

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RIZAL IDNAY Y BATARA, ACCUSED-APPELLANT.

G.R. No. L-48269. August 15, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Rizal Idnay y Batara appeals from the Decision of the Court of First Instance of Ilocos Norte, Branch III, Laoag City,[*] convicting him of Murder and sentencing him to "reclusion perpetua in its medium period;" to pay civil indemnity of P12,000.00 plus P700.00; without subsidiary imprisonment in case of insolvency; and to pay the costs.

The prosecution evidence discloses that before lunch time on 12 November 1976; accused-appellant Rizal Idhay y Batara, entered the restaurant of Nicolas Bautista at Badoc, Ilocos Norte. He met some companions in the restaurant and drank beer with them. Appellant remained up to about 5:00 to 6:00 o'clock in the afternoon. When people came to the restaurant to drink, appellant would sit and drink with them. When the drinks were finished, he would order beer and "pulotan" but would not pay for what he had ordered. Instead, he forced others to pay for the bills.

Noting this, Nicolas Bautista, the restaurant owner talked to him in a nice manner to leave the restaurant. But since appellant was reluctant to do so, Bautista took hold of his arm and forcibly took him out. Outside, appellant threatened Bautista with the words: "You wait, I will come back and kill one among you."

About ten (10) minutes later, from inside the restaurant, Bautista heard the crying of a child and instructed his son, Benedicto, to look for his five-year old brother, Ronald, as he thought that it was Ronald who was crying. Before that, Ronald had taken some empty bottles outside the restaurant to be placed in a case.

When Benedicto went outside in obedience to his father's bidding, he saw appellant at a distance of about eight (8) meters with his right hand raised up and moving downward in a swinging position "as if whipping" his younger brother, and with appellant's left hand holding Ronald who was then standing. Benedicto then shouted at the accused, "What are you doing?" Appellant did not answer him but ran eastward.

Approaching his brother, who was then lying prostrate on the ground, Benedicto tried to raise him up. But sensing that the latter was limp and weak, Benedicto touched his brother's breast and saw blood. Benedicto immediately reported the happening to his father and pointed to appellant as the perpetrator. They then rushed the little boy to the hospital but the latter was pronounced dead on arrival.

The post-mortem examination on the victim's body disclosed five (5) clean-cut wounds, three at the back and two in front (Exhibit "A"). The examining physician testified that the wounds could have been caused by a sharp-pointed bladed instrument; that the victim was probably standing when he was stabbed, the wounds on the back having been inflicted first; and that the cause of death was severe hemorrhage, secondary to multiple stab wounds on chest and back.

The father claimed that he had spent P100.00 for the coffin, and P600.00 for the tomb.

For his part, appellant claims that since he got married in 1970 he had been residing at Nagrebcan, Badoc, Ilocos Norte. On 12 November 1976, he was sitting in front of the PC detachment at Badoc, Ilocos Norte, waiting for a ride to go to Nagrebcan. Appellant saw Edgar Pagdilao, Hilario Salon and Leopoldo Tadena, who invited him to drink beer with them in a restaurant about twenty (20) meters away from the PC detachment. Pagdilao ordered four bottles of beer, and after staying in the restaurant for about fifteen (15) minutes and finishing their drinks, the three proceeded to the mini-bus driven by Pagdilao leaving appellant in the restaurant to buy cigarettes, but there were none for sale. When appellant was about to leave the restaurant, the owner reminded him of his debt of more than P5.00 and asked him, "Why don't you pay for your debt?" To which appellant answered, "I have no money yet." The owner got infuriated and uttered bad words against appellant, to which the latter retorted, "yot" (coitus), and left for the mini-bus where his three companions were waiting for him.

All four then proceeded to Nagrebcan, which was about seven (7) kms. distant. Upon reaching Nagrebcan, Edgar Pagdilao again invited the accused to proceed to the bus terminal in Barrio Balbaldez to drink some more. Balbaldez is about one kilometer farther away from Nagrebcan. Upon reaching the terminal and after the conductor, Angel Reyes, had turned over his collections, Pagdilao again ordered gin and coke and the three continued drinking up to 8:30 P.M. All of them slept in Balbaldez in the house of Narciso Reyes, the bus operator. The next day, when appellant woke up at 7:30 A.M., Pagdilao and Reyes had already left for the morning trip.

When appellant returned to Nagrebcan he was told by his mother-in-law that a policeman was looking for him during the night. At around 10:00 A.M. of the same day he left his house to go to town but on his way he was met by some policemen who invited him to ride in their jeep as the Chief of Police wanted to ask him questions. When asked whether he was the one who had killed Ronald Bautista, he replied that he did no such thing and that at the time of the incident on 12 November 1976, at about 6:00 P.M., he was in Barrio Balbaldez.

The bus driver, Pagdilao, corroborated appellant's story in all essential details, particularly, that when they left the restaurant, they left appellant there to buy some things; that they proceeded to the parked bus and waited for appellant; that they slept at the bus operator's house that evening; and that when they took the early trip at 6:00 A.M. the next morning, appellant was still sleeping.

The Trial Court discredited the defense version of the incident and convicted appellant. Hence, this appeal on the following:

"Assignments of Error

I

"The lower court erred in giving credence to the testimony of Benedicto Bautista and Nicolas Bautista.

II

"The lower court erred in holding that there was a positive identification of the accused.

III

"The lower court erred in concluding that the accused resided in the poblacion of Badoc, just forty (40) meters away from the scene of the crime.

IV

"The lower court erred in not sustaining the defense of alibi."

The foregoing revolve around the issue of credibility in which regard the findings of the Trial Court are entitled to great weight and respect as held in a host of cases. No circumstance of weight or influence has been shown to have been disregarded that would call for a conclusion other than that arrived at by the Trial Court.

Prosecution witness, Benedicto Bautista, has seen appellant in his father's restaurant at least five (5) times before the killing took place. The witness recognized him at a distance of eight (8) meters "as if whipping" the boy-victim with his right hand raised up and downward in a swinging position, with the victim held by the left hand of appellant. When the witness approached and asked what he was doing, appellant immediately ran away. Benedicto could not have been mistaken in his identification of appellant.

While it may be that Benedicto did not call appellant by name, it does not necessarily follow that he did not recognize the culprit. At that precise moment, the witness did not have to call him by name. It sufficed that the witness could identify him. And just because Benedicto did not state that he saw the accused holding a bolo or bladed instrument does not mean that his identification of appellant is flawed. It is understandable that Benedicto did not see the weapon used since it was the victim's back that was towards the witness and the event occurred with such rapidity that the witness did not see every detail. The vital fact remains, however, that Benedicto saw appellant as if in the act of whipping the victim while appellant held the latter with his left hand and immediately thereafter the victim fell prostrate soaked in his own blood.

That Benedicto did identify appellant is proven by the fact that he promptly revealed to his father the tragedy that had befallen his brother and the assailant responsible therefor. The father then immediately reported the matter to the municipal police and later to the Philippine Constabulary (t.s.n., September 29, 1977, p. 114). The same evening, the police already looked for appellant at his home in Nagrebcan.

With the positive identification of appellant, the defense of alibi cannot prosper besides the fact that it should be established by clear and convincing evidence. The requisites of time and place must be strictly met. Appellant must show that he was at some other place for such period of time as to preclude or render impossible his presence at the place where the crime was committed at the time of its commission (People vs. Cruz, L-68805, July 9, 1986, 142 SCRA 576, citing cases). Proof herein falls far short of the criteria thus laid down. The incident occurred soon after the restaurant owner took appellant forcibly out of the restaurant prompting the latter to utter his threat, which he made good soon after. Appellant could have proceeded to Balbaldez after the occurrence. Besides, even giving appellant the benefit of the doubt, Balbaldez, where appellant claims he was at the time of the incident, is only about eight (8) kilometers away from Badoc, Ilocos Norte, the scene of the crime (t.s.n., January 4, 1978, pp. 163-164. November 10, 1977, pp. 133), and considering the availability of motorized transportation, it was not impossible for appellant to have negotiated the distance and committed the offense.

We see no reason, therefore, to disturb the Trial Court's conclusions, the same being anchored on convincing

evidence.

The penalty, however, will have to be modified.

Pursuant to Article 248 of the Revised Penal Code, the imposable penalty should be reclusion perpetua, as imposed by the Trial Court. However, with the abolition of capital punishment in the 1987 Constitution, the penalty of Murder is now reclusion temporal in its maximum period to reclusion perpetua. In the absence of any modifying circumstances, the penalty is imposable in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years.

For purposes of the Indeterminate Sentence Law, the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense is prision mayor in its maximum period to reclusion temporal in its medium period, or, from ten (10) years and one (1) day to seventeen (17) years and four (4) months.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED**, except that the penalty is modified to ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and the civil indemnity is increased to P30,000.00. With costs.

SO ORDERED.

Paras, Padilla, and Sarmiento, JJ., concur.

[*] Presided over by Judge Magin V. Tanedo.

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