

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE CASTILLO Y RIZADO, ACCUSED-APPELLANT.

G.R. No. L-32864. March 08, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

In this appeal interposed directly from the decision of the then Circuit Criminal Court of Manila of the former Sixth Judicial District, in Case No. CCC-VI-178-70,[1] the appellant was convicted as the principal and his co-accused Emmanuel Maliclic as an accomplice in the crime of murder.

It is alleged in the information filed in said case that on May 8, 1970 in the City of Manila both accused, acting in conspiracy together and with others still unknown, treacherously and with evident premeditation inflicted multiple gunshot wounds on the person of one Dalmacio Roxas y Velasquez, which injuries were the direct and immediate cause of the victim's death.[2]

At the trial, the prosecution presented three witnesses, one of them being Dr. Abelardo Lucero who performed the necropsy examination of the victim.[3] The two other witnesses were Restituto Luna and Luciano de Guzman, both brothers-in-law of the victim, who testified that it was the appellant who shot the deceased, with witness Luna explicating that the appellant shot the victim from behind.[4]

The trial court correctly summarized the testimonies of said two witnesses, culled from the transcripts of stenographic notes which We have reviewed and correspondingly indicated herein, as follows:

"(2) Restituto Luna, 37 years old, married, janitor of the General M. Hizon Elementary School residing at 7 Callejon Dela Reyna, Binondo, Manila, declared that he knows the victim Dalmacio Roxas as he was his brother-in-law, On May 8, 1970 at 8:00 p.m., he saw him in his place at work in the Frank Tailoring, Sande, Tondo, Manila. He talked to him and then they went home. On the way home, Roxas was shot while they were walking on the railroad track near the corner of M. Hizon and Batangas Streets, Manila. While walking they saw a chasing incident in the railroad track going to their direction. They stopped and Roxas was confronted by the people chasing. The people chasing asked the victim who is he. They were five (5) more or less.

In that group were Castillo and Maliclic. He saw Castillo armed with a short gun but he did not notice if Maliclic was armed. The other two were with guns. The one who said who are you was Castillo. He saw Castillo two (2) meters away from the victim. Victim said he is not an enemy and then he heard around five (5) or more shots. When Roxas was confronted, he was already able to hide behind a Meralco post two or three meters behind the accused as he was frightened. The place was bright because of the Meralco lampost. Castillo was behind the victim when he fired at him. At that time, Maliclic even said he is already dead, let us run. The other companions of Castillo were also there. He did not notice if the other companions of Castillo also fired as he was afraid. After firing, they all run (sic) towards Kagandahan and then he run (sic) to the house of Roxas and informed the members of his family that Roxas is already dead. When he returned, the victim was already dead.[5]

"On cross examination, this witness declared that the sister of the victim is his wife. There were many persons

in the chasing incident. The chasing was going towards Tayuman. The group of Castillo stopped when they met them. He saw the accused for the first time, that night. When victim was confronted by the group of Castillo he at once hid behind the Meralco Post as they were with guns. He was sitting and peeping behind a piece of GI sheet. The other members of the group during that confrontation were even laughing and one said, go ahead, kill him. He was investigated by the police that night right in the crime scene. The police called for him after the apprehension of the accused on June 5, 1970. He was fetched by the police from his house. He went to the police station and there he recognized the two accused. His statement was taken. On May 8, 1970 he already described the accused as one who shot the victim and is as tall as him or a little bit shorter.[6]

"(3) Luciano de Guzman, 35 years old, single, jobless, residing at 2248 Batangas Street, Tondo, Manila, declared that on May 8, 1970 he came from a basketball game and was on his way home when he saw a commotion between two groups near the railroad track. One group was with stones and the other with guns. He stopped and hid and saw the group of Boy Castillo composed of around five persons, shot (sic) a person. In the group of Castillo was Maliclic. Castillo was armed with a shotgun. Maliclic was also holding a gun. He did not notice if the others were armed because they run (sic) away after the shooting. The one who shot was Castillo and he heard around four or five shots all coming from Castillo. Maliclic was around one arm's length away from Castillo. He (witness) was around four (4) meters away from them. The victim was hit on the neck. He cannot remember their exact positions. The place was bright because of the light coming from the Meralco lamppost and from the houses nearby.

When the person was already dead, he moved away. After the shooting, they all run (sic) away in the same direction. He was investigated by the police during that night. He knew Castillo and Maliclic only that evening. On June 5, 1970 he saw again the accused in the precinct and he narrated the incident.[7]

"On cross examination, this witness declared that he was around (5) meters away from the place of the shooting. He hid behind the fence of a small house and he saw what happened because there were slits in the fence. He saw the companion of the victim running away. He did not know where he went. The police did not know where he went. The police immediately arrived and he told them that as soon as they are apprehended he will give his statement because he is afraid. On June 5, 1970 the police informed him that the accused had already been apprehended and the police told him if he can point (sic) the persons and his answer was yes and he pointed them (sic) to the police. He is not related to the deceased. Nor with the accused. He knew the deceased because he oftenly (sic) passed in their place."[8]

Anchored mainly on these testimonial moorings, the trial court rendered judgment —

"(1) Finding accused Jose Castillo guilty beyond reasonable doubt as principal of the crime of murder qualified by treachery and there being no modifying circumstance to consider, the Court sentences him to life imprisonment and to indemnify the heirs of the deceased the sum of P12,000.00;

"(2) Finding accused Emmanuel Maliclic guilty beyond reasonable doubt as an accomplice of the crime of murder qualified by treachery and there being no modifying circumstance to consider, the Court sentences him to an indeterminate penalty ranging from Six (6) years and One (1) day of prision mayor as minimum to Twelve (12) years and One (1) day of reclusion temporal as maximum, to indemnify the heirs of the deceased one-fourth of the P12,000.00 required to be paid by accused Jose Castillo.

"(3) Both accused to pay the costs proportionately."[9]

A notice of appeal was filed by appellant Castillo on September 5, 1970 while his co-accused Maliclic filed his notice of appeal on September 9, 1970. However, accused Maliclic subsequently filed an "Rollo motion to withdraw" his appeal on September 18, 1970, which motion was granted by the trial court on September 25, 1970.[10]

Expectedly, appellant's plaint is focused mainly on the credibility of the prosecution witnesses, particularly Luna

and De Guzman. According to him, "the trial court erred in giving too much credence in (sic) the inconsistent, contradictory, unnatural, incredible and unbelievable testimonies of the in-laws of the victim." He contends that said testimonies were "nothing but mere afterthought of an interested biased witness designated to get anybody pointed to by the police to answer for the death of their brother-in-law." [11] The truth, avers the appellant, is that these witnesses were not in the place of the shooting incident.

After a careful examination of the records, We are fully persuaded that there is no reason to reject the testimonies of witnesses Luna and De Guzman. The deficiencies and inconsistencies imputed to them do not indicate any proclivity on their part to prevaricate.

The appellant gives undue emphasis to the fact that the witnesses cannot remember the color of the shirt of the accused Jose Castillo at the time of the incident and the fact that they did not know the name of the policeman who investigated them.

These are trivialities and inconsequential details that neither affect the credibility of said witnesses on the facts they declared nor impair their identification of the accused. It is understandable and, in fact, normal that the witnesses would not notice all, or would otherwise forget some, details relating to the crime which at the time of the incident did not appear important to them. That they were frightened and excited was but natural; contrarily, it would be incredible if they were not, considering the unexpected assault resulting in the death of their brother-in-law, aside from the fact that their lives were also exposed to danger. It would be more in accord with human experience to conclude that fear distracted their powers of observation, while the time between the incident and their testimony thereon obscured the accuracy of their recollection. Nonetheless, Luciano de Guzman did identify the policeman who investigated him as a certain Javier. [12]

Fear generated by the violent murder of a close relative and of probable reprisal from the perpetrators thereof readily explain why the written statements of said witnesses were not taken by the police investigator immediately after the incident. This should have been obvious to the appellant, for said witnesses categorically established that after their oral statements were taken, they told the investigator that they would give their written statements after the apprehension of the assailants because they were frightened. [13]

We cannot accept the intimation of the appellant that the witnesses were biased because they were the victim's brothers-in-law. It is a rule of respectable consistency that the mere fact that the witnesses were relatives of the victim is not proof sufficient to disregard their testimony nor does it render the same less worthy of credit. [14] The theory of the appellant that the witnesses would implicate a complete stranger like him on the mere indications of the police is implausible. We have ruled that the absence of evidence as to improper motive actuating the principal witness for the prosecution strongly tends to sustain the conclusion that no such improper motive existed and that his testimony is worthy of full faith and credit. [15]

Appellant's pretense of puzzlement as to the necessity for witness Luna to pass through a far place in going home is readily debunked. Had he examined the records more closely, he would see therefrom that the victim and the witness passed by that place because they were going to the house of the victim in order to get the pants of said witness. [16]

The failure of the prosecution to present the police investigator does not adversely affect the merits of the case for the People. We have heretofore declared as an established rule in this jurisdiction that the non-presentation of certain witnesses by the prosecution is not a sufficient defense. If the accused believes that the testimonies of said witnesses are important to his cause, he should avail of them, even by compulsory judicial process if necessary. However, the non-presentation of some prosecution witnesses, to repeat, does not detract from the prosecution's case, since the number of such witnesses who should be called to testify is addressed to the sound discretion of the

prosecuting officers.[17]

It is apt to observe at this juncture that in a long line of decisions on the assessment of the credibility of witnesses. We ruled that where the issue is one of the credibility of witnesses, the appellate court will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[18]

In the case at bar, the presiding judge expressly made of record in his decision that the demeanor and gestures on the witness stand of Luna were specifically considered in assessing the credibility of said witness.[19]

It is infelicitous that the appellant took the oft travelled but generally rejected path in seeking vindication through the insipid defense of alibi. As hereinabove indicated, there was positive identification of both accused, in addition to the fact that the place where the victim was killed was within the vicinity of the house of the appellant. Against these uncontroverted facts, the defense of alibi cannot prevail. It is true that, under certain circumstances, the scales of justice may incline in favor of the accused if his defense of alibi is of a convincing nature and not susceptible of easy contrivance,[20] Such a scenario, however, does not obtain in the present case.

No modifying circumstance is present in this case. Concordant with and in deference to the doctrine adopted by the majority in *People vs. Millora, et al.*[21] to the effect that the medium period of the penalty for murder is reclusion perpetua, the penalties imposed by the trial court call for affirmance. However, the indemnification to be paid to the heirs of the deceased should be, as it is hereby, increased from P12,000.00 to P30,000.00.

WHEREFORE, with such modification, the decision of the lower court is AFFIRMED.

SO ORDERED.

Paras, Padilla and Sarmiento, JJ., concur.

Melencio-Herrera, J., Subject to reservations as to the penalty consonant with my dissent in *People vs. Millora, et al.*, Feb. 9, 1989.

[1] Penned by then Judge Manuel R. Pamaran.

[2] Original Record. 1.

[3] TSN. Aug. 5. 1970. 2-8.

[4] Id., id., 12. 15 and 24.

[5] Id., id., 8-13.

[6] Id., id., 13-21.

[7] Id., id., 23-26.

[8] Id., id., 26-31.

[9] Decision, 18-19; Original Record. 57-58.

[10] Original Record. 60-63.

[11] Rollo, 79.

[12] TSN. Aug. 5. 1970. 29.

[13] Id., id., 16, 29.

[14] People vs. Bergario, et al., 110 Phil. 332 (1960); People vs. Malillos. 24 SCRA 133 (1968); People vs. Yap, et al., 42 SCRA 567 (1971); People vs. Moises, et al., 66 SCRA 151 (1975); People vs. Canada, et al., 144 SCRA 121 (1986).

[15] People vs. Laganzon, et al., 129 SCRA 333 (1984). citing People vs. Borbono. 76 Phil. 702 (1946).

[16] TSN. August 5, 1970. 22.

[17] People vs. Laureta. G.R. No. L-31245. Mar. 25, 1988.

[18] People vs. Realon, 99 SCRA 422. 447 (1980) and the cases cited therein: People vs. Bania, 134 SCRA 347 (1985); People vs. Nabaluna, 142 SCRA 446 (1986); People vs. Salufrania. G.R. No. 50884. Mar. 30. 1988.

[19] Rollo, 17.

[20] People vs. Baniaga, 1 SCRA 283 (1961); People vs. Aquino, 133 SCRA 283 (1984); People vs Pacasa, Jr., et al., 142 SCRA 427 (1986).

[21] G.R. Nos. L,-38968-70. Feb. 9. 1989.

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