

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PROCOPIO O. BERMOY, DEFENDANT-APPELLANT.

G.R. Nos. L-48502-03. June 17, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Charged with murder and unlawful carrying of deadly weapon in two separate informations, Procopio O. Bermoy was convicted by the Court of First Instance of Bohol and sentenced as follows:

"In Criminal Case No. 1293 for murder, he is sentenced to reclusion perpetua or life imprisonment; to indemnify the heirs of Humberto Hamo the sum of P15,000.00 as actual or moral damages; and to pay the costs. In Criminal Case No. 1294 for un-lawful carrying of deadly weapon he is sentenced to TEN (10) YEARS imprisonment and to pay the costs. The bolo, Exh. "B" is hereby forfeited in favor of the govern-ment."

The decision is now on appeal before this Court.

Succinctly stated in appellee's brief, the facts as proven by the prosecution, are as follows:

"On July 27, 1975, at 6:00 o'clock in the evening, the deceased Humberto Hamo, a driver of the MB Liner based in Tagbilaran, Bohol, together with his conductor, Julian Calabes, stopped in an intersection in Barrio San Roque, Bohol, to take a rest in the restaurant/store owned by Ponciano Uy.

"Inside the store, Humberto Hamo drank Tanduay Rhum upon the invitation of Ponciano Uy (p. 133, TSN, Feb. 13, 1977). Julian Calabes sat on a bamboo bench outside the store (p. 33, TSN, Sept. 17, 1975). At about 6:30 p.m. a fish vendor arrived in the vicinity shouting "fish for sale!" The fish vendor, Alonso Galas, attracted buyers. He thus stationed himself some ten meters from the store which was lighted by two petromax lamps (p. 7, TSN, Feb. 1976).

"Among the buyers was the deceased Humberto Hamo. While Humberto Hamo was bending over the fish, accused-appellant approached him from behind and hacked him with a bolo. Everyone in the area started scampering for safety, with the exception of Guillermo Cuyno, one of the buyers of the fish, and Alonso Galas. These two wanted to intervene and stop accused-appel-lant. The first blow completely surprised the deceased. But he still managed to run away for some 15 meters. While he was run-ning and even when he had already fallen to the ground, accused-appellant kept striking at him with his bolo (p. 58, TSN, Nov. 6, 1975).

"Humberto Hamo died as result of the following wounds that he sustained:

"1. Incised wound, 12 cm long, cur-vilinear, running superiorly downwards, located at the scalp, pariete-occipital region, involv-ing the parietal and occipital bones, meninges and brain.

"2. Incised wound, 6 cm long, run-ning superiorly downwards along the median line, scalp, frontal region, involving the whole thickness of the frontal bone.

"3. Incised wound, 5 cm long, 1 cm deep, curvilinear, malar region, right.

"4. Incised wound, 5 cm long, 3 cm deep, curvilinear, cheat, located along the sternal border, at the level of the 3rd rib.

"5. Incised wound, 4 cm long, 1 cm deep, scalp, located just below the superior nuchal line of occipital bone, left.

"6. Incised wound, 13 cm long, 1.5 cm deep at midlength, running obliquely along the paravertebral area, right at the level of the 11th thoracic to the 1st lumbar vertebra.

"7. Incised wound, 3.5 cm long, located at the base of the index finger, right, involving the proximal phalange of the index finger (severed).

"8. Incised wound, 2 cm long, located at the base of the small finger, palmar surface, left.

(Exhibit A)"

Appellant assigned three errors which are as follows:

I

"THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS IDENTITY, LIKE HIS GUILT, WAS NOT PROVEN BEYOND PERADVENTURE OF DOUBT.

II

"THE COURT A QUO ERRED IN NOT GIVING CREDENCE TO THE EVIDENCE OF THE ACCUSED-APPELLANT TO THE EFFECT THAT HE WAS FAR FROM THE SCENE OF THE INCIDENT AT THE TIME OF THE KILLING OF THE DECEASED, AND THEREFORE COULD NOT HAVE COMMITTED THE CRIME.

III

"THE COURT A QUO ERRED IN CONVICTING THE ACCUSED- APPELLANT ALSO FOR ALLEGED VIOLATION OF PRE-SIDENTIAL DECREE NO. 9 NOTWITHSTANDING THE TOTAL ABSENCE OF EVIDENCE THAT EXH. "B" WAS USED IN FURTHERANCE OF SUBVERSION AND/OR REBELLION."

The first two errors may be discussed together, as the defense of alibi which was interposed by appellant falls once he has been positively identified as the assailant as firmly established by the evidence of the prosecution, which appellant, however, disclaims.

The state witnesses who positively identified the appellant as the assailant were Alonso Galas, the fish vendor, and Guillermo Cuyno, one of those buying fish from the vendor at the time. However, appellant assails the worth of Galas' testimony positively identifying him by saying that it was only after the Chief of Police had named him as the assailant that Galas came up with his identification. Thus, he quoted from Galas testimony the following:

"Q - Now, Mr. Witness, you have identified Exhibit H which was your affidavit and which appears to be taken by the chief of police of Mabini, Bohol on July 30, 1975, my question is at the time you were investigated by the chief of police is it not true that the accused was already locked up in the municipal jail of Mabini, Bohol?

"A - Yes, Sir.

"Q - And in fact before Exhibit H was taken you were told by the chief of police that this is Procopio Bermoy, the assailant of Humberto Hamo, is it not true?

"A - Yes, Sir. (TSN, Remolador, pp. 26--27; underscoring ours.)"

Standing alone, the above quoted portion of Galas testimony might support appellant's claim as to the supposed worthlessness of Galas testimony in the way of establishing appellant's identity as the assailant. But it is apparent that appellant conveniently left out the following portions of the testimony of witness Galas:

"Q - Did the Chief of Police tell you for the first time that the one who killed Humberto Hamo was the accused Procopio Bermoy?

"A - Yes, Sir.

"Q - Before the Chief of Police told you that, did you already know or did know who killed Humberto Hamo?

"A - Yes, I know already that it was the accused Procopio Bermoy.

(p. 27, TSN, February 17, 1976)."

The above quoted portion of Galas testimony shows that he identified appellant as the assailant on his own personal knowledge, not on information supplied him by the Chief of Police, as is further shown by his testimony on direct examination reproduced hereunder as follows:

"Q - And how about you, what was your position while Humberto Hamo was standing hovering one of your basket of fish?

"A - I was standing.

"Q - While standing, where was Humberto Hamo, directly in front of you, to your left or to your right?

"A - Humberto Hamo was at my left side.

"Q - Now, while Humberto Hamo was in that position what happened?

"A - He was hacked.

"Q - Who hacked him?

"A - Procopio Bermoy. (p. 12, TSN, Feb. 17, 1976)

"Q - But how were you able to recognize when it was night time and night time is dark?

"A - After he did the hacking blows against Humberto Hamo, I even told him 'that is enough, Brod' and Procopio Bermoy even said to me 'do not go near, this is a bolo already'.

"Q - But can you see in the dark?

"A - There was light coming from the petromax.

"Q - How far was the petromax from the place where Procopio Bermoy hacked Humberto Hamo?

"A - About ten meters.

"Q - And how many petromax lamps lighted the place?

"A - The petromax of Zenon Uy and Ponciano Uy.

"Q - Two petromax lamps therefore?

"A - Yes sir. (pp. 19-20, TSN, Feb. 17, 1976)"

What could be more probative of Galas positively identifying appellant as the assailant with his own eyes than

his testimony that after appellant had dealt the hacking blows on the victim, Galas admonished him to stop in his assault, but appellant in turn warned him against "going near?"

Significantly, the aforesaid warning with the display of the bolo was the subject of perfect corroboration by state witness Guillermo Cuyno who in his testimony mentioned about hearing appellant make the remark: "A bolo, Nong." The tallying in the testimony of both Galas and Cuyno would prove that the latter, like the former, was an eye-witness to the assault of Humberto Hamo by appellant. Appellant's attempt to denigrate Cuyno's testimony by pointing to a portion of said testimony to the effect that Cuyno only saw the hands of the assailant, but not his whole body, would likewise, be of no avail if the whole testimony of Cuyno is considered. A reading thereof will reveal that the basis of his identification was his confrontation with appellant and the ante-mortem statement he heard from the deceased. Thus, when Guillermo Cuyno tried to stop appellant from attacking Humberto Hamo, appellant turned to him and shouted: "A bolo Nong!" (pp. 55, 58, tsn., Nov. 6, 1975). After the attack, Cuyno heard the victim say that it was appellant who hacked him (p. 79, tsn., Nov. 6, 1975).

A minor discrepancy between the affidavit of Alonso Galas (Exh. H) in which he stated that Humberto Hamo was "hacked" and his testimony in the preliminary investigation that he was "stabbed" is utterly insufficient to discredit Galas' entire testimony as appellant would seek to do. This is a mere inaccuracy that is by no means a mark of untrust-worthiness much less willful falsehood, but normally susceptible of commission by one testifying from his own observation of a fast-moving event, or by mere carelessness in the use of precise terms; and certainly negating a rehearsed or coached testimony. It is an undisputed fact that the deceased was attacked with a bolo, and whether it was a hacking or stabbing motion that featured the assault, same might not be so easily distinguishable, and in any event is inconsequential, considering that a bolo is both a bladed and pointed weapon and may thus be used both in a "hacking or "stabbing" motion in the course of an attack.

Another witness who identified appellant as the assailant is Julian Calabes, the bus conductor. A defense witness, Ponciano Uy testified that Calabes was sleeping during the incident, but on cross examination, he wavered in his assertion (pp. 133-134 tsn., July 1, 1977). Incidentally, same defense witness impliedly admitted appellant's involvement in the incident with his testimony that people were afraid to talk about the assailant's identity in the presence of appellant's relatives.

To bolster his claim that he could not have been identified by the prosecution witness, appellant alleged that the place of the incident was not well lighted. There is no truth in his allegation because there were two petromax lamps lighting the area. The fish vendor was just six to ten meters from the lamps. He must have chosen a well lighted spot to display the fish he was selling. The state witnesses all knew appellant well even before the incident.

With the positiveness with which he was identified as the assailant, appellant's alibi cannot prosper. At least two witnesses, Galas and Cuyno, were riot shown to have any motive to falsely charge appellant with so grave an offense, if the third witness, being the bus conductor of the deceased driver, may not be said to be as absolutely free from such improper motive. Repeatedly it has been held that the defense of alibi cannot stand against positive identification.[1] Neither can it avail when, as in the instant case, appellant was only some three kilometers away from the crime scene, as he alleged, and, therefore, it was not physically impossible for him to be at the scene at the time the crime was being perpetrated.[2]

To be acceptable, alibi must count with a strong corroboration. Appellant's only witness for the purpose, Maximo Timario, is far from being one who could provide that kind of corroboration. He never mentioned the fact that he was with appellant in the latter's house during the incident to any one at anytime before he appeared in Court. Moreover, even from his testimony, there were some 25 minutes while he was in appellant's house that he

did not see appellant as the latter was supposed to be preparing the rooster's thigh for their repast. During this period, and with the use of a vehicle, appellant could have gone to the crime scene, committed the offense, and returned home just in time when this repast was ready.

To top it all, appellant did not present his parents and a brother to prove that he was at home during the incident, a fact which led the trial court to make the following very apt observation:

"Sub-station commander (Chief of Police) Ramon Deligero of Mabini, testifying for the prosecution, declared that in the evening of July 27, 1975 the police looked for the accused; that past that midnight, he and other policemen went to the accused's house but he was not there, as they found only the accused's parents who told them that the accused did not go home that evening. The defense never denied nor contradicted this important matter. It directly con-tradicts with the accused's testimony that he slept in his house that night."

The recorded evidence is not wanting in a possible motive that prompted appellant to commit the offense against the deceased. Appellant's own witness, Ponciano Uy, testified that he heard appellant mutter a threat that he will finish Humberto Hamo at Cabulao (p. 13, tsn., March 7, 1975). That appellant had such evil design was known also by another wit-ness, Epifanio Pelegrino, who so testified, appellant having harbored a grudge against the victim because the latter had once ordered appellant to get off the bus he was driving before reaching his (appellant's) destination.

Indicative of his guilt was appellant's attempt to flee from the scene of the crime. Just after the incident he tried to contract for a boat to bring him to Leyte. He had also hidden in a bamboo thicket evidently to avoid arrest. By these acts, appellant had shown an unmistakable sense of guilt traceable to the slaying of the hapless victim, Humberto Hamo.

In his last assignment of error, appellant contends that he could not be convicted for violation of Presidential Decree No. 9. In the light of our ruling in a joint decision ren-dered in the cases cited as footnotes hereof,[3] the contention is meritorious. The Solicitor General also agrees with appel-lant with his observation that the bolo (Exh. B) used in the hacking of Humberto Hamo was not proven to be a weapon used in the furtherance of subversion, rebellion or other public disorders mentioned in Presidential Decree No. 1081, which is an essential element of the crime defined in said Decree, as We held in the aforecited cases.

The crime committed in the killing of Humberto Hamo is murder, qualified by treachery which may be considered to have absorbed nocturnity. Evident premeditation was not proven, as found by the trial court, beyond doubt. Without any modify-ing circumstance, the penalty should be imposed in its medium period, or life imprisonment.

WHEREFORE, the judgment of conviction in Criminal Case No. 1293 for murder being in accordance with law and the evidence, is hereby affirmed in toto, with costs.

In Criminal Case No. 1294, the judgment of conviction is hereby set aside or reversed. Cost de oficio.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

[1] People vs. Aguel, et al., 97 SCRA 795; People vs. Lumayag, 13 SCRA 502.

[2] Ibid; People vs. Tanchico, 93 SCRA 575.

[3] People v. Purisima, G.R. No. L-42050-66; People v. Maceren, G.R. No. L-46229-32; G.R. No. L-46313-16; People v. Polo, G.R. No. L-46997, jointly decided by the Supreme Court on Nov. 20, 1978; Bermudez v. CA,

G.R. No. L-42121, July 30, 1979).

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