

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DOMINGO MABUYO, DEFENDANT AND APPELLANT.

G.R. No. L-29129. May 08, 1975

Ponente: MAKALINTAL, C.J.

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MAKALINTAL, C.J.:

This is an appeal from the decision of the Court of First Instance of Batangas in its Criminal Case No. 2486 finding the accused Domingo Mabuyo guilty beyond reasonable doubt of the crime of murder, with treachery as the qualifying circumstance, and sentencing him to reclusion perpetua, with all the accessory penalties provided by law; to indemnify the heirs of the deceased Norberto Anillo in the sum of P6,000.00; and to pay the costs.

On June 18, 1966, at about midnight, Norberto Anillo was shot dead at the doorstep of his house in Bo. Ambulong, Tanauan, Batangas. Immediately thereafter a police team headed by Lt. Roque Garcia, Deputy Chief of Police of Tanauan, went to the scene of the incident and conducted an investigation. Fifteen empty carbine shells were recovered from the premises. Agaton Anillo, the father of the deceased, and Adelaida Mirania, the widow, when interviewed by Lt. Garcia, declined to name the assailants but promised to go to his office after the interment to disclose to him their identities.

Dr. Francisco M. Garcia, the Municipal Health Officer of Tanauan who performed the post mortem examination of the deceased in the early morning of June 19, 1966, found eleven (11) gunshot wounds on his body.

As promised, Agaton Anillo and Adelaida Mirania went to the Office of the Chief of Police of Tanauan on June 20 and submitted themselves to a formal investigation. In their respective statements they named Domingo Mabuyo as the triggerman and alluded to a certain Juan Mendoza as the instigator of the crime. The following day, June 21, a complaint for murder was filed in the Municipal Court of Tanauan against both Mendoza and Mabuyo. Upon a finding of a probable cause, the municipal judge ordered the issuance of the corresponding warrants of arrest, but Domingo Mabuyo was nowhere to be found.

Juan Mendoza waived his right to the second stage of the preliminary investigation and the municipal court forwarded the record of the case to the Court of First Instance of Batangas, where an information for murder was filed against him alone as principal by inducement. Upon a plea of "not guilty" the accused went to trial, after which he was acquitted "on ground of reasonable doubt" in a decision promulgated on January 7, 1967.

On March 27, 1967 Domingo Mabuyo presented himself at the Office of the Chief of Police of Tanauan, but only to be fingerprinted since he had with him an order of release issued by the Municipal Court. It appears that Mabuyo had previously prepared a bail bond in the sum of P30,000.00, which was approved by the Municipal Judge. Through counsel Mabuyo waived his right to the second stage of the preliminary investigation. Accordingly the municipal court in its order dated March 27, 1967 elevated the case to the Court of First Instance of Batangas for further proceedings. On April 5, 1967 the Provincial Fiscal filed the corresponding information for murder against Mabuyo, alleging the circumstances of treachery and evident premeditation. The case went to trial upon a "not guilty" plea.

The widow of the deceased, who appeared to be the lone eyewitness to the Commission of crime, testified that at about midnight of June 18, 1966, while she was reading in bed, she heard her husband asking her to open the door. She stood up, and taking with her a lighted kerosene lamp, went downstairs. Suddenly there were two successive gun shots. She heard her husband cry out "aray," followed by a sound of a falling object. As she came near the door there were other successive shots. Undaunted, she opened the door to see what was happening outside. With the aid of the light of the kerosene lamp, which she was holding over her head, she saw Domingo Mabuyo firing at her prostrate husband with what appeared to her to be a carbine. Mabuyo aimed it at her, so she immediately closed the door and shouted for help. Shortly thereafter her father-in-law, whose house was nearby, arrived. She told him that it was Domingo Mabuyo whom she saw shooting her husband.

Another witness for the prosecution, Aniceto Sumarraga of Bo. Ambulong, narrated that on June 18, 1966, at about 10:00 o'clock in the evening, while he was at home reading, Domingo Mabuyo arrived with a carbine. They talked briefly inside the house. Domingo Mabuyo inquired if he (the witness) would go with him to kill Norberto Anillo. Aniceto refused, saying that he did not want to be involved in any such undertaking. Domingo Mabuyo then told him that if that was his decision, then he alone would go. After his visitor had left, Aniceto went to the store of a certain Alejandro Perez, also in Bo. Ambulong, and played mahjong. He noticed that Norberto Anillo was also there watching the game. As he was engrossed in the game Aniceto did not warn Norberto about Mabuyo's criminal design against him. At about midnight Anillo left the store. A few minutes later the mahjong players heard gun reports coming from the direction of Norberto Anillo's place. They stopped the game and went to Anillo's house and there saw the lifeless body of Norberto Anillo lying on its face on the ground.

Testifying also for the prosecution, Agaton Anillo said that in the evening of June 18, 1966 he was at his home. At about midnight he heard gun reports coming from the house of his son Norberto. At first there were two shots, followed shortly by several more in rapid succession. When he was about to go downstairs he heard the shouts of his daughter-in-law that her husband had been fired upon. He ran to her house, where he saw his son already dead. His daughter-in-law met him and told him that she had seen Domingo Mabuyo do the shooting.

Agaton Anillo further testified that on June 16, or two days before the fatal incident, his son told him that there was a plot for his liquidation and that it was Domingo Mabuyo who would carry it out; that on June 18 he (Agaton) saw Domingo passing in front of his house; and that after Norberto was killed Domingo disappeared and went into hiding.

Domingo Mabuyo's defense was alibi. He claimed that early in the morning of June 3, 1966 he left Bo. Ambulong, Tanauan, Batangas for Gabaldon, Nueva Ecija, arriving there at about 7:00 o'clock in the evening, and did not return to Tanauan until March 27, 1967, when he surrendered to the authorities. While away from home he worked in the logging concession of Gabaldon Vice-Mayor Isabelo Aquino in Ibuna Estate, Dingalan, Quezon. In the evening of June 18, 1966, the date when Norberto Anillo was killed, he was detained in the municipal jail of Gabaldon for drunkenness and was released at about 8:00 o'clock the next morning. On March 23, 1967 he went to Dolores, Quezon, with some members of the family of Vice-Mayor Aquino, and attended the annual Holy Week rites of his religious sect known as "Iglesia dela Ciudad Mistica." While there somebody informed him that he was being charged in court. At first he did not mind the information, but when he happened to meet Atty. Juan Mendoza, who told him the same thing, he decided to surrender to the authorities. On March 27, 1967 he and Atty. Mendoza went to Calamba, Laguna, and asked a certain Patrolman Dionisio Samiano to accompany them to the Tanauan Police Department. While he was at the Tanauan Police Department somebody fetched him and took him to the office of the municipal judge, where he was asked to sign certain papers which turned out to be his bail bond. After said bond was approved by the municipal judge he was ordered released temporarily from the custody of the police authorities. He further claimed that he had no motive to kill the deceased because the latter was not

only his friend but also a nephew of his wife. He added that he was Norberto's confidant even in connection with the latter's extra-marital affairs.

Corroborating the alibi of the accused, Vice-Mayor Isabelo Aquino of Gabaldon, Nueva Ecija, testified that on June 2, 1966 he sent Antonio Berganos to Ambulong, Tanauan, Batangas to fetch Domingo Mabuyo; that the following day, June 3, 1966, both Antonio Berganos and Domingo Mabuyo arrived in Gabaldon, Nueva Ecija; that from June 6, 1966 to March 22, 1967, Domingo Mabuyo worked under him as a laborer — first as a log cutter in his concession in Dingalan, Quezon and then as a rattan gatherer; that Domingo Mabuyo stopped working on March 22, 1967 because he went to Dolores, Quezon, to attend a religious ceremony of his sect; and that the distance from Gabaldon, Nueva Ecija to Tanauan, Batangas could be negotiated by means of a bus in about ten (10) hours.

In the course of his testimony Aquino identified a time book he was keeping, wherein it was shown that Domingo Mabuyo rendered services as one of his laborers from June 1966 to November 1966. Also identified by him were the payrolls from April 1966 to November 1966, showing the amounts paid to Domingo Mabuyo from June 1966 to November 1966, and his signatures as payee.

Gabaldon Police Chief Francisco Gamit testified on the entries in the police blotter of his department, showing that Domingo Mabuyo was detained for drunkenness in the municipal jail on June 18, 1966 at 9:00 o'clock in the evening and released at 8:00 o'clock the next morning.

Another corroborating witness, Atty. Juan Mendoza, testified that in the first week of June 1966, Domingo Mabuyo was fetched from barrio Ambulong by Antonio-Berganos, one of the laborers of Vice-Mayor Aquino, to work in the logging concession of the latter in Dingalan, Quezon; that from the time of Domingo Mabuyo's departure, it was only on March 23, 1967, in Dolores, Quezon, that they met again; that upon meeting Domingo Mabuyo, he informed the latter that he was facing a court charge for having allegedly killed Norberto Anillo and advised him to surrender immediately after the festivities of their sect; that early in the morning of March 27, 1967 he and Mabuyo went to Calamba, Laguna and asked Patrolman Samiano of the Calamba Police to accompany them to the Tanauan Police Department; and that from the time they met each other in Dolores, he had Domingo Mabuyo under his surveillance until he surrendered on March 27, 1967.

Upon the evidence presented the trial court rendered its judgment of conviction as aforesated; hence, this appeal.

The appellant alleges that the trial court erred in convicting him of a crime not properly charged in the information since he was charged with murder allegedly committed in Bo. Bagumbayan, Tanauan, Batangas, but was found guilty of said crime committed in Bo. Ambulong, some 12 kilometers away in the same municipality and province. The alleged irregularity does not constitute a reversible error. It is a settled rule that unless the particular place of commission is an essential element of the offense charged, conviction may be had even if it appears that the crime was committed not at the place alleged in the information, provided the place of actual commission was within the jurisdiction of the court.^[1] In the instant case the place of commission does not constitute an essential element of the offense charged and the evidence discloses that said offense was in fact committed within the territorial jurisdiction of the trial court. Moreover, there is no reason to believe that the appellant was misled or surprised by the variance between the proof and the allegation in the information as to the place where the offense was committed.

With respect to the appellant's claim that he was denied the right to preliminary investigation, We find the same to be without factual basis, it appearing from the order dated March 27, 1967 of the Municipal Court of Tanauan that he "had renounced his right to the second stage of the preliminary investigation." Furthermore, the record does not show that he raised the question of lack of preliminary investigation at any stage of the trial in the court of first

instance. It is well-settled that the right to a preliminary investigation is not a fundamental right and may be waived expressly or by silence.[2]

We now take up the merits of the case. In asking for his acquittal the appellant vigorously assails the credibility of the prosecution witnesses, particularly the widow who identified him as the murderer of her husband. He urges that since the testimonies of said witnesses as regards the guilt of Juan Mendoza were not given credence, the same should likewise be rejected in his case in order to be consistent. We cannot sustain the appellant. It is to be noted that in Criminal Case No. 2388 Juan Mendoza was prosecuted on the theory that he directly induced the herein appellant, who was then at large during the pendency of said case, to kill Norberto Anillo. In the case under review, the appellant himself was charged as the sole author of the crime after the acquittal of his supposed inducer. Under the foregoing factual setting, the trial court aptly observed that the incredibility of the witnesses for the prosecution against Juan Mendoza as principal by inducement did not necessarily mean that said witnesses were also incredible when they testified against the very person who allegedly shot to death the victim. In fact, it found that the testimonies of prosecution witnesses Adelaida Mirania, Agaton Anillo and Aniceto Sumarraga against the appellant "were in accord to what they disclosed in their written statements executed less than two days after the commission of the imputed crime," but such was not the case when they testified against Juan Mendoza. In *people vs. Mallillos*,^[3] this Court had occasion to state that:

"It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. And it has been aptly said that even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected, but such portions thereof deemed worthy of belief may be credited. Suffice it to say, in this connection, that a trial court by reason of its proximate contact with witnesses, are in a more competent position to discriminate between the true and the false, and We really find no cogent reason to disturb the above-quoted conclusion of the court below in the decision appealed from."

Adelaida Mirania could not possibly have been mistaken as to the identity of the appellant. She knew him very well, he being from the same barrio where his house was not far away from hers. At the time of the incident she was carrying a lighted kerosene lamp. Although the lamp was not presented in evidence it was adequately described as a bottle of beer with the wick held in place at its mouth by means of a tin plate. It is a common enough source of illumination in our barrios. Undoubtedly it was sufficient to light an area within a radius of five meters.

While it is true that Adelaida Mirania did not report immediately to the Deputy Chief of Police the identity of the assailant, it is to be noted that she promised to identify him after her husband was interred, which she readily did by going to the police department where she executed a sworn statement.

In a further attempt to discredit the identification made by Adelaida Mirania, the appellant insists that she could not have possibly seen the assailant because, as testified to by Mateo Simbahan, she was not at home at the time of incident but in the house of her father-in-law, watching a game of "bingo." However, the testimony of said witness contains flaws which render it unworthy of belief. He went to Agaton Anillo's house, he said, in order to ask the latter to help him find a job. Yet he did not talk to Agaton Anillo immediately upon his arrival but waited until midnight on the lame excuse that he got interested watching the bingo game. Furthermore, considering that Adelaida Mirania had nine (9) children and was then again pregnant, it is hardly believable that she would leave her house just to watch the bingo game, remaining on her feet until midnight.

The appellant also insists that the widow pointed to him as the assailant because she was angry with him because he refused to stop helping her late husband in his extra-marital affairs. We find this motive insufficient for her to accuse him falsely of so grave a crime as murder. Besides, it is unthinkable that she would fabricate evidence to

send an innocent man to jail and let the real murderer of her husband go free.

The appellant having been clearly and positively identified by the widow, his alibi cannot be sustained. Moreover, after examining the evidence in support of his defense We find that his alibi has the aspect of fabrication. Firstly, the police blotter of Gabaldon, Nueva Ecija, was not properly accomplished. While the Chief of Police testified that the appellant was brought to the municipal jail by his two policemen at about two o'clock in the afternoon of June 18, 1966, it appears in the blotter that the appellant was detained at 9:00 o'clock in the evening. Also, while the appellant was supposedly released on June 19, 1966 at 8:00 o'clock in the morning, the release was entered on the page for June 18, 1966. It is a fair conclusion that the fact of release was entered on said page because it could no longer be accommodated on the page for June 19, 1966, there being already legitimate entries thereon and the blank spaces having been crossed out. The Chief of Police was even surprised why the questioned entry appeared as it did. Secondly, as correctly observed by the trial court, from all appearances the payrolls from April 1966 to November 1966 were all prepared at the same time. Thirdly, the protestation of the appellant that he never knew that he was being implicated in the killing of Norberto Inillo or that he was being charged in court therefor until he was so informed by Juan Mendoza on March 23, 1967 is belied by the fact that even before that date he had already taken steps to prepare his bail bond. It appears from the record that his bondsmen secured the necessary papers in connection with their respective properties to be offered as security on February 28, 1967 and that the bail bond itself was prepared on March 4, 1967. Lastly, if it were true that he was working from June 1966 to March 1967 under Gabaldon Vice-Mayor Aquino and not hiding from the authorities as alleged by the prosecution, he would at least have returned home to visit his family during that long period. He never did, not even on Christmas day, which is traditionally a day for family reunion. If anything, his long absence from his barrio supports the theory of the prosecution that his flight immediately after the commission of the crime was not for any innocent reason.

The trial court correctly appreciated the qualifying circumstance of treachery against the appellant. The attack was sudden: the victim was knocking at the door and asking his wife to open it when he was shot. Although he was apparently aware of the plot to liquidate him, the circumstances, including the use by the appellant of a high power firearm, rendered the victim defenseless.

The mitigating circumstance of voluntary surrender cannot be considered in favor of the appellant. The fact that it took him almost nine months after the issuance of the warrant of arrest against him before he presented himself to the police authorities negates the spontaneity of his surrender.

The crime committed was murder, and there being neither mitigating nor aggravating circumstance, the appellant was correctly sentenced to reclusion perpetua.

WHEREFORE, with the only modification that the indemnity payable to the heirs of the deceased Norberto Anillo is increased from P6,000.00 to P12,000.00, the decision appealed from is affirmed with costs.

Fernando, Barredo, Antonio, Aquino and Concepcion, Jr., JJ., concur.

[1] U.S. vs. Smith, 3 Phil. 20; U.S. vs. Archos, 11 Phil. 555; U.S. vs. Tan Goy, 36 Phil. 974; Rule 110, Sec. 9, Rules of Court.

[2] People vs. Mijares, 90 Phil. 102; People vs. Baluran, No. L-28582, March 25, 1970, 32 SCRA 71.

[3] No. L-26568, July 29, 1968, 24 SCRA 133, 139-40.

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