

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MACABATO ALI, DEFENDANT AND APPELLANT.*G.R. No. L-18519. October 30, 1969*

Ponente: DIZON, J.

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Appeal from a decision of the Court of First Instance of Lanao del Sur in Criminal Case No. 1775 finding appellant Macabato Ali guilty, beyond reason-able doubt, of murder, and sentencing him to reclusion perpetua, with the accessory penalties provided for by law, to indemnify the heirs of the deceased Cabib Di-patuan in the sum of P6,000, without subsidiary im-prisonment in case of insolvency, and to pay his pro-portionate share of the costs.

It is not disputed that in the morning of February 23, 1955 Cabib Dipatuan was killed in Baraas, Malabang, Lanao del Sur. This gave rise to the filing of three separate informations for murder in the Court of First Instance of said province: one against herein appellant (Criminal Case No. 1775), another against Faisal Bo-gabong (Criminal Case No. 1580) and the third against Omar Alo (Criminal Case No. 1812). After a joint trial upon a plea of not guilty entered by the de-fendants, Ali and Bogabong were found guilty of mur-der and sentenced accordingly, while Alo was acquit-ted on the ground of reasonable doubt. Ali and Bo-gabong appealed, but the latter, with our approval, withdrew his appeal on April 25, 1956 (G. R. No. L-18520).

The appealed judgment is based upon the testi-mony of Dipumbai Bantuas and Kilala Panangila-an – eye witnesses to the commission of the crime charged. For this reason, appellants main contention as expounded in his brief is that the trial court erred in giving credit to the testimony of said witnesses instead of accepting as true that given by the witnesses for the defense, thus reducing the issue herein to a mere question of credibility.

Dipumbai Bantuas, single and twenty-five years of age at the time of the trial, testified that in the morning of February 23, 1955, her now deceased brother-in-law Cabib Dipatuan, left their house at Baraas, Mala-bang, Lanao, to take a bath in a nearby river, followed by the other prosecution witness Kilala Panangila-an, a teenager student at the time, and one known as Salim; that sometime after they had left the house she also followed them to the river; that upon reaching that place she heard the report of a gun and when she looked towards the direction from which the sound came, she saw Ali, Bogabong and Alo on the other side of the river aim-ing and firing at Dipatuan; that after the first volley of shots, Dipatuan ran away for cover towards the embank-ment of the river leading towards her house, but successive shots fired by appellant and his companions hit him and killed him almost instantaneously; that immediately there-after she informed their relatives of the incident and then went to make report thereof to the P.C. station where she was able to contact Sgt. Mendiola, and that the latter reduced her declaration into writing three days later (Exhibit I); that the probable motive that impelled appellant and his companions to commit the crime was this: both Ali end Bogabong were frustrated suitors of her younger sister who chose to marry the deceased a short time before he was killed.

The testimony of the other eye witness, Kilala Panangila-an, who was practically right behind Cabib Dipatuan

when the latter was on his way to the nearby river to take a bath, is substantially to the same effect. She testified that while Dipatuan was taking a bath in the river and while she and Salim were seated on the nearby embankment, they suddenly heard shots fired from the opposite bank; that when she looked towards that direction, she saw Ali and Bogabong firing at the deceased Dipatuan, and as the latter attempted to run away, he was hit and fell right in front of her; that the distance between the deceased Dipatuan, while he was taking a bath in the river, and appellant and his companions, was hardly eight or nine meters.

P.C. Sgt. Mendiola also took the witness stand and testified that in the morning of February 23, 1955 pro-secution witness Dipumbai Bantuas reported the killing of Dipatuan to the headquarters and, as a result, by orders of his Commanding Officer, he immediately pro-ceeded to the place of the incident and to the house of the deceased where he saw his dead body with several gunshot wounds, one at the back passing through the left nipple, another at the thigh and still another in the forearm; that he then questioned Dipumbai Bantuas and Kilala Panangila-an, both of whom pointed to appellant and Bogabong as the ones who had killed Dipatuan, having thereafter reduced their respective testimony into writing.

The evidence discloses that appellant and his com-panions were well known to both Bantuas and Panangila-an. As a matter of fact, appellant and Bogabong had been un-successful suitors of Bantuas' younger sister. It is true that, to discredit Bantuas' testimony, appellant testified that she had a grudge against him because he had reported to their elders certain immoral relations between her and the third accused, Omar Alo, for which, after due investigation, Bantuas was fined P500.00 by Macaorao Balindong, Mayor of Malabang. The trial court, however, found this to be without merit because said Mayor testified that it was not true that he had imposed such a fine upon Bantuas.

Moreover, appellant admitted that he is a first degree cousin of Bantuas. As there is no credible evidence showing prejudice on Bantuas' part, we do not believe that she would have imputed to appellant the commission of such a grave offense as that of murder if it was not true that he was really guilty thereof.

Anent his defense of alibi, appellant claimed that in the morning in question he was in the house of his father at sitio Capialo, five kilometers away, more or less, from sitio Baraas, the scene of the incident; that between six and seven o'clock that morning, he was giving lessons on the Koran to a housemate named Macalangon and it was only about one o'clock that day that people passing by their house informed him that Cabib had been killed, for which reason, after he had taken his lunch, he went to Baraas to find out the truth.

His testimony was corroborated by that of Macalangon.

It is well settled, however, that alibi is a defense very easily concocted, and for this reason, to be sustained, it must be supported with strong and unassailable evidence. Appellant's evidence in this case is far from being of this nature and can not overcome nor sufficiently weaken that of the prosecution witnesses mentioned heretofore clearly and positively pointing to him and to his companions as the ones who had killed Dipatuan.

WHEREFORE, finding that the appealed judgment is in accordance with law and the evidence, the same is hereby affirmed, with his proportionate share of the costs taxed against appellant. Furthermore, the indemnity awarded in the appealed judgment is hereby increased to P12,000.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur. Makalintal, J., did not take part.

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