

## THIRD DIVISION

[ G.R. No. 114002, July 05, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ELEUTERIO C. COMPENDIO, JR., ALIAS "LOLOY," ACCUSED-  
APPELLANT.**

### D E C I S I O N

**DAVIDE, JR., J.:**

Accused-appellant Eleuterio C. Compendio, Jr. appeals from the decision<sup>[1]</sup> dated 8 December 1993 of Branch 14 of the Regional Trial Court (RTC) of Baybay, Leyte, in Criminal Case No. B-1747, finding him guilty beyond reasonable doubt of the crime of murder.

The case commenced with the filing of a complaint with the Municipal Trial Court (MTC) of Baybay, Leyte, on 27 January 1992,<sup>[2]</sup> while the information was filed with the RTC on 23 October 1992, its accusatory reads:

That on or about the 18th day of August 1989 in the Municipality of Baybay, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with evident premeditation, with intent to kill and treachery, did then and there wilfully, unlawfully and feloniously [sic] attack, assault and stab one Cirilo Vitualla, with the use of a bladed weapon, which the accused had provided himself for the purpose, thereby inflicting upon said victim physical injuries which caused the instantaneous death of the victim.<sup>[3]</sup>

This was later amended, with leave of court, to insert a second paragraph thereof reading:

Accused Eleuterio Compendio is a recidivist having been convicted of the crime of Frustrated Homicide in Crim. Case No. B-1554, on October 6, 1989.<sup>[4]</sup>

After pleading not guilty upon arraignment, trial on the merits ensued with the presentation of the following witnesses: Trinidad C. Sabando and SPO1 Anselmo C. Tan, Jr. for the prosecution; and the accused-appellant, Romeo L. Aguinaldo, Perfecto Inso, Thelma Gofredo, and Luz Alvero for the defense. They all testified before Judge Vicente M. Aujero, then Presiding Judge of Branch 14. Judge Cristina T. Pontejos, who penned the decision after taking over the case from Judge Aujero, only received the formal offer of exhibits for the defense.<sup>[5]</sup> She thus admitted that

she "could no longer observe the demeanor of the witnesses or appraise or assess -- what they said during trial. Their testimonies were already lifeless and cold in the transcripts."<sup>[6]</sup> She had to rely on the transcripts of the stenographic notes of the testimony of the witnesses and summarized the testimony of Sabando and SPO1 Tan, which find to be fully supported by the said transcripts:

On August 18, 1989 at about 3:00 o'clock in the early morning, while Cirilo Vitualla and his companion, Nenita Jose were on board a pedicab (potpot) cruising along Magsaysay Avenue, Baybay, Leyte, near the Petron Gasoline Station, it suddenly stopped. The driver alighted and forced [the] passenger, Cirilo Vitualla to get out and once outside, he was stabbed by [the pedicab driver] accused Eleuterio Compendio alias Loloy on the left side of the breast, causing the former to fall down with his back to the ground. This was the scene Trinidad Sabando saw while walking on foot ahead of the pedicab at a distance of five (5) armslength[s] away. She recognized both the victim, Vitualla and accused Compendio by the light of the electric bulb from the said gasoline station. She also knew that the weapon used was a knife while the victim was unarmed.

After this incident was reported to the police by Nenita Jose, the victim's companion, a team headed by SPO1 Anselmo Tan went to Brgy, Kilim, Baybay, Leyte "to investigate the crime" per order of the Station Commander. There, they found accused already on board a passenger jeepney bound for Ormoc City, carrying two (2) bags of clothes. It had been found out from the inquiry made by the police that accused admitted to the killing but this statement was not reduced to writing.<sup>[7]</sup>

The accused-appellant interposed the defense of alibi. According to him, on the night of 18 August 1989, he was in his house on M.L. Quezon Street, Baybay, Leyte, with his live-in partner, Nene Nuñez. He went to sleep at around 8:00 p.m., and woke up only at about 6:00 a.m. the next day.<sup>[8]</sup> On questions from the court, he admitted that the Sangi bridge on M.L. Quezon Street was only two corners away from his house and he could reach the bridge by walking from his house in fifteen minutes.<sup>[9]</sup> Romeo Aguinaldo was presented to affirm a previous affidavit taken by the accused-appellant's counsel where the former allegedly refuted the testimony of Trinidad Sabando; however, on the witness stand, Aguinaldo denied knowledge of the contents of the affidavit.<sup>[10]</sup> For this reason, the defense introduced the testimony of Perfecto Inso who attested that Aguinaldo's affidavit was read twice to Aguinaldo by Atty. Alfredo T. Bensi in the latter's office.<sup>[11]</sup>

Thelma Gofredo, Aguinaldo's common-law wife, asserted that the victim, Cirilo Vitualla, was at her house drinking tuba with Aguinaldo from 8:00 p.m. to 9:00 p.m. on 18 August 1989 and left only at 10:00 p.m.. The following day, at 6:00 a.m., she learned that Vitualla had died because his corpse was carried to his house nearby.<sup>[12]</sup> While Luz Alvero testified that around 4:00 a.m. of 19 August 1989, she, together with Isyang (the victim's mother) and Romeo Aguinaldo, retrieved the corpse of the victim from the Sangi bridge near the house of Dr. Bernardo. Her testimony was meant to discredit Trinidad Sabando by providing details about the

victim's death which were allegedly inconsistent with those narrated by Sabando.  
[13]

The trial court found the accused-appellant's alibi flawed in light of Sabando's positive identification, as the possibility of his being at the crime scene at the time of the killing could not be discounted, considering his meeting with his live-in partner on the night of 18 August 1989 and his flimsy excuse that he was asleep from 8:00 p.m. until 6:00 a.m.. However, the trial court found no evidence of evident premeditation, but appreciated the qualifying circumstance of treachery because at the time the victim was attacked, he was "unarmed and had no time to defend himself as he was just forced to get out and once out, he was stabbed right away."<sup>[14]</sup>

The trial court likewise considered against the accused-appellant the aggravating circumstance of recidivism despite absence of proof, and justified its action in this wise:

For having been convicted of the crime of Frustrated Homicide (Crim. Case No. B-1554) on October 6, 1989, the Information was amended on February 24, 1993, to include recidivism as an aggravating circumstance but the prosecution failed to attach the certified true copies of the judgment of conviction against accused, however, he failed to object to such lack of presentation, hence the Court has to appreciate it as an aggravating circumstances.<sup>[15]</sup> (citations omitted)

It then disposed as follows:

WHEREFORE, in view of all the foregoing, the Court finds accused Eleuterio Compendio alias Loloy guilty as charged for the crime of Murder and hereby sentences him to suffer the penalty of life imprisonment, and to indemnify the heirs of Cirilo Vitualla in the sum of P50,000.00 without subsidiary penalty in case of insolvency.<sup>[16]</sup>

In this appeal, the accused-appellant claims that the trial court erred:

I. INSTATING THAT THE TESTIMONY OF 1ST WITNESS TRINIDAD SABANDO, WAS VERY CATEGORICAL AND STRAIGHT FORWARD [sic], AND ALSO COMPLETE WITH ITS DETAILS;

II. IN GIVING CREDENCE TO THE TESTIMONY OF 2ND WITNESS, SPO1 ANSELMO TAN, PHILIPPINES [sic] NATIONAL POLICE (PNP) BAYBAY, LEYTE;

III. IN STATING THAT ON AUGUST 18, 1989, AT ABOUT 3:00 O'CLOCK IN THE EARLY MORNING, THE VICTIM, CIRILO VITUALLA, WAS WITH HIS LIVE-IN PARTNER, NENITA JOSE, ON BOARD THAT PEDICAB (POTPOT) ALLEGEDLY DRIVEN BY THE ACCUSED-APPELLANT ELEUTERIO COMPENDIO;

IV. IN STATING, THAT IT WAS THE LIVE-IN PARTNER OF THE VICTIM, CIRILO VITUALLA, WHO REPORTED THE STABBING INCIDENT TO THE PHILIPPINES [sic] NATIONAL POLICE (PNP), BAYBAY, LEYTE.<sup>[17]</sup>

In the first assigned error, the accused-appellant attacks the credibility of prosecution witness Trinidad Sabando. On this score, the oft-repeated rule is that appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.<sup>[18]</sup> This case, however, falls under one of the exceptions to the above rule, namely, where one judge heard the testimony of the witnesses and another penned the decision;<sup>[19]</sup> hence, we are not precluded from making our assessment of the probative merit and value of the testimony of the witnesses on the basis of the transcripts of the stenographic notes thereof.

After poring over Sabando's testimony, we find her to be a trustworthy witness. Her narration of the events and observations of what transpired before her were delivered in a direct, unaffected, and convincing manner. She stuck to her story and was uncompromising in regard thereto on cross-examination and on questions from the court. We detect no indication of prevarication.

The argument under the second assigned error is incomprehensible. What we gather is that the accused-appellant assails the admissibility of his alleged uncounselled oral admission when he was apprehended and investigated by SPO1 Tan. It must however, be noted that the trial court did not take into account the alleged admission and relied on Sabando's testimony to convict the accused-appellant. What it found material was SPO1 Tan's avowal that the accused-appellant "was collared at Brgy. Kilim, Baybay, Leyte on board a passenger jeepney bound for Ormoc City, with bags of clothes just a few hours after the incident,"<sup>[20]</sup> which it considered proof of "flight."

The third and fourth assigned errors are irrelevant and inconsequential. While it may be true that the trial court erroneously found that Nenita Jose was with the victim during the killing, and reported the incident to the Baybay Philippine National Police (PNP), the error does not alter, affect, or negate its finding that the accused-appellant was seen and positively identified by Trinidad Sabando as the killer of the victim Cirilo Vitualla.

Against the credible testimony of the lone eyewitness, the accused-appellant had nothing to offer but alibi which, however, must fail. It is settled that alibi cannot prevail and is worthless in the face of the positive identification of the accused.<sup>[21]</sup> For alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the *locus criminis* at the time the crime was committed.<sup>[22]</sup> In the instant case, the accused-appellant was not elsewhere so as to preclude his presence at the scene of the crime at the time of its commission. He was at a distance which could be reached in fifteen minutes by walking from where the victim was killed.<sup>[23]</sup>

There is then no doubt in our minds that the accused-appellant killed Cirilo Vitualla in the early morning of 18 August 1989.

To elevate the killing to murder, the prosecution alleged in the information the qualifying circumstances of evident premeditation and treachery. We agree with the trial court that the prosecution failed to establish the following requisites of evident premeditation, *viz.*, (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.<sup>[24]</sup>

We cannot, however, agree with the trial court that treachery was duly proven. Under substantive law, there is treachery when the offender commits any of the crimes against persons (e.g., homicide or murder) employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.<sup>[25]</sup> Two conditions must then concur for treachery to be present, *viz.*, (1) the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate; and (2) the said means of execution were deliberately or consciously adopted.<sup>[26]</sup>

In the instant case, all the prosecution could rely upon was the testimony of the lone eyewitness, Trinidad Sabando, to the effect that while walking home, the pedicab driven by the accused-appellant overtook her then stopped; its driver forced his passenger, the victim who was a deaf-mute and then unarmed, to alight. After the victim had disembarked, the accused-appellant, facing the victim who was six feet from the pedicab, stabbed the latter on the left portion of the breast. The victim fell to the ground and the accused-appellant sped away in his pedicab. The following was Sabando's testimony on this point:

**FISCAL RUBIO:**

xxx xxx xxx

**Q:** Since you walked in going home, was there any unusual incident [that] happened while on your way going home?

**A:** Yes, there was.

**Q:** Will you please tell the Honorable Court what kind of incident . . . happened?

**A:** Cirilo Vitualla was stabbed.

**Q:** Please clarify, what happened first while on your way going home?

**A:** When I reached the bridged of Sangi, a pedicab overtook me.

xxx xxx xxx