

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO AQUINO, DEFENDANT-APPELLANT.

G.R. No. L-36468. November 20, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

This is an appeal taken by Ernesto Aquino from the decision of the then Circuit Criminal Court, Fourth Judicial District, Cabanatuan City, in Criminal Case No. CCC-IV-54, the dispositive portion of which reads:

"WHEREFORE, this Court finds the herein accused Ernesto Aquino guilty beyond reasonable doubt of the crime of Murder, as charged in the information, and in the absence of any modifying circumstance, hereby sentences him to suffer the penalty of reclusion perpetua; and to indemnify the heirs of the deceased in the amount of P12,000.00, and to pay the costs." (p. 46, Rollo)

At about 9:30 in the evening of July 10, 1970, Gregorio dela Cruz, Bonifacio Collado, Edilberto Soriente, Raymundo Desiderio, Elpidio Clamonte and the deceased Alberto Felix were walking on their way home along Clamonte Street, Calagundian, Aduas, Cabanatuan City. Alberto Felix and Gregorio dela Cruz were walking side by side behind their four companions. As they passed by the house of accused-appellant Ernesto Aquino, they saw him (Ernesto Aquino) standing at the entrance of his yard with his hands behind him. The place was bright because of the light coming from the house. Shortly after, they heard two successive gunshots. Gregorio dela Cruz looked back and saw Ernesto Aquino still firing at them with the gun pointed at them. He then heard Alberto Felix say: "May tama ako, sangko."

About the same time, Ambrocio Victoria was on his way home, walking behind Gregorio dela Cruz and Alberto Felix. He saw appellant Aquino in a squatting position at the gate of his house firing at the group who were then walking along the same street. He heard four shots after which Aquino ran to his house and put off the light.

Ambrocio Victoria went to the aid of the victim Alberto Felix and with the help of the others, brought him to the hospital.

The following day, July 11, 1970, Alberto Felix was interrogated at the hospital by police investigator Ruben Herrera. The investigation was reduced to writing which is hereunder quoted, as follows:

"T - Bakit aarito ka sa pagamutan?

S - Nabaril po ako ni Maestro Ernesto Aquino po na taga roon rin sa pook namin.

T - Bakit ka nabaril ni Ernesto Aquino?

S - Hindi ko po alam nagdadaan lamang kami sa tabing bahay nila.

T - Kailan ka nabaril?

S - Kagabi po.

T - Doon sa tabing bahay nila?

S - Opo, dahil sa daan iyon na papasok sa amin.

T - Sino ang kasama ni Ernesto Aquino ng mabaryl ka?

S - Nag-iisa po siya.

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T - Nagkagalit ba kayo ni Ernesto Aquino?

S - Hindi po naman.

T - Bakit mo nasabing si Ernesto Aquino ang bumaril sa iyo?

S - Marami pong beses niya kami binaril kaya nalingon ako at nakita ko siyang namamaril.

T - Ano ang pakiramdam mo ngayon?

S - Nahihirapan po akong huminga baka ikamatay ko ito.

T - Ano ang masasabi mo tungkol kay Ernesto Aquino?

S - Nais ko panagutan niya sa Hukuman ang ginawa niyang ito sa akin.

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(Exhibit "A". Records, pp. 164-165)

The foregoing statement, Exhibit "A" was signed by Alberto Felix in the presence of the investigator and another patient, Hermogenes Marcos.

The following week, Alberto Felix died at the Nueva Ecija Provincial Hospital. The autopsy finding of Dr. Tomasito Valleroso shows:

"Cardiac tamponed, pericardia! hemorrhage, massive left with hemothorax approximately 200 cc. of blood and massive intraabdominal hemorrhage, all secondary to gunshot wound." (p. 5, Appellee's Brief)

Dr. Valleroso explained that the point of entrance is at the back of the victim, penetrating the cardiac cavity. He was able to extract a slug (Exhibit "C") inside the heart. Cause of death is massive hemorrhage.

The defense is denial and alibi. Appellant testified that he left Cabanatuan City for Manila between four and five o'clock in the afternoon of July 10, 1970. He stayed in Manila until the following day for the purpose of bringing his son Onofre, who is a mental case, to the hospital. He returned to Cabanatuan City at about three o'clock in the afternoon of July 11, 1970. Further, he declared that in the afternoon of July 8, 1970 the deceased Alberto Felix took away his six (6) pieces of galvanized iron sheets which were then placed by the side of his fence under the mango tree. When he saw Alberto Felix the following day, July 9, 1970 he demanded the return of the galvanized iron sheets or else he would file an action against him. The latter merely smiled and walked away.

In this appeal, appellant claims that the trial court erred "(1) in not considering the defense of alibi on the mere basis of relationship of the defense witness Rodolfo Mejia as the alleged brother-in-law of the accused; (2) in not giving weight to the testimony of the accused and his witnesses Dr. Lauro Jardino, Rodolfo Mejia and Jesus Velasquez; (3) in considering Exhibit "A" as the dying declaration of the deceased Alberto Felix y Lorenzo; (4) in considering the testimony of prosecution witness -Gregorio dela Cruz for not being corroborated by his companions who were actually present; (5) in considering the testimony of Ambrocio Victoria, who has an

impeachable character and whose name does not appear in the information as one of the typewritten witnesses, in condemning the accused; and (6) in convicting the accused (Reclusion Perpetua) for lack of sufficient proof to prove the guilt of the accused beyond reasonable doubt."

WE are not persuaded. The defense of denial and alibi cannot prevail over the positive identification of the accused as the author of the crime by the victim Alberto Felix and witnesses Gregorio dela Cruz and Ambrocio Victoria. Well-settled is the rule that "an alibi must be proved by positive, clear, and satisfactory evidence. (U.S. vs. Olais, 36 Phil. 828; People vs. Limbo, 49 Phil. 94; People vs. Pili, 51 Phil. 965.) The reason is that 'oral evidence of alibi is so easily manufactured and usually so unreliable that it can rarely be given credence.' (People vs. Badilla, 48 Phil., 718). It has been held, further, that, when the defendants are identified by the witnesses for the prosecution by clear, explicit and positive testimony, the alibi will not be credited. (U.S. vs. Nudieres, 27 Phil., 45; People vs. Cabantug, 49 Phil., 482; People vs. Palamos, 49 Phil., 601; People vs. Medina, 58 Phil., 330; People vs. De Asis, 61 Phil., 384; People vs. Cinco, et al., 37 Off. Gaz., 2740.)"

It is true that Rodolfo Mejia testified that appellant was in his house between 8:00 and 9:00 in the evening of July 10, 1970 until the following day, July 11, 1970. We cannot also discount the fact that after the incident that evening of July 10, 1970 about 9:30 in the evening, appellant could have left for Manila and be in (he house of Mejia until the following day.

It has been shown also that Mejia's wife is the sister of the wife of Atty. Hermogenes Aquino, a brother of the accused. As held in People vs. De Asis, 61 Phil. 384, 389, alibi is a very common defense easy of concoction between relatives and friends which is the case with the appellant, and even between those not so related.

Upon the other hand, prosecution witness Gregorio dela Cruz testified that he was walking side by side with the victim and as they passed by the house of accused Ernesto Aquino, he saw the latter in the entrance of his yard holding a short gun and firing at them. Likewise, Ambrocio Victoria testified that while he was following the victim and his companions, he saw Ernesto Aquino who was about five meters away from him and, in a squatting position, shoot the victim. Both Ambrocio Victoria and Gregorio dela Cruz were not shown to have any evil motive, remote or proximate, not to tell the truth, nor was it shown that they have a personal grudge against herein appellant that would lead them to implicate or to impute falsely to the accused such a serious offense. In fact, the trial court in assessing the testimonies of these witnesses said:

"x x x the prosecution witnesses, particularly Gregorio dela Cruz, Ambrocio Victoria and Pat, Ruben Herrera, testified straight from their shoulders with ease and without hesitation; their testimonies are consistent and plausible and, therefore, bear the earmarks of sincerity.

They minced no words in pointing to the accused as the one who fired the shots at the deceased victim." (p. 45, Rollo)

Anent the argument that the trial court erred in having considered Exhibit "A" as the dying declaration of the deceased Alberto Felix, evidence is clear that said statement was taken at the hospital in the early morning of July U, 1970 when the condition of the victim was really bad. The seriousness of the wounds justifies the conclusion that the declarant was conscious of his impending death. Otherwise stated, considering the degree and nature of the wound which penetrated the heart of the victim and the fact that death supervened few days thereafter, such circumstances can be considered as substantial evidence of consciousness.

WHEREFORE, the appealed judgment is AFFIRMED with the modification that the indemnity is increased from P12,000.00 to P30,000.00. With costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana and de la Fuente, JJ., concur.

Gutierrez, Jr., took no part.

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