

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANASTACIO DELASA, DEFENDANT-APPELLANT.

G.R. No. L-36094. July 16, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Anastacio Delasa appeals from the decision of the Court of First Instance of Leyte, convicting him of Robbery with Homicide and sentencing him to "the penalty of Reclusion Perpetua and to indemnify the heirs of the victim in the sum of Twelve Thousand Five Hundred Pesos (P12,500.00) with all the accessory penalties provided by law and to pay the costs."

During the pendency of the appeal, the appellant filed a motion for new trial on ground of newly discovered evidence. The motion was noted by this Court in a resolution dated May 21, 1973, but did not resolve the same.

In his brief, the appellant's counsel prays for the acquittal of the appellant, or in the alternative, for the return of the case to the court of origin for new trial.

Prosecution evidence shows that at about 11:00 in the morning of September 26, 1972, Anselmo Pondoyo, his wife Virona, and son Alberto, were harvesting rice in their field in Sitio Calbugos, Villaba, Leyte. As they were not able to finish harvesting, they proceeded to their house by going down to the creek. On their way home, Anselmo Pondoyo went ahead because he would gather camongay leaves for viand. Alberto also went to get ripe bananas. When her husband was already at the creek, Virona saw him conversing with the accused Anastacio Delasa and his son-in-law whom she knew by the name of Apolonio. Thereafter, Anselmo proceeded on his way passing through an improvised bridge consisting of pieces of wood. While crossing the bridge, Anselmo was stabbed twice with a bolo at the back by the appellant. The first stab wound penetrated the heart; the second, the stomach. Notwithstanding, Anselmo was able to crawl a distance of two or three fathoms but appellant Anastacio Delasa slashed the victim's pants, took P500.00 from his pocket and then, with his son-in-law, ran away.

Anselmo died as a result of the stab wounds. The post-mortem report (Exhibit A) shows these findings:

- Stab wound thru and thru 2" x ½" x 4" entering on the posterior surface of the interscapular region left aspect and passing out to the anterior chest wall within the parasternal line, left, ¾" above the left nipple measuring 1½" x ½" x 4".
- Stab wound thru and thru 2¼" x ½" x 8" entering posteriorly on the left infrascapular region and passing to the anterior abdominal wall 4" above the navel at the epigastric region measuring 2" x 1½" x 8".
- Stab wound 1½" x ½" x 3" on the left subcostal arch within the mid- axillary line.

Cause of Death: Irreversible stab due to massive hemorrhage due to multiple stab wounds."

The defense is alibi. Appellant claims that the whole day of September 26, 1972, from 6:00 in the morning to evening time, he was working in his farm in Sitio Iligay, Villaba, Leyte which is more than three (3) kilometers

from Sitio Calbugos.

The appeal lacks merit. Two eyewitnesses, namely: Alberto Pondoyo and Virona Pondoyo, the son and the wife, respectively, of the deceased, personally identified the appellant very well because "we are neighbors." The crime was committed at about 11:00 in the morning. There could therefore have been no mistake in the identification of the appellant.

The appellant did not even bother to impute any motive on the part of the two prosecution witnesses to testify falsely against him.

"The absence of evidence as to an improper motive actuating the offended party and the principal prosecution witnesses tends to sustain the conclusion that no such improper motive existed and that their testimonies are worthy of full faith and credit." (People vs. Amiscua, 37 SCRA 813).

The rule is well established that when the issue involves credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, as the latter is in a better position to decide the question, having seen and heard the witnesses themselves and observed their behavior and manner of testifying, except when it is shown that the trial court has over-looked certain facts of substance and value that, if considered, might affect the result of the case. (People vs. Curiano, 9 SCRA 323).

In view of the positive identification of the appellant as the killer, his defense of alibi does not merit consideration. (People vs. Mabaga, 28 SCRA 779; People vs. Casillar, 30 SCRA 352). And more, where the place appellant claims to be at the time of the incident is so near to the place of the commission of the crime that his presence thereat cannot be considered as impossible; hence, his alibi cannot stand to offset his positive identification by Alberto Pondoyo, as follows:

"Q Did you notice any unusual event while harvesting palay with your father and your mother?

A Yes sir, Anastacio Delasa killed my father.

Q What is the name of your father?

A Anselmo Pondoyo.

Q How many times the accused stabbed your father?

A Two times.

Q With what weapon did the accused use in stabbing your father two times?

A A bolo.

Q What happened to your father after he was stabbed by Anastacio Delasa for the first time?

A Anastacio Delasa stabbed my father two times and my father was able to run only about two fathoms then my father fell down. And when he was already on the ground, my father lie down on the ground on his back, and with the use of the bolo Anastacio Delasa made an opening of the pants of my father where his money was placed on a wallet.

Q Where was your father hit when he was hit by the accused?

A Here. (Witness referring to the right side of his back)

Q What happened to your father after receiving that wound at the back?

A Anastacio Delasa stabbed my father, two times and the two wounds at his back were all penetrating."[1] and by Virona Pondoyo:

"Q Do you know the accused Anastacio Delasa in this case?

A Yes, sir.

Q For how long have you known him?

A Since 1949, when we bought our land there.

Q How come that you know the accused for such a long period of time?

A Yes sir, because we are neighbors.

Q Where?

A In Calbugos, Villaba, Leyte.

Q Do you recall where you were at about 11:00 o'clock on September 26, 1972?

A Yes sir, we were harvesting palay in our ricefield.

Q Did you have any companions with you in harvesting palay?

A Yes sir, my son and my husband.

Q What is the name of your son who was with you that time?

A The name is Alberto Pondoyo.

Q Were you able to finish harvesting your palay?

A No sir, because we only started to harvest some during that time for testing.

Q Then, what happened after that?

A After that, we proceeded to our house and we were going down to the creek. My husband asked permission from me to go ahead because, according to him, he will get camongay leaves for our viands and my son also went to get ripe bananas which he kept and when my husband was already at the creek, I saw him having a conversation with the accused Anastacio Delasa together with the son-in-law of Anastacio Delasa.

Q Do you know the name of the son-in-law of the accused who was with the accused conversing with your husband?

A The name is Apolonio but I do not know his family name.

Q Then, what happened if any, when you saw them conversing?

A And then after the conversation, my husband proceeded on his way passing through an improvised bridge consisting of two pieces of wood. So that we were already on the other side of the hill while my husband was also at the other side of the hill.

Q While you were on the way home following your husband, what if anything unusual happened?

A While my husband was crossing the improvised bridge, it was the time that he was stabbed.

Q Who stabbed him?

A It was Tacio.

Q Was your husband hit?

A Yes sir, he was hit at his back and the weapon penetrated to his left breast, to the left nipple and when he was stabbed for the second time, the weapon also penetrated to his stomach.

Q What weapon was used in stabbing your husband?

A A bolo.

Q How long was that bolo?

A The length is about this. (Witness indicating a length which when measured is 67 centimeters and this length

already includes the handle.)

Q At that time when your husband was stabbed twice by the accused, where was Apolonio?

A Apolonio was staying behind Anastacio Delasa.

Q What happened to your husband after he was hit twice?

A My husband was able to move crawling forward to a distance of about three fathom and when he was already on the ground, the accused moved my husband so that my husband was already lying on the ground on his back and the secret pocket of the pants of my husband was let open and Anastacio Delasa took out the money which was kept by my husband and after that, the two Anastacio Delasa and his son-in-law, ran back down to the brook.

Q What did the accused use in opening the secret pocket of the trouser of your husband?

A The bolo which was used by Anastacio Delasa in stabbing my husband.

Q How much was taken from your husband?

A The amount was P500.00.

Q Then what did you do?

A I did not make any noise because I was afraid that we might be stabbed also.

Q You said that the accused fled, to what direction did the two go?

A They followed the course of the brook."[2]

As an alternative prayer, the appellant prays for the return of the records of the case to the court of origin for a new trial based on newly discovered evidence. Attached to the motion for new trial are the alleged retractions of the two principal witnesses for the prosecution, Virona and Alberto which are marked as Annexes F (p. 51 of the Rollo) and E (p. 49 of the Rollo) dated November 22, and November 21, 1972, respectively, to the effect that they did not see the accused stab the victim. The sworn statements of the two prosecution witnesses alleged that their testimonies were made upon the instigation of Primitivo Daquil.

In addition to the retractions of Virona and Alberto, there was also attached to the motion for new trial a statement of Inocencio Damayo who allegedly was the actual witness (Annexes B and B-1). In his statement, Damayo points to Leonardo Dalot and Francisco Marilao as the culprits.

Among the requirements of new trial based on newly discovered evidence is that the evidence could not have been discovered and produced at the trial even with exercise of reasonable diligence. In the case at bar, there is no showing that the alleged eyewitness Inocencio Damayo could not have been discovered and produced in the trial. His testimony does not constitute newly discovered evidence.

The retractions of Virona and Alberto should be taken with great caution. The reason for the rule is that if new trial should be granted at such instance where an interested party succeeds in inducing some of the witnesses to vary their testimony outside of court after trial, there would be no end to every litigation (Reyes v. People, 71 Phil. 598) As held in People vs. Curiano, 9 SCRA 323, citing People vs. Farol, L-9423 and L-9424, promulgated May 30, 1958:

"x x x resort to the use of affidavits of recantation x x x is becoming rather common. Appellate courts must therefore be wary of accepting such affidavits at their face value, always bearing in mind that the testimony which they purport to vary or contradict was taken in an open and free trial in the court of justice and under conditions calculated to discourage and forestall falsehood, those conditions being as pointed out in the case of U.S. vs. Dacir (26 Phil. 507) that such testimony is given under the sanction of an oath and of the penalties prescribed for perjury; that the witness' story is told in the presence of an impartial judge in the course of solemn trial in an open court; that the witness is subject to cross-examination, with all the facilities afforded

thereby to test the truth and accuracy of his statements and to develop his attitude of minds towards the parties, and his position to assist the cause of truth rather than to further some personal end; that the proceedings are had under the protection of the court and under such conditions as to remove, so far as is humanly possible, all likelihood that undue or unfair influences will be exercised to induce the witness to testify falsely; and finally that under the watchful eye, of a trained judge his manner, his general bearing and demeanor and even the intonation of his voice often unconsciously disclose the degree of credit to which he is entitled as a witness. x x x".

WHEREFORE, the appealed decision is hereby **AFFIRMED** and the motion for new trial is denied. With costs against the appellant.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.
Melencio-Herrera, J., on leave.

[1] T.S.N., pp. 2-3, October 24, 1972, hearing)

[2] T.S.N, pp. 24-28, October 24, 1972 hearing.

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