

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SENDECEO BALMACEDA, DEFENDANT-APPELLANT.

G.R. No. L-41703. November 29, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal from the decision of the Court of First Instance of Albay, Branch IV at Legazpi City, in its Criminal Case No. 767, finding Sendecio Balmaceda guilty of the crime of Murder, with the following dispositive portion:

"WHEREFORE, after having been found by this Court guilty beyond reasonable doubt of the crime of murder, SENDECEO BALMACEDA is hereby sentenced to reclusion perpetua, to pay the heirs of the deceased the amount of P12,000.00 and to pay the costs. Considering the uncontested manner by which this particular accused has been loosely guarded while in jail, the Provincial Jail authorities are hereby ordered to henceforth place this person under maximum security with the end in view that his chances of committing a crime outside the premises of the jail will be reduced to the minimum, if not rendered altogether impossible."

It is not disputed that Ferdinand de la Paz, 25 years of age, was found dead, lying face down in his own bedroom at around 10:00 o'clock in the evening of October 16, 1973 by his brother Armando. A stab wound on the right part of the chest which penetrated the pleural cavity caused his death, according to an autopsy conducted by the Acting Municipal Health Officer of Sto. Domingo, Albay.

The evidence of the prosecution reveals that in the evening of October 16, 1973, Dionisia de la Paz and her children, Ferdinand, Armando and Nancy, after taking their supper, retired to their rooms at their residence in Barrio San Isidro, Sto. Domingo, Albay. Armando and Nancy slept with their mother in one room while Ferdinand slept in another adjoining room. At about 9:45 p. m. of that same evening, Dionisia was roused from her sleep by groans and sounds of footsteps coming from the bedroom of her son Ferdinand. As soon as Dionisia had sat up, the door of their bedroom suddenly opened and she saw appellant Sendecio Balmaceda enter. He immediately pointed a knife at her throat. Armando and Nancy were also roused from their sleep by the commotion. Balmaceda told them that Ferdinand is already dead and that he should be buried the next day. Appellant Balmaceda then asked for Dionisia's other son, Ricardo, and when informed that Ricardo was not around, appellant remarked that Ricardo was lucky for not being present. Due to the moonbeams that penetrated the glass windows of their room and the light coming from the flashlight of the appellant, Dionisia noticed that there was blood on the knife appellant was holding as well as on his pants. The three were then herded out of the house by the appellant and told to sit on the concrete path leading to the highway. While they were sitting on the concrete path, appellant raised his shirt and showed them his gun tucked in his front right waistline. He told them that the gun is fully loaded and he still had nine bullets inside his pocket. Appellant then charged Dionisia of having an affair with the judge who ordered him sent to prison and with having illicit relations with certain soldiers.

Meanwhile, Armando, who was told to go up the house by the appellant, left the group and went to see his brother Ferdinand. Inside his brother's room he found Ferdinand already dead, with blood oozing from his mouth. Armando then returned to his mother and sister with the intention of preventing the appellant from doing anything to his mother. Armando asked appellant why he killed Ferdinand. Appellant made no reply but asked Armando if he was challenging him. When Armando answered in the negative, appellant left and headed towards Legazpi City. Then Armando told his mother to call the police. His mother ran crying to the police headquarters where she reported the incident. Some of the policemen hurried to their house while others went after the appellant.

On that same night of October 16, 1973, Roger Buen was watching his palay with Rodolfo Madrilejos in his hut at San Isidro, Sto. Domingo, Albay. According to Buen, at around 11:30 p. m. appellant arrived at the hut. Pointing a knife at Rodolfo Madrilejos, he ordered them to conduct him to the boundary of Legazpi City and Sto. Domingo. They complied but after crossing the (toll) bridge, Roger Buen clubbed the appellant with a branch of "malunggay". Appellant fell and Madrilejos was able to get his knife. Appellant, however, was able to stand up and he immediately fled towards Legazpi City. Then Buen and Madrilejos brought the knife of the appellant to their barrio captain and reported the matter to him. Together they went to the municipal building of Sto. Domingo and surrendered the knife to the police.

Meanwhile, Pat. Felix Bertiz, the Officer-in-Charge of the Sto. Domingo Police, to whom the slaying was reported, radioed the Constabulary Commander for assistance. He immediately proceeded to his office and conducted an investigation. He sent one of his policemen to guard the house of the victim. Knowing that the suspect was a detainee in the Provincial Jail, he sent a message to the Provincial Commander through the Provincial Law Enforcement Communication System to verify whether the suspect, Sendecio Balmaceda, was in the Provincial Jail at the time. Receiving no answer to his message, he and one of his policemen went to the Provincial Jail, arriving there past midnight. Informing the guard of his purpose, he was told that appellant was confined there and even reported at 8:00 o'clock. He then requested them to produce him as he wanted to talk to him. One of the guards was sent to fetch appellant from the mess hall of the jail, his assigned sleeping quarters. The guard, however, returned with the information that the appellant could not be found anywhere. A few minutes later two PC enlisted men arrived with the same purpose as Bertiz' as they were acting on his message. An hour later, three policemen of the Legazpi City Police Department arrived and informed Bertiz that the appellant had been sighted with two hostages. Upon receiving this information, Bertiz organized a group of policemen to search for appellant. They began their search at about 8:00 o'clock the following morning of October 17, 1978. In the afternoon of the same day Bertiz was informed that appellant had already returned to the Provincial Jail. The Legazpi City Police Department confirmed the information when verified by Bertiz.

It was also established during the trial that Dionisia was appellant's common-law wife. In 1972, they parted ways in rather stormy circumstances because appellant, besides keeping another mistress, had the family's palay milled without Dionisia's knowledge. He also stole money and goods from the store of Dionisia in Tabaco, Albay. These facts created resentment and hostility between appellant and the deceased, Ferdinand de la Paz.

In July 1973, Dionisia filed a criminal complaint for robbery and less serious physical injuries against appellant that led to his arrest and detention. One day, appellant left his place of detention and went to Dionisia's store which the deceased was then tending. When appellant saw the deceased, an altercation ensued between them wherein appellant took a glass jar and tried to hit Ferdinand with it the latter grabbed a knife and stabbed appellant, wounding the latter on the right arm. Although this incident was investigated by the police, neither of them elected to file charges against the other.

It was also established at the trial that the deceased reported to the authorities that appellant had hidden his gun at the cemetery instead of surrendering it after the declaration of martial law. The deceased and a policeman went to

the cemetery to retrieve the hidden weapon, but they did not succeed because a friend of the appellant had earlier dug it out and hid it elsewhere. This accusation made by the deceased was resented by appellant.

The foregoing facts were established by the testimonies of Dionisia de la Paz, Armando de la Paz, Felix Bertiz, Dr. Sergio Alvarado, Nelson Arao, Mauro Madrid, Jesus Manuel and Rodolfo Madrilejos.

The defense of appellant is alibi. - He testified that at the time of the incident he was in the premises of the Albay Provincial Jail as a detention prisoner; that he did not leave the Provincial Jail but only left the mess hall with Pelagio Belangel to sleep at the Marcos type building on that night, and that Belangel woke him up at about 2:30 o'clock in the morning because the guards were looking for him. Belangel, appellant's corroborating witness, testified that he ate his supper at the jail mess hall at around 5:00 o'clock in the afternoon of October 16, 1973; that he and appellant, with two others, went to sleep on that date at the Marcos type building at past midnight; and that at around 2:00 or 2:30 in the morning of the following day he woke up appellant as the guards were looking for him.

The prosecution presented, as a rebuttal witness, Exequiel Colico, Assistant Warden of the Albay Provincial Jail, who brought with him the jail blotter in compliance with a subpoena duces tecum and testified on the entries therein for October 16, 1973, which revealed that until 2:30 a.m. of the next day, a search was made for the appellant but he could not be found. On October 17, 1973, appellant was listed as having admitted that he left the jail without permission at about 9:00 o'clock in the evening of October 16, 1973 and returned at around 2:30 a.m. the next morning.

Appellant impugns the credibility of the testimonies of prosecution witnesses Dionisia and Armando de la Paz. He argues that it is against the instinct of self-preservation for appellant to reveal that he had killed the deceased to the victim's mother, brother and sister, after he had committed the crime apparently without the victim's family being aware thereof. It is claimed that appellant could have slipped out of the house and avoided detection. It is also asserted that it is very unlikely for appellant to have herded Dionisia and her two children into the cemented path leading to the national highway and thus exposed himself to the view of passers-by; and that it was improbable for the mother to have run immediately to the police at the bidding of her son instead of rushing to the side of her dead son.

It should be noted that appellant was obsessed by jealousy. Thus, he accused Dionisia of having illicit relations with the judge, or even with some constabulary soldiers. Apart from this, there is no question that appellant must have resented the filing of criminal charges against him by Dionisia and his having been investigated by the authorities at the instigation of the deceased for hiding an unlicensed firearm. It is not, therefore, improbable that as a consequence of these, he killed Ferdinand and boasted of the killing to Dionisia and her son, in a blatant attempt to intimidate the De la Paz family and discourage them from continuing with the criminal prosecution and at the same time get back Dionisia for the satisfaction of his carnal desires.

Neither is the testimony of Dionisia to the effect that appellant led them to the cement pathway improbable. It could not be concluded therefrom that appellant, by such act, exposed himself to the view of passers-by since it was already late in the evening and there is no showing that there were people passing by. Nor is it improbable for Dionisia to have run and reported the incident to the police, considering that at that time she already knew that her son was dead and, therefore, it was imperative that her son's assailant be apprehended.

Equally unavailing is appellant's contention that because of alleged discrepancies in some details in the testimonies of Dionisia and Armando — such as the exact place in the house where appellant exhibited his gun, or the manner in which appellant left the De la Paz family -- such testimonies should be disbelieved. Those differences do not go to the substance of their testimony but are merely minor variations. Apparently, they are the

result of differences of observation and recollection on the part of witnesses, rather than a deliberate falsehood.[1] Further, such variance on a minor detail may be considered as a badge of veracity, considering that witnesses react differently to what they see and hear depending upon their situation and state of mind.[2]

Appellant places much stress on the testimony of the Acting Municipal Health Officer that the victim could have died eleven (11) hours prior to his examination of the cadaver of the deceased at 11:35 a. m. on October 17, 1973, which places the time of death at approximately 12:35 o'clock past midnight of October 16, 1973; while the testimony of Dionisia places the time of slaying at around 9:45 in the evening. The Acting Municipal Health Officer's determination of the time of death, however, was merely an approximation. It was a mere calculation and is not a positive assertion of an actual fact. Similarly, the statement of Dionisia that she was awakened at about 9:45 p.m. is also a mere estimate of the time, since no showing has been made that this is based on a reading of a watch. Estimates of time differ even among people of equal intelligence, and the testimony of a witness is not necessarily to be deemed incredible because his time estimate differs materially from that of the other witnesses.[3] These differences in the calculation of the time of death of the deceased certainly cannot impair the veracity of the testimony of the prosecution witnesses that they were awakened by groans and sounds of footsteps emanating from the bedroom of Ferdinand, and that thereafter they saw appellant emerge from the bedroom with a blood-stained knife in his hand.

Appellant also questions the prosecution for attempting to establish, through the testimonies of Dionisia and Armando, that the evening of October 16, 1973 was a moonlit night, in order to strengthen the identification by the said witnesses of the appellant as the perpetrator of the crime, while it tried to prove during the cross-examination of the latter that there was a storm in Legazpi City on October 14 and 15 and, therefore, the moon did not shine on the night of October 16, 1973 in Tambangan, Sto. Domingo, Albay. We find no confusing facts brought out by the evidence for the prosecution on this matter. The storm referred to in the cross-examination of the appellant pertained to October 14 and 15, 1973, while the slaying occurred in the evening of October 16, 1973. As repeatedly held by this Court, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that having heard the witnesses themselves and observed their deportment and manner of testifying during trial, it is in a better position to weigh their credibility unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[4]

The defense of alibi resorted to by the appellant is at best a weak defense. It cannot prevail over the positive identification by prosecution witnesses pointing to him as "particeps criminis".[5] Further, in order that an alibi as a defense may prosper, the evidence to support it must be clear and convincing as to preclude the possibility that the accused was present at the situs of the crime, while the evidence as to his identification must be weak and insufficient.[6] With respect to the possibility that appellant was present at the scene of the crime, the trial court correctly observed that "(i)t was not at all impossible nor improbable for Balmaceda to have left the De la Paz residence in Sto. Domingo a few minutes before ten in the evening and reached the jail in Legazpi before 2:30 in the morning of the next day. The distance can be covered even on foot within the intervening 4-1/2 hours, and if the accused had managed to get a ride, he could have reached the jail in less than one hour."

Even defense witnessess Mauro Nuyda and Nonie Ocfemia, both Provincial Jail Guards, admitted that appellant was nowhere to be found when a search for him was made at 12:30 a. m. of October 17, 1973, in the cells, mess hall, guardhouse or cottages of the Provincial Jail. When appellant was investigated by the Assistant Warden in the morning of October 17, 1973, he admitted having left the jailhouse at about 9:00 o'clock in the evening of October 16, 1973 and returning at 2:30 a. m. of the next day. His later claim that he slept in the cottage by the hill appears to be an afterthought. Moreover, even assuming that appellant went to the cottage by the hill, there is no

assurance that he could not have slipped out and committed the crime in question, considering that the perimeter of the prison compound is not fenced.

On appellant's claim that Dionisia, in her desire for revenge, picked him out as the culprit when she could not pinpoint the responsibility to anyone, it must be recalled that Dionisia and her son were aware that appellant was under detention and, certainly, it is unlikely that they would have pointed to appellant as the perpetrator of the crime, if the latter did not actually perpetrate the act imputed to him.

Finally, appellant argues that since there is no showing on how the victim was killed, the qualifying circumstance of treachery should not be applied. We find merit in appellant's argument. There being no prosecution witness who saw how appellant killed the deceased and, since the combination of all the circumstances does not produce beyond doubt the conclusion that the victim was asleep at the time he was stabbed, this Court cannot agree with the trial court's conclusion that treachery had been employed in the perpetration of the offense. We have already had occasion to rule that treachery cannot be presumed. It must be established beyond reasonable doubt. Treachery cannot be deduced from indicia nor from presumption. It must be proven by convincing evidence. When the manner of attack was not proven, the defendant should be given the benefit of the doubt.[7]

However, We find that attendant to the offense are the aggravating circumstances of nocturnity and dwelling. Undoubtedly, from the surrounding circumstances, appellant purposely sought the cover of night to obtain advantage in killing the deceased. Appellant took advantage of nocturnity to leave the prison premises without being noticed, enter undetected the room of the deceased and stab the latter to death. There is no question that the house wherein the crime was perpetrated was the dwelling of the victim.

There being no mitigating circumstance to offset the aggravating circumstances of nighttime and dwelling, the penalty for homicide, which is reclusion temporal, should be imposed in its maximum period. The appellant is, therefore, found guilty of the crime of homicide and is sentenced to suffer an indeterminate penalty ranging from twelve (12) years of prision mayor as minimum, to twenty (20) years of reclusion temporal as maximum, and to suffer the accessory penalties as provided for by law.

WHEREFORE, with the foregoing modification, the decision appealed from is hereby AFFIRMED.

Fernando, (Chairman), Barredo, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] People v. Paz, L-17320, May 31, 1965, 14 SCRA 132, citing People v. Tuazon, L-1733, March 4, 1950 and People v. Calleha, L-2264, December 27, 1950; People v. Ancheta, L-29581-82, October 30, 1974, 60 SCRA 333.

[2] People v. Tumulip, L-28451, October 28, 1974, 60 SCRA 303, citing People v. Pascual, L-4801, June 30, 1953 and People v. Mones, L-2029, May 6, 1950.

[3] People v. Demetrio, L-2124, May 10, 1950, 86 Phil. 344.

[4] People v. Ancheta, supra, citing People v. Espejo, L-27708, December 19, 1970, 36 SCRA 400.

[5] People v. Cortez, L-31106, May 31, 1974, 57 SCRA 308, citing People v. Berdida, L-20183, June 30, 1966, 17 SCRA 520.

[6] People v. Edaño, L-33641, June 30, 1975, 64 SCRA 675.

[7] People v. Samonte, Jr., L-31225, June 11, 1975, 64 SCRA 319, 325; People v. Carpio, L-1783, April 30, 1949, 83 Phil. 509, 512; People v. Amansec, L-927, March 11, 1948, 80 Phil. 424, 435.

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