

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AYAMAN ABBOC, BITEL ABBOC AND BERSA MIN ABBOC, DEFENDANTS-APPELLANTS.

G.R. No. L-28327. September 14, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this appeal from a verdict of guilty rendered against the accused-appellants, the Court affirms the appealed judgment. The main issue is one of credibility and no valid cause has been shown by them to warrant the Court's deviating from the settled doctrine that absent any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted as to impeach its findings or call for a different finding, the appellate courts will not interfere with or set aside the trial court's judgment and findings on the credibility of witnesses. More so is this true in the present appeal, where appellants have not even challenged the trial court's rejection of their defense of alibi as outright concoction and falsification.

Upon a criminal complaint filed on February 9, 1965 by the chief of police of Sallapadan, Abra before the municipal court against the three accused Ayaman Abboc and his son Bitel Abboc and his brother Bersamin (also referred to in the records as Benjamin) Abboc, and upon the information for murder first filed on September 30, 1965 by the provincial fiscal with the Abra court of first instance and later amended on March 8, 1966 to include Bitel Abboc as co-accused (since he "remained at large, his arrest for more than a year could not be effected"[1]) the lower court after trial rendered judgment dated September 19, 1969 finding the three accused guilty as charged of the crime of murder in the fatal shooting on January 27, 1965 of the victim Lucagan Banig and "sentenced each to suffer reclusion perpetua, to indemnify jointly and severally the heirs of Lucagan Banig in the amount of P6,000.00, and to pay the proportionate part of the costs."

The trial court rendered its guilty verdict on the testimony of Dayapan Banig and Marcos Banig, sister and brother of the victim. It thus related Dayapan Banig's testimony: "Dayapan Banig testified that on the night of January 27, 1965 the three accused, namely, Ayaman, Benjamin and Bitel all surnamed Abboc, went to her house in Bantay, Sallapadan, Abra, and inquired where Lucagan Banig was in the neighborhood. The three left and she returned inside their kitchen where she was preparing food. Moments later at about seven o'clock she heard two gun detonations followed by a cry which she recognized to be that of her brother Lucagan Banig. She immediately took a lighted kerosene lamp, went down the house and proceeded to the south direction from which the cry came. She found Lucagan Banig already wounded and who told her that Ayaman Abboc and Benjamin Abboc held him while Bitel Abboc shot him. After this Lucagan Banig expired and upon the arrival of Marcos Banig, Dayapan Banig informed him of what Lucagan Banig told her. Moments after, the barrio captain Agapito Begnalen (now deceased) also arrived. Witness Dayapan Banig stated that the cadaver of the victim was not autopsied because there was no physician in the locality. A Sanitary Inspector, Bantes Saluquem, however, went to see the body. She (witness) gave her statement Exh. C before the Chief of Police Juanito Bagabag of Sallapadan, Abra, which she identified in court. This witness attributed the motive of the killing to a misunderstanding the deceased had with

Ayaman Abboc when the carabao of the former was lost but which he (victim) recovered from the place of the latter, and when Ayaman Abboc went to get it back, the deceased refused to give."

As to the witness Marcos Banig, the trial court's decision recited that he "testified that upon hearing the gun reports and the cry of his sister Dayapan Banig he took his flashlight and proceeded to the place where Lucagan Banig was. On his way ten meters away from where Lucagan Banig was gunned down he met the three accused Ayaman, Benjamin and Bitel, the latter then armed with a gun, who were running. When he arrived at the place of the incident he found his brother Lucagan Banig already dead and Dayapan Banig who informed him of the victim's dying declaration that Ayaman Abboc and Benjamin Abboc held him while Bitel Abboc shot him. He likewise gave his statement before the same Chief of Police of Sallapadan, Abra, Juanito Bagabag, which was marked and identified as Exh. B. This witness gave the same motive given by Dayapan Banig - the incident about a stolen carabao belonging to the de-ceased."

As to the wounds inflicted on the victim, the trial court narrated that "Bantes Saluquem, a Sanitary Inspector for 16 years in Salla-padan, Abra, testified that he himself conducted an exploratory examination on the body of the deceased Lucagan Banig because there was no practising physician nor a rural health physician of that place and Dr. Jose Dalisan who was summoned to conduct the autopsy did not come. He found five wounds in all, three of which were wounds of exit and two were wounds of entry, inflicted on the portions of the body as indicated or represented in the human figures drawn in his report Exh. A. The wounds of entry are located at the back. He stated that said wounds must have been caused by a carbine, a garand, a Japanese rifle, or any gun with the same caliber. He also found powder burns on the shirt of the victim near his wounds."

The trial court rejected the defense of alibi presented by the three accused.

As to the alibi presented by Ayaman Abboc and his son Bitel Abboc that they were in their place in Manabo, Abra, on the night of the crime attending to Capitan Dioayan, a sick grandfather, the trial court found that "the distance from Manabo to Bantay, Sallapadan, [scene of the killing] Abra, [was] three kilometers which distance could be negotiated within thirty minutes of ordinary walking. The accused Ayaman Abboc and Bitel Abboc, who alleged to have been attending to their sick grandfather, could have gone to Bantay, Sallapadan, Abra, on horseback and returned to Manabo unnoticeably within a period of ten or fifteen minutes to continue with their alleged routinary service to their grandfather. Besides, this concocted alibi of Ayaman and Bitel Abboc was overthrown by the clear and positive identification by Marcos Banig, who, then holding a lighted flashlight in going to the succor of his deceased brother, met them with Benjamin Abboc on the way few meters away from the place where the victim was gunned down and saw Bitel Abboc then holding a gun."

As to the alibi of the third accused, the trial court found that "(B)enjamin Abboc or Bersamin Abboc, in his desire to escape criminal responsibility, concocted the story of branding cattles and collecting taxes in the districts of Quilong-Olao, Danac and Amti, Boliney, Abra. Over-zealous in the interest of comrade-in-arm Benjamin Abboc, Chief of Police Manawis Stimson made it appear in the municipal police blotter of Boliney, Abra that said Benjamin Abboc was sent by him to those places with Fernando Dayaoen as companion. Likewise Rayken Malid-ing, a co-policeman of accused Abboc, was also induced to participate in this drama in an attempt to brainwash the court. Their true intention was however unveiled by their conflicting testimonies and the apparent alteration of the police blotter marked Exhs. D and 4.

"While Police Chief Stimson stated that Benjamin Abboc was in Boliney on January 25, 1965 for the meeting he convened, accused Abboc stated that it was on January 26, 1965 when he went to Boliney for said meeting. xxx xxx xxx" An examination of the exhibit fully supports the trial court's finding that "(E)xamining Exhs. D and 4 which is the police blotter for Boliney, Abra, particularly the entries marked Exhs. D-1-a and D-1-b, the original figures were erased and altered. The entire entry as forged would now indicate that the meeting

alluded to was held on January 25, 1965 and the field duty of Benjamin Abboc and Fernando Dayaoen to the places mentioned was from January 26-29, 1965, thereby implying that Abboc could not have been in Bantay, Sallapadan, Abra, because he was with the group branding cattle and collecting taxes." [2] The police chief who testified on the municipal police blotter performance had to admit upon questioning by the trial court that the entries "were all taken from memory" several days afterwards instead of "on the following day" as originally claimed by him and that he made "many errors" resulting in the changes and superimpositions of dates entered therein made by him, that the trial court in the face of the brazen attempt to present a falsified blotter could not but remark in open court to "make that of record with all the falsifications therein, the court cannot believe him, he is not a good chief." [3]

On appeal, the accused have not challenged the grounds and findings of the trial court for rejecting their alibis.

Instead, they have concentrated their challenge against the trial court's having given due credence and weight to the testimonies of the two principal witnesses Dayapan and Marcos Banig and on a series of self-serving but baseless conjectures and speculations, e. g. "the natural possibility that the heart of Lucagan Banig was pierced by a thru-and-thru bullet and therefore was no more in a position to talk upon the alleged arrival of Dayapan at the place" [4] or that it is "more in consonance with the natural cause of ordinary human actions and reactions to say that Marcos Banig arrived first at the scene of the crime than Dayapan Banig, where he found his brother Lucagan already breathless and lifeless, taking into account the circumstance that Marcos is a man," [5] proceed to an unfounded conclusion that their testimonies were "unnatural" and "unbelievable."

These speculative arguments of appellants find no support in the record. Appellants' brief is in itself totally inadequate, without specific page references to the record in their statement of the case and of the facts nor in their rambling argument, as required by the Rules of Court. [6] These requirements were imposed to expedite the business of the appellate courts and to aid their members in the investigation and verification of the factual and legal questions submitted on appeal and thus facilitate the prompt and orderly disposition of appealed cases; and failure to comply with them at least substantially - if not strictly - has been held to constitute sufficient ground for dismissal of an appeal that failed to present substantial questions. [7]

In view of the grave penalty of life imprisonment at stake, however, the Court has nevertheless gone into the record and found the conjectural contentions of appellants to be wholly unsubstantiated and without merit.

Thus, Exhibit A (also marked as Exhibit 5 of the accused) which is the sketch of the five wounds on the victim's body as prepared by Saluquem, the sanitary inspector who conducted the post-mortem exploratory examination on the corpse in the absence of a physician, bears out the principal witnesses' testimony of having heard two shots, which caused two wounds of entry and three wounds of exit: both wounds of entry were in the back all on the right side (one near the right armpit and one above the right buttock) with the first one exiting through the side and grazing his arm and the second one exiting in a straight trajectory through the right abdomen. The nature of the wounds completely rules out the possibility of the victim's heart (on his left side) having been pierced through and through as conjectured by appellants. The lower court thus properly relied on its own observation "that several persons whose bodies sustained several perforations by bullets survived or died after several minutes or hours" and hence were able to identify their assailants before expiring.

Similarly, the speculation of appellants that Marcos Banig should have reached the victim ahead of his sister Dayapan, based on an unfounded assertion "that the path leading to the scene of the crime is nearer to Marcos' house" [8] is manifestly untenable. Aside from being contrary to the unrefuted testimony of Dayapan, who also immediately told the barrio captain (in reply to the latter's query) upon his arrival at the scene after her brother Marcos of the victim having identified the three accused as his assailants [9] Dayapan's testimony upon cross-examination by appellants' counsel brought out the fact - contrary to their unwarranted assertion in their

brief - that her house was much nearer to the place where the victim was shot, being only eight meters away, while Marcos' house was double the distance or sixteen meters away[10] - and hence, it was only natural that Dayapan was able to reach her dying brother ahead.

The trial court in passing upon the credibility and admissibility of the witnesses' testimony, correctly held that "(W)hile the statement of deceased Lucagan Banig to his sister Dayapan Banig cannot strictly be considered an ante mortem declaration, it is admissible in evidence as part of the res gestae (People vs. Palamos, 49 Phil. 601). " In People vs. Ner,[11] the Court through Chief Justice Concepcion restated the settled rule of evidence on res gestae under Rule 130, section 26 that "All that is required for the admissibility of a given statement as part of the res gestae, is that it be made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make up a story, or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from re-ferring to the event in question or its immediate attending circumstances."

The trial court's statement that it "has no reason to doubt the positive and unwavering testimony of the prosecution witnesses particularly that of Dayapan Banig and Marcos Banig which has fully established the conspiracy of all the accused in committing the crime" is borne out by the record. No flaw or element of doubt that would warrant disbelieving or rejecting the spontaneous declaration of Dayapan as to the last words of her brother-victim right at the scene of the killing identifying the accused as his killers and leading to their prompt apprehension has been put forward by accused-appellants.

In fine, the issue in this appeal is one of credibility of witnesses. The trial court from its vantage point of seeing and hearing the witnesses themselves and observing their behavior and manner of testifying during the trial gave due credence to the "positive and unwavering testimony of the prosecution witnesses." Its rejection of the accused-appellants' defense of alibi has not even been challenged on appeal, owing obviously to the serious flaws and outright concoction and falsification found by it.

No valid cause has been shown by appellants that would warrant the Court's deviating from the settled doctrine consistently followed by the Court since the 1910 case of U.S. vs. Pico[12] down to the latest case of People vs. Carandang[13] recognizing the great respect and weight due to the judgment of the trial court in passing on the credibility of witnesses and that unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted as to impeach its findings or call for a different finding, the Court on appeal will justifiably assume that the trial court acted fairly, justly and legally in the exercise of its primary function of appraising and resolving the question of credibility and will not interfere with the trial court's judgment and findings thereon.

The Court finds no error in the life sentence imposed, the trial court having correctly imposed the penalty for murder in the medium degree on its finding that treachery, which absorbed the aggravating circumstances of nocturnity and superior strength, qualified the killing as murder. The P6,000.00 indemnity awarded by the trial court to the victim's heirs shall, however, be increased to P12,000.00.[14]

ACCORDINGLY, the appealed judgment is hereby affirmed with the sole modification that their joint and several liability by way of indemnity for the heirs of the deceased Lucagan Banig is hereby increased to P12,000.00. SO ORDERED.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Antonio, and Esguerra, JJ., concur.
Makasiar, J., no part.

- [1] Record, page 99.
- [2] Emphasis supplied.
- [3] T.s.n. February 20, 1967, pp. 43-44.
- [4] Appellants' brief, p. 5.
- [5] Idem, at page 15; emphasis copied.
- [6] Rule 46, section 16, pars. (c), (d) and (f) in relation to Rule 56, section 1.
- [7] See *Gaspay vs. Sangco*, per Fernando, J., 21 SCRA 1303 (1967).
- [8] Appellants' brief, page 15.
- [9] T.s.n. Jan. 12, 1967, p. 21.
- [10] Idem, at pp. 25-26.
- [11] 28 SCRA 1151, 1161 (1969) and cases cited.
- [12] 15 Phil 549.
- [13] L-31012, August 15, 1973.
- [14] *People vs. Pantoja*, 25 SCRA 468 (1968).

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