

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO HERILA, DEFENDANT-APPELLANT.

G.R. No. L-32785. May 21, 1973

Ponente: MAKALINTAL, ACTING CJ.

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MAKALINTAL, ACTING CJ.:

This appeal from the decision of the Court of First Instance of Masbate in its Criminal Case No. 08576-CR was originally taken to the Court of Appeals but was subsequently certified to this Court for final determination in view of the finding that the imposable penalty upon the appellant is reclusion perpetua.

In an information dated September 1, 1966 filed in the court a quo by the Provincial Fiscal of Masbate, Simon Alteza and Alfredo Herila were charged with the murder of Matias Lalaguna allegedly committed as follows:

"That on or about the 17th day of August, 1966, in the barrio of Mapuyo, Municipality of Mobo, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused confederating together and helping each other, with deliberate intent to kill and with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab with their bolos one Matias Lalaguna, a Barrio Captain of Mapuyo, Mobo, Masbate, thereby inflicting upon the latter serious wounds, right elbow, posterior surface, severing the major arteries and veins and at the interparietal region which injuries directly caused his death."

When arraigned on October 1, 1966, Simon Alteza pleaded guilty. On the same day the trial court sentenced him to suffer imprisonment from 6 years, 1 month and 11 days to 12 years, 5 months and 11 days; to indemnify the heirs of the victim in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency; and to pay one-half of the costs. The other accused, Alfredo Herila, entered the plea of not guilty, so the trial proceeded against him.

The prosecution presented three witnesses, namely: Benita Lalaguna, the widow of the victim; Nilda, their daughter; and the medical health officer who examined the victim's body. Benita Lalaguna and her daughter Nilda testified substantially as follows: On August 17, 1966, at around 6:00 o'clock in the morning, Matias Lalaguna, together with his two children, Nilda and Adelino, left their house in Bo. Mapuyo, Mobo, Masbate, to gather firewood. Benita stayed at home. After walking a short distance Nilda saw Alfredo Herila and Simon Alteza hiding beside the footpath. Matias Lalaguna, who was ahead of her, failed to notice them. When Nilda saw the two suddenly emerge from their hiding place, with the evident intention of attacking Matias Lalaguna, she shouted, "Father, run away because somebody is going to stab you." The shout attracted the attention of the people in the neighboring houses, whose excited shouts caused Benita to look out of her window in the direction of the footpath her husband and children had taken. Both Benita and Nilda saw Simon Alteza hack Matias on the head with the bolo. Matias ran toward his house, but before reaching it he fell to the ground. Alfredo Herila then approached him and with a bolo slashed his right elbow, inflicting a three-inch wound. The two assailants then left, and Matias got up and ran to his house. With the help of a schoolteacher Benita applied a tourniquet on the right arm of the wounded man to stop the flow of blood, but her efforts were futile. At around nine o'clock, or

three hours after the incident, Matias expired.

The medical health officer testified, among other things, that the cause of death was shock secondary to external hemorrhage; that the wound at the region of the right elbow completely severed the major arteries and veins; and that even without the wound on the head death would have resulted just the same.

Alfredo Herila's defense was alibi. He testified that he was not in Bo. Mapuyo in the morning of August 17, 1966 but in Sitio Sawmill, some four kilometers away, where he had taken his wife and child the previous day to visit his father-in-law, returning to Bo. Mapuyo only at three o'clock in the afternoon of the day of the incident, that is, on August 17. Upon arrival at his house he lay down to rest, but two policemen came shortly afterwards and placed him under arrest in connection with the killing that morning. His wife, Avelina Cuna, and Sabas Cuna testified in corroboration of Alfredo's alibi.

The defense also presented a certain Sofronio Escoto, who was supposed to have been utilized as a witness for the prosecution. He said that he saw Simon Alteza stab Matias Lalaguna, but did not see Alfredo Herila at all in the vicinity. When cross-examined, however, he admitted that after Matias was stabbed by Simon he ran to his house and closed its door and windows because he was scared, and that he remained inside his house for sometime and did not observe anymore what else happened.

The lower court found the accused guilty of murder and sentenced him as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finds accused Alfredo Herila guilty beyond reasonable doubt as principal by direct participation in the commission of the crime of murder qualified with treachery punished under Article 248 of the Revised Penal Code by reclusion temporal in its maximum period to death. There being no aggravating circumstance attending the commission of the crime, and taking into consideration the mitigating circumstance that "the accused had no intention to commit so grave a wrong as that committed" [Rev. Penal Code, Art. 13 (3)] in his favor, and applying the indeterminate sentence law, the accused Alfredo Herila is hereby sentenced to suffer imprisonment from ten (10) years and one (1) day, minimum of the maximum period of prison mayor, to seventeen (17) years, four (4) months and one (1) day, minimum of the maximum period of reclusion temporal, to pay the heirs of the victim Matias Lalaguna the amount of P6,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. The accused being a detention prisoner is entitled to one half of the period of his preventive imprisonment to be deducted from the term of his sentence, pursuant to Article 29 of the Revised Penal Code."

Only one error is assigned by the appellant, namely: that the trial court erred in finding him guilty of the crime of murder and in not acquitting him on ground of reasonable doubt. He contends that the trial court should not have relied entirely on the testimonies of Benita Lalaguna and her daughter Nilda positively identifying him as one of the assailants and instead should have considered favorably his defense of alibi.

The appellant claims that Benita Lalaguna could not have seen her husband being stabbed because she was inside their house at the time when her husband and children left. The record belies the appellant's claim. On direct examination Benita testified as follows:

"Q

When your husband was stabbed by Alfredo Herila where were you? In what part of your house were you?

"A At the door of my house because I already heard the shout." (t.s.n., p. 5, Cipriano.)

When cross-examined Benita explained how she was able to witness the incident:

"Q

And how were you able to see the stabbing when you were at the door according to your previous testimony when you could see houses, plants and others around while standing at the door?

"A

I have seen when Alfredo Herila stabbed my husband because on the place where my husband was stabbed by Alfredo Herila, there was no obstruction because the houses are on the other side, the banana plants are on the other side, and the flowering plants are on the other side and the place where Alfredo stabbed my husband.

"Q

How could you have seen as you stated Simon Alteza stabbed your husband on the head when just the same there were houses and plants around when you stood at the door and besides it was 50 meters distance away from your house?

"A

Because Simon Alteza followed my husband and then stabbed him and my husband was able to run away towards home x x x on midway he was stabbed by Alfredo Herila." (t.s.n., p. 6, Bajar.)

The appellant points out an alleged flaw in Benita's testimony, in that while she saw her husband being stabbed she did not see her children who were supposed to be near their father. She explained:

"Q

Why did you not go out or go down from your house to extend help when you saw your husband was stabbed on the head at a distance of 50 meters as you said before?

"A Because I was afraid.

"Q

That is why you did not even see where your children were because you did not attempt to see your husband when he was stabbed by Alteza?

"A

I did not leave the house. I was only inside because I was afraid for I have seen my husband already stabbed.

"Q

So you were not able to see the two children when your husband was stabbed because there were houses covering them?

"FISCAL:

Misleading.

"COURT:

Answer.

"A

I did not mind anymore these two children of mine because my husband was already stabbed." (t.s.n., p. 8, Bajar.)

In her fear and excitement upon seeing her husband attacked it was not unnatural at all for her to overlook the presence of her children.

The appellant says that mother and daughter were impelled by an improper motive to testify against him, in view of his failure and refusal to give any part of the produce of the land owned by the victim. Again Benita's explanation satisfactorily negates the imputation. On cross-examination she testified:

"Q

You stated here that accused Herila does not pay you for the rent of the land upon which his house is built, correct?

"A

That is not a sort of rental because he is living there in the barrio. That is not his obligation to pay rent because he is there within the barrio.

"Q Whose land is that upon which the house of Herila is built?

"A

That land whereon the house of Alfredo Herila was constructed belongs to us but it was already donated to the municipal government.

"Q

You said on direct examination that accused Alfredo Herila was staying in your own land at Mapuyo, which land is this?

"A Precisely, that is our land but we donated the same to the municipal government.

"Q

When you stated that statement, you considered yet your land because you said so in your statement?

"A

No, sir, because at first they stayed in our farm and later on they transferred to the barrio proper.

"Q How long did they stay in your farm before transferring to the barrio?

"A For almost two years.

"Q Alfredo Herila did not give any produce of the land to you, is that correct?

"A

They did not give us any produce of the land within that length of time they stayed in our farm.

"Q You expected him to give you produce but he did not?

"A

We never expected nor asked from them about our share of the produce derived from the land he was working because we have a better understanding between us but to my surprise and for no reason at all I do not know why he stabbed my husband.

"Q

What are the produce of the land derived from that land which Alfredo Herila has not given you?

"A Camotes, corn and others, like cassava, onion.

"Q

You have enough crops yourself because you don't require Alfredo Herila to give you anything, am I correct?

"A

We don't ask for our share from him because we have enough for our subsistence." (t.s.n., pp. 11-13, Bajar.)

It is quite clear that the alleged refusal of the appellant to give Benita a share of the produce of the land could not have motivated her and her daughter to level at him a false accusation for such a serious offense.

It is true that no motive has been shown why the appellant would kill Matias Lalaguna, but this Court has repeatedly held that motive is pertinent only when there is doubt as to the identity of the culprit. Since in this case the accused was positively identified by credible witnesses to be one of the assailants of the victim, proof of motive is not essential for conviction.[1]

As regards the defense of alibi, the trial court correctly found it to be without merit. Settled is the rule that alibi cannot prevail over positive testimonies of identification by credible witnesses.[2] Besides, it was not physically impossible for the accused to be at the scene of the crime at six o'clock in the morning of August 17, 1966 since the distance from Bo. Mapuyo and Sitio Sawmill was only four (4) kilometers and could be reached in thirty (30) minutes by hiking.

In view of the foregoing, there is no reason to disturb the finding of the trial court that the appellant is guilty of the crime charged. However, we do not agree with the trial court in appreciating in favor of the accused the mitigating circumstance of "no intention to commit so grave a wrong as that committed." Considering that the victim had already fallen helpless and was in a lying position when he was hacked by the appellant, We entertain no doubt that the appellant intended to kill the victim. Besides, the nature of the weapon that was used and the fact that the attack was characterized by treachery, since the assailants waited in ambush for their victim, are also demonstrative of such intent.[3]

The penalty provided for the crime of murder is reclusion temporal in its maximum period to death. There being neither aggravating nor mitigating circumstance which attended the commission of the crime, the penalty should be imposed in its medium period which is reclusion perpetua.

WHEREFORE, modified as to the penalty, which is increased to reclusion perpetua and the amount of the indemnity, which is also increased to P12,000.00,[4] the decision appealed from is hereby affirmed. The appellant should be credited with the full time of his preventive imprisonment upon a showing that he agreed to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise, he shall be credited with four-fifths (4/5) of the time of such preventive imprisonment.[5] With costs.

Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.
Antonio, J., took no part.

[1] *People vs. Largo*, No. L-28106, August 18, 1972 (46 SCRA 597), *People vs. Bautista*, No. L-27638, November 28, 1969 (30 SCRA 559).

[2] *People vs. Ganda*, L-28163, January 30, 1970 (31 SCRA 347) and the cases cited.

[3] *People vs. Banlos*, G.R. No. L-3413, Dec. 29, 1950.

[4] *People vs. Pantoja*, L-18793, Oct. 11, 1968, (25 SCRA 468).

[5] Article 29 of the Revised Penal Code, as amended by Republic Act No. 6127.

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