup>

The appellant moved for reconsideration<sup>[38]</sup> of the trial court’s Decision, raising as issues the credibility of the prosecution witnesses and the appreciation of treachery, and reiterating his defense of alibi. The appellant also moved that the judge inhibit herself from resolving the motion for reconsideration and the pleadings filed in connection therewith.<sup>[39]</sup>

The trial court, however, dismissed both motions in its Orders dated June 1, 1994<sup>[40]</sup> and August 26, 1994.<sup>[41]</sup>

In dismissing the motion for inhibition, the trial judge declared:

The Court’s observation referring to the candidness and straightforwardness of the testimonies of the prosecution witnesses did not limit itself to their demeanor at the witness stand but also the assessment of their testimonies, as a whole, as recorded in the transcripts of the stenographic notes that were taken when they testified. It is the firm stand of the undersigned judge that she could properly and amply evaluate, assess and look into not only on the demeanor of the witnesses at the witness stand, but also on their candor and manner of answering the questions posed at them during the conduct of their direct, cross, redirect and recross examinations, as duly recorded and reflected in the transcribed notes. She had patiently read, examined, appreciated

and narrated the testimony of each of the witnesses, not only for the prosecution but that of the defense, at the 13-page challenged decision of this case. She could say with certainty that she made just findings and conclusions in the disputed decision based on the culled facts and circumstances from the evidence on record, subject, of course, to the evaluation of the same by the higher appellate courts. xxx”<sup>[42]</sup>

### **Assignment of Errors**

Appellant Jamiro raises in his appeal brief<sup>[43]</sup> the following assignment of errors:

1. The trial court gravely abused its discretion in rejecting the SC ruling that the silence of the alleged prosecution witnesses for almost two years puts in doubt their credibility and renders unreliable their story.

“2. The trial court gravely abused its discretion in giving credence to alleged eyewitnesses who where (sic) contradi[c]tory on material points, were coached, rehearsed, and evasive, and who have motives to testify falsely against accused.

“3. The trial court gravely abused its discretion when it adjudged the guilt of the accused when in the face of the evidence presented, he should be acquitted for insufficiency of evidence, or at the least, reasonable doubt.”

<sup>[44]</sup>

In sum, his appeal hinges on the credibility of the prosecution witnesses and the sufficiency of evidence to convict the accused beyond reasonable doubt.

### **This Court’s Ruling**

The appeal is without merit.

### **Credibility of Prosecution Witnesses**

We shall deal with the challenges posed by the appellant with respect to the credibility of the eyewitnesses, seriatim. First, Appellant Jamiro posits that the long silence (two years) of the eyewitnesses and their failure to report the incident to the authorities, to the family of the victim, or to anyone else, render their testimonies dubious; such silence shows that they acted contrary to normal human behavior.<sup>[45]</sup>

Time and again, this Court has ruled that, when confronted with startling occurrences, behavioral responses of witnesses are diverse.<sup>[46]</sup> Indeed, there is no uniform reaction or standard behavioral response to grisly events.<sup>[47]</sup> In numerous instances, we have declared that the reluctance of eyewitnesses to testify on a crime and to get involved in a criminal investigation are but normal and do not by themselves affect the witnesses’ credibility.<sup>[48]</sup> The sealed lips of said witnesses are but a natural and spontaneous reaction. They may opt to remain silent rather than to imperil their own lives and those of their families.