

## THIRD DIVISION

[ G.R. No. 118770, December 06, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GEORGE GONDORA, ACCUSED-APPELLANT.**

### D E C I S I O N

**FRANCISCO, J.:**

This is a case of murder.

Appellant George Gondora alias "Bogie" alias "George Gongora", together with "Totoy" and "Onio"<sup>[1]</sup> were charged with the crime of murder in an information which reads as follows:

"The undersigned Assistant City Prosecutor accused GEORGE GONDORA Y MINA, JOHN DOE @ TOTOY and PETER DOE @ ONIO, the true names and real names identities of the last two accused are still unknown of the crime of MURDER committed as follows:

"That on or about the 19th of May, 1992, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, evident premeditation and treachery, suddenly attack and assault and repeatedly stab one Antonio Malinao, Jr. on the vital parts of the latter's body, thereby inflicting upon the latter mortal wounds which caused his death.

"Contrary to law."<sup>[2]</sup>

"Totoy" and "Onio" remain at large. upon arraignment appellant pleaded not guilty to the charge.<sup>[3]</sup> After trial, the lower court convicted the appellant of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim in the amount of P50,000.00.<sup>[4]</sup>

The facts, as summarized in the People's Brief, and which we adopt are as follows:

"In the morning of May 19, 1992, at about 9:30 a.m., Antonio Malinao and his common-law wife Edma Malinao went to Villa Barbara, Tramo Street, Pasay City collect a loan from a certain "Junior". However, they were not able to collect said loan, and were merely asked to return the next day (TSN, August 6, 1992, pp. 6-7).

"While on their way home passing via an alley suggested by Junior, two (2) persons, one known as "Bogie", herein appellant and another known

as "Totoy Killer", suddenly appeared from nowhere. The latter boxed Antonio Malinao, and when he fell down, appellant repeatedly stabbed him. Simultaneously, Totoy Killer stabbed Antonio (TSN, Ibid, p. 7).

"Edma Malinao pleaded for mercy and tried to embrace the [assailants], but was instead pushed and kicked aside. Thereafter, the two (2) [assailants] ran towards opposite directions and escaped (TSN, Id., pp. 2-3).

"With the help of a tricycle driver, Edma Malinao brought Antonio to the Manila Sanitarium. Thereat, Dr. Prudencio Sta. Lucia, Jr. found the victim with a dilated pupil, 0/0 blood pressure and 0/0 cardiac rate. Said doctor pronounced Antonio dead (TSN, July 17, 1992, pp. 5-6; August 6, 1992, p. 3).

"Dr. Sta. Lucia thereafter examined the deceased and found twenty (20) different stab wounds all over the different parts of the body of the victim, namely:

"Firstly Stab Wound - was located on the right chest along the interior auxilliary (sic) line which is about 1.5 cm. in width and located also along the fifth rib.

"The Second Stab Wound - is located on the anterior portion of the arm which is about 1 cm. in width.

"The Third Stab Wound - is located on the prominal portion of the forearm which is 2 cm. in width.

"The Fourth Stab Wound - is located on the anterior chest or along the 8th rib about 2 cm.

"The Fifth Stab Wound - is located on the subcontrol on the right anterior chest about 1 cm. in width.

"The Sixth Stab Wound - is located on the left parasternal line at the left or third intercentral space about 2.5 cm. in width.

"The 7th Wound is located on the posterior auxilliary (sic) area on the right side and about 1.5 cm.

"The 8th wound is located at the mastoid left on the right side about 2 cm. in width.

"The 9th wound [is located this] is a triangular wound or altrasion located at the right shoulder.

"The 10th wound is about 2.5 cm. located on the 11th rib on the posterior back on the right.

"The 11th wound is a 3 cm. wound located on the sub-coastal margin on the posterior back of the chest on the right.

"The 12th wound is 3 cm. in width located on the posterior lumbar area.

"The 13th wound is a 2.5 cm. wound located on the posterior forearm.

"The 14th wound is 2 cm. located on the medial aspect of the forearm.

"The 15th wound is 3 cm. located on the posterior aspect of the forearm.

"The 16th wound is 2.5 cm located on the anterior aspect of the superior alia spine.

"The 17th wound is 3 cm. located on the left wrist.

"The 18th wound is 3 cm. located on the right forearm.

"The 19th wound is 1.5 cm. located on the right side of the neck; and

"The 20th wound is 3 cm. located on the dermal aspect of the right arm (tsn, p. 1 barrientos, July 17, 1992)

(Exhibits "A", "B", to S-8). (TSN, July 17, 1992, pp. 6-7)."<sup>[5]</sup>

Appellant seeks a reversal of his conviction via this appeal on the following assignment of errors:

"I THE TRIAL COURT ERRED ON (SIC) CONVICTING THE ACCUSED SOLELY ON THE UNCORROBORATED AND BIASED TESTIMONY OF WITNESS EDMA MALINAO, THE COMMON-LAW WIFE OF VICTIM ANTONIO MALINAO, JR.;

"II THE TRIAL COURT ERRED IN NOT TAKING INTO CONSIDERATION THE TESTIMONY OF WITNESS [ROWENA]<sup>[6]</sup> OLANDAY

"III THE SAID COURT ALSO DID NOT TAKE INTO CONSIDERATION THE TESTIMONY OF ACCUSED GEORGE GONDORA;

"IV THE TRIAL COURT ACTED IN A HOSTILE AND UNJUST ATTITUDE AGAINST THE ACCUSED, THEREBY DEPRIVING HIM OF HIS RIGHT OF PRESUMPTION OF INNOCENCE."<sup>[7]</sup>

The issue raised in the foregoing assignment of errors ultimately boils down to a question of the factual findings and assessment of the credibility of the witnesses by the trial court. Hence, we shall discuss them together.

Appellant contends that the trial court erred in rendering a judgment of conviction based on the biased and uncorroborated testimony of witness Edma Malinao. We find the contention bereft of merit. The rule is to accord much weight to the impressions of the trial judge, who had the opportunity to observe the witness directly and to test their credibility by their demeanor on the stand.<sup>[8]</sup> Although the judgement of conviction was primarily based on the testimony of Edma Malinao, we do not find any reversible error committed by the lower court in arriving at its

findings. The rule is that witnesses are to be weighed, not numbered.<sup>[9]</sup> It has never been uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness.<sup>[10]</sup>

Concretely, appellant points to certain alleged inconsistencies in the testimony of Edma Malinao. Appellant alleges that in one of her sworn statements, Edma Malinao mentioned that the victim was suddenly and immediately stabbed by two men (*at pagtapat sa amin ay walang sabi-sabing bigla na lang sinaksak si Tony*)<sup>[11]</sup>, while in another affidavit, she stated that one of the assailants boxed the victim first before the latter was stabbed by them simultaneously (*At sinuntok noong isang lalaki and aking asawa at siya ay bumagsak. Pagbangon ng aking asawa ay pinagsasaksak siya ng dalawang lalaki sa bahagi ng katawan ng aking asawa*).<sup>[12]</sup> The inconsistency refers to minor details and has no bearing on the credibility of the witness. It is rather immaterial to dwell exhaustively on whether the victim was boxed first when the cause of the death of the victim is the multiple stab wound inflicted on his person. On this point, Edma Malinao consistently testified and remained unwavering in her stand that appellant and Totoy Killer, repeatedly stabbed the victim to death. A certain latitude must be given to whatever minor mistake the witness might have said about the actual confrontation. For apart from the shock and the numbing effect of the whole incident, the rapidity with which the sequence of events took place must have taken its toll on the accuracy of the witness' account.<sup>[13]</sup>

Appellant likewise makes issue of the fact that in Edma Malinao's third affidavit<sup>[14]</sup>, she mentioned that the motive for the commission of the crime was allege quarrel between one "Onio" and the victim, when no such declaration was made in the previous affidavits. Again, appellant's claim is not worthy of credit. For one, the imputed inconsistency is misplaced as there is no inconsistency at all, but rather, an omission which relates to the apparent motive for the killing. Such motive is inconsequential in view of the positive identification of the perpetrators of the crime. Moreover, we attribute the omission to state the motive of the crime to the apparent reluctance of witness Edma Malinao to divulge the illegal dealings of her common-law husband. We note that the deceased was into the business of dealing illegal drugs and the same must have been the cause of his death.

The above alleged inconsistencies pointed out by appellant were all contained in the three (3) affidavits executed by Edma Malinao in connection with the filing of the case. The contradictions, if any may be explained by the fact that an affidavit can not disclose the whole facts, and oftentimes and without design, incorrectly describe, without the deponent detecting it, some of the occurrences narrated. Being taken *ex parte*, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries.<sup>[15]</sup> It has thus been held that affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to her.<sup>[16]</sup>