

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICANOR MONTECILLO, DEFENDANT-APPELLANT.

G.R. No. L-47810. November 29, 1984

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

In Criminal Case No. 461-SP of the Court of First Instance of Laguna, Nicanor Montecillo was charged with the crime of Parricide committed, as follows:

"That on or about July 18, 1972, in the Municipality of Alaminos, Province of Laguna, Republic of the Philippines and within the jurisdiction of this Hon-orable Court the accused above-named, did then and there wilfully, unlawfully and feloniously with intent of premedi-tation, that is having conceived and delibe-rated to kill his wife, Donata N. Gutierrez with whom he was united in lawful wedlock, attack, assault and shot with a caliber .38 revolver and employing means, manner and forms in the execution of the crime which tended directly and specially to in-sure its commission without danger to the person of the accused, as a result of which attack, the said Donata N. Gutierrez received mortal gun shot wound on her upper lips which directly caused her instantaneous death."

After due trial, judgment was rendered, finding the accused guilty of the charge and sentencing him to suffer the penalty of reclusion perpetua and to pay the costs. From this judgment, the accused has ap-pealed to this Court.

The People's version of the facts of the case are as follows:

"During the time material to this case, Nicanor Montecillo was married to Donata Gutierrez (Exh. 'I'). The couple resided at Barrio San Andres, Alaminos, Laguna (pp. 3, 5, tsn, August 9, 1973).

"It appears that the couple very often quarreled on account of Nicanor Montecillo's suspicion that his wife Donata Gutierrez had illicit relations with his twin brother, Alo (p. 7, tsn, November 8, 1973). The quarrel led Donata Gutierrez to seek, on 17 July 1972, advice from her mother and step-father, Reynaldo Bantigue, regarding her wish to separate from her husband Nicanor (pp. 6, 7, tsn, November 8, 1973).

"On July 18, 1973, between 9:00 to 9:30 p.m., Felicisima Masa, a neighbor of the spouses Nicanor and Donata Montecillo, and whose resi-dence was located opposite that of the Montecillos, heard a gunshot (pp. 4, 5, tsn, August 9, 1973). She immediately went down the house with her flashlight, went across the street to-wards the residence of the Montecillos (p. 5, *ibid.*). She saw Gonzalo (Alo) Montecillo, twin brother of Nicanor, standing by the road (*Ibid.*); she, however, did not talk to Gonzalo; instead, she entered the residence of Nicanor and Donata (p. 6, *Ibid.*). Nicanor was on the groundfloor of the house, walking; Donata's mother-in-law, Macaria Masa, was crying, while Donata was lying on a bed covered with blood (pp.. 7, 9, *ibid.*). Felicisima Masa and the mother-in-law of Donata dressed up Donata, and together with one Jose Masa and another by the name of Alberto, brought the victim to the hospital (pp. 10, 11, *ibid.*). Donata was, however, pronounced dead on arrival at the hospital (p. 5, tsn, February 27, 1973).

"The post mortem examination conducted on the deceased showed that she died of internal hemorrhage on account of a gunshot wound (p. 5, *ibid.*). The post mortem examination was reduced to writing, which we

quote here-under:

"I. Time, Date, and Place of Examination:

1:45 A.M., July 19, 1972, Funeraria Avenue, San Pablo City

II. Date and Place of Injury:

Evening of July 18, 1972 in Barrio San Andres, Alaminos, Laguna.

III. Date and Place of Death:

Evening of July 18, 1972; Dead on Arrival at the Community Hospital, San Pablo City

IV. General Data:

Donata N. Gutierrez Montecillo, 33 yrs. old, female, married, housekeeper, Filipina, grown race, Roman Catholic, born in Candelaria, Quezon, presently residing in San Andres, Alaminos, Laguna, CPA by profession, Deceased is fairly developed, fair-ly nourished, 5 feet in height, and about 95 lbs. in weight.

V. Physical Findings:

1. Deceased already rigid with lividity at the dependent portion of the body.
2. Gunshot wound just above right upper lip, 1/2 inch from anterior midline, measuring 3 mms. x 6 mms., directed internally and upwards in the direction of the brain substance. Wound is circular, inverted and edges well-defined. Zone of powder burns are scattered within the vicinity of the wound.
3. Right central and right lateral incisors (Teeth) fractured.
4. Blood seen exuding from mouth and both nostrils.
5. No exit wound found and no other signs of trauma in other parts of body.

VI. Cause of death: Internal hemorrhage following gunshot wound. (Exh. 'A', p. 1, Folder of Exhibits)"

"On July 18, 1972 Restituto Banzuela, a police lieutenant connected at the time with the Police Department of Alaminos, Laguna received a phone call to the effect that a certain woman was shot (p. 19, tsn, February 27, 1973). He proceeded to the San Pablo Community Hospital where he came to know of some details of the incident (p. 20, Ibid.). Thereafter, he went to the residence of the victim at Barrio San Andres, Alaminos, Laguna where he found the mother-in-law, of the deceased and the brother of Nicanor, Gonzalo Montecillo (pp. 21, 24, Ibid.). Macaria Masa and Nicanor's brother could not furnish the police lieutenant information regarding Donata's death as they had no knowledge of what happened (p. 22, Ibid.). Similarly, the driver of the car which brought the victim to the hospital could not tell the investigator anything as he did not know what took place (pp. 24, 25, Ibid.).

"At about 4:00 in the morning of July 18, 1972, policemen fetched Reynaldo Bantigue, stepfather of Donata and informed him of the death of the victim, whom he saw at the morgue. Upon learning that the suspect was Nicanor and that at the time he was not yet apprehended, Reynaldo Bantigue proceeded to Manila and asked assistance from the National Bureau of Investigation. An autopsy was conducted on the deceased after which the remains of the deceased lay in state for three days at the Masa residence. During this period, Nicanor was not present, neither was he present during the funeral (pp. 8, 10, 11, 14 and 15, tsn, November 8, 1973).

"The records show that Nicanor Montecillo was surrendered by his brother-in-law Benito Balazo, to the police the day following the shooting incident (p. 27, tsn, February 27, 1973).

"On July 23, 1972, Petronilo Aninias, whose wife is the sister of the deceased, went with one Tomas Alimario,

to the police office at the Municipal Building to secure a copy of the necropsy report from the Office of Dr. Octavio Faylona. From the said office, they passed by the municipal jail of Alaminos, Laguna where, from his prison cell, Nicanor called them. They approached Nicanor who begged for help concerning the shooting incident.

Nicanor said: 'Hindi ko sinasadya ang pag-kakabaril ko sa aking asawa.' Still feeling bad about the death of Donata, Petronilo, together with his companion, left without saying a word to Nicanor. (pp. 6, 7, 8, 11, 13, 15, tsn, March 7, 1974)."

The accused", Nicanor Montecillo, denied the charge against him and interposed the defense of alibi. The trial court summarized his testimony, as follows:

"(8) Nicanor Montecillo, 37, accused, testified that on July 18, 1972 he reached his house at Bo. San Andres, Alaminos, Laguna at about 6:00 p.m. coming from San Pablo City where he is working as agricultural credit officer of the Department of Agrarian Reform, San Pablo Branch. He and his wife Donata had supper at about 6:30 p.m. After taking care of their 3-year old child Dennis and spending sometime in their store, he went to his neighbor's house, Jose Masa's situated 40 meters obliquely from their house. From 8:00 to 9:00 p.m. he played checkers (dama) with his neighbor. Then he heard a shot coming from the direction of his house. He went home and saw his wife sprawled on the bed inside their bedroom full of blood. He did not see any gun near his wife. He embraced his wife and asked her what happened. She did not answer; she only moaned. He asked Macaria, his mother, who was in the room crying, what happened; she did not answer. He went back to Jose Masa's place and asked for his help to bring Donata to the hospital. He together with his mother Macaria Masa and Felicisima Masa, a neighbor who arrived, wrapped Donata in a blanket and loaded her in Jose Masa's car (a Volkswagen Beetle). He was seated in the back holding his wife, together with Felicisima Masa. In the front seat was Jose Masa, driving, and a Visaya. On the way to the hospital, they stopped at accused's brother-in-law Benito Balazo's place in the poblacion to ask the latter's help. Balazo opened the car and asked both Jose Masa and Felicisima Masa what happened. Both did not answer. Balazo also asked him (witness) but he did not answer for he was shivering (giniginaw na). Balazo then ordered the car to proceed to the Community Hospital, saying that he will follow. Witness was left in Balazo's house because 'wala na ako sa isip, giniginaw'. About 10:00 p.m. that night Balazo returned from San Pablo and told him that Donata is dead. Witness lost consciousness (sess. April 12, 1977) regaining consciousness the following day in the after-noon (sess. a.m., April 12, 1977). He had wanted to see his wife but was prevailed upon by Balazo not to because his wife's relatives had made threats against him. Before day-break he was brought by his brother-in-law Benito Balazo to the Alaminos Municipal Building supposedly for police protection but once, there a policeman locked him inside the cell as a suspect for the killing of Donata (April 12, 1977, sess p.m.)

"Accused testified that his wife could not have gone and seen her step-father Reynaldo Bantigue the day before the incident of July 18, 1972 because she was taking care of their child and tending their store. He also denied having seen Petronilo Aninias, married to the elder sister of Donata, during the period he was inside the jail of Alaminos (Afternoon sess. April 12, 1972)."

Although there is no direct evidence pointing to the appellant as the person who shot his wife, the trial court enumerated an unbroken chain of circumstances to support his conclusion that the accused was responsible for the death of his wife, to wit:

1. The marriage of the accused and the deceased was wracked with frequent and severe domestic quarrels to the point that the deceased told her mother and step-father, Reynaldo Bantigue, on the day immediately preceding her death, that she wanted to separate from her husband and when asked to be a little bit more patient, she expressed the fear that she might be killed if they did not separate because her husband had threatened to kill her.
2. The accused had the opportunity to kill his wife. The trial court did not give credence to the defendant's

claim that he was in the house of Jose Masa, playing "dama" when the shooting incident occurred because of serious contradictions in his testimony, as well as in that of Jose Masa who tried to corroborate his statement.

3. No third person was seen in the house or its environs immediately after the shot was fired. Macaria Masa and Felicisima Masa both declared that when they entered the bedroom occupied by the accused and his wife, there was no other person inside except for Donata and her child.

4. The accused did nothing to help bring his bleeding wife to the hospital. Felicisima Masa, who rushed to the house of the accused upon hearing the gunshot, found the herein accused in the ground floor doing nothing, he was just walking; he did not help in wrapping the deceased or in bringing her to the hospital.

5. The accused, who was named as the suspect in the shooting incident, surrendered to the police authorities early the following day, before daybreak.

6. No explanation from the accused. In the letter of the Chief of Police to the City Municipal Judge dated July 21, 1972 (p. 3, rec.) the former states that 'the suspect refused to give statement'. An innocent man would ordinarily profess his innocence at the first available opportunity. He was detained for more than one month.

7. The admission of the accused that he killed his wife. On July 23, 1972, the accused, while incarcerated at the Alaminos municipal jail, called Petronilo Aninias, his brother-in-law and husband of the elder sister of Donata Gutierrez, who happened to pass by the jail house in the company of Pat. Tomas Alimario of the San Pablo City Police Force, and pleaded with him: "Tulungan mo ako sa aking pagkakasala. Hindi ko sinasadya ang pagkabaril ko sa aking asawa." and

8. Death of the deceased was not a suicide since there were no powder burns around the entrance wound; no gun was found inside or near the victim; the victim had a hearty meal previous to her death so that she could not have contemplated on killing herself; and that shooting as a mode of suicide is not favored by women who generally choose a less painful mode of taking one's life, such as taking barbiturates or poisons.

The appellant contends, however, that these circumstances have not been duly established and do not lead to a fair and reasonable conclusion that he, to the exclusion of all others, is responsible for the death of his wife. The appellant assails the trial court for giving due weight and credit to the testimonies of Reynaldo Bantigue and Petronilo Aninias, step-father and brother-in-law, respectively, of the deceased Donata Gutierrez, on the ground that they are biased and false and fabricated.

In the absence of proof of any evil motive, the testimonies of Reynaldo Bantigue and Petronilo Aninias should not be discredited merely because they are related to the deceased. Even the biased testimony of a party in a suit is admissible if it is given in a natural and straightforward manner and refers to pertinent and positive facts. In the instant case, no evil motive was shown and the testimonies of these witnesses are positive and convincing and they were well guided by their relationship to the deceased when they testified against the accused. Besides, the testimony of Petronilo Aninias that the accused-appellant had pleaded with him: "Tulungan mo ako sa aking pagkakasala; hindi ko sinadya ang pagkabaril ko sa aking asawa", is corroborated by Pat. Tomas Alimario of the San Pablo City Police Force whose bias was not shown.

The appellant also claims that the trial court erred in discounting suicide as a possibility.

The contention is utterly devoid of merit. We find the explanation of the trial court that the deceased could not have committed suicide to be reasonable and satisfactory. The trial court said:

"In addition to the above-enumerated circumstance, positively pointing to the culpability of the accused, the following are circumstances which negate and belie accused's hypothesis that the victim killed herself, with the consequent effect that these circumstances earlier mentioned supporting prosecution hypothesis that accused shot the victim. These circumstances are:

"(1) The gun fired at a distance not less than 12" from the body surface. Re-garding this point, Dr. Octavio Faylona, rural health physician of Alaminos who made a post-mortem examination of the vic-tim at the Funeraria Avenue on July 19, 1972, at 1:45 a.m. identified his report, Exh. A (p. 182, rec.) where he reports finding 'some of powder burns are scattered within the vicinity of the wound'. He testified that powder burns would be found if barrel of gun is not more than 6" from site of wound (Sess. Feb. 27, 1973). Another prosecution witness, Dr. Alberto M. Reyes, Senior Medico-legal officer of the NBI, who autopsied the victim on July 19, 1972 at 7:40 p.m. identified the Necropsy Report, Exh. F, (p. 16, rec.). He declared that he found no gun powder residues on entry site and surrounding area, that the absence of burning, smudging, tatooing means that the muzzle or barrel of the gun was more than 24" from the body surface (sess. March 27, 1973). The defense in turn called Dr. Ernesto G. Brion, former Chief of Crimina-listic Division, NBI', in an effort to re-concile the two apparently conflicting findings, Dr. Faylona reporting the presence of powder burns, and Dr. Reyes testifying that he found no gun powder residues. Dr. Brion testified that Dr. Faylona must have meant powder 'grains' when he said powder burns because if they were burns, there would be tatooing and Dr. Reyes would have seen them (sess. Nov. 21, 1975). According to Dr. Brion, at a distance of 2" to 3" the flame from the barrel of the gun causes burning; up to 6", the smoke produces smudging up to 12"; blast of gun powder pro-duces 'tatooing' (digs into skin' these are visible to the naked eye, and cannot be washed away (Ibid.). Beyond 12", according to the witness, only powder grains, which could be washed away. Even taking Dr. Brion's testimony as correct; it means that the gun was fired at a distance of no closer than 12" from the body surface. This militates against the probability of suicide. A suicide would hold the barrel of the gun pressed against or at least closed to the target. Moreover, as noted by Dr. Reyes, the right, upper lip is an unlikely site (p. 7, sess. Nov. 18, 1974)' likely sites would be the temple, the mouth or the heart (Ibid.). It strains unduly one's imagination to conjure a suicide holding the gun, the barrel not less than 12" from her nostril, and aiming at her nostril.

"(2) No gun found beside or near the victim. Both according to Macaria Masa, mother of the accused (Sess. April 21, 1977) and Lt. Restituto Banzuela, who was the first police officer who went to the scene, no firearm was recovered on the spot (Report, p. 4, rec.). If it was a suicide, the gun would be found near the victim.

"(3) The victim had a hearty meal. According to Macaria Masa, they (witness, accused, Gonzalo, Donata and her child) all had supper at 7:00 p.m. of that day, July 18, 1972 (Sess. April 12, 1977). Obviously, Donata Gutierrez appetite was not a bit dampened; she ate as she was want for the autopsy performed July 19, 1972 at 7:40 p.m. showed the victim's stomach 'about three fourth full of mode-rately digested rice and other food part-icles' (Exh. F p. 16, rec.). Now, a per-son contemplating suicide would not have such appetite.

"(4) Shooting as a mode is not favored by women. According to Dr. Alberto Reyes, women generally choose a less painful mode of ending one's life, such as taking barbiturates and poison (p. 18, tsn, sess., Nov. 18, 1974)."

The appellant further claims that the trial court erred in having disregarded that portion of the testimony of Felicisima Masa, a state witness, to the effect that the deceased on the way to the hospital was asked if it was her husband who harmed her and she shook her head.

It is a settled rule, however, that the courts may believe one part of the testimony of a witness and disbelieve another part. Courts are not required to accept or reject the whole of the testimony of a particular witness. In the instant case, the trial court correctly rejected, for being unbelievable, the retraction of Felicisima Masa that the accused went with them in the car to bring Donata to the hospital and that Donata shook her head when she was asked if it was her husband who harmed her, after previously testifying, for the prosecution that the accused did not help in bringing Donata to the hospital. We quote with approval the following findings of the trial court:

"(4) The accused did nothing to help bring his bleeding wife to the hospital. Felicisima Masa, neighbor, who rushed the accused's house upon hearing the shot, found the herein accused in the ground floor doing nothing; he was just walking. He did not help in wrapping the deceased or in bringing her to the hospital (Sess. Aug. 9,

1973). Subsequent recantation of the witness, now testifying as a defense witness (Sess. Nov. 15, 1976) to the effect that accused went with them in the car to bring Donata to the hospital does not inspire belief. For utter bias (she is a distant relative of accused's mother (Macaria Masa) is shown when she was not content in saying that the accused went with them in the car but added that Benito Balazo asked Donata who harmed her, was it Nicanor and Donata shook her head (Sess. Nov. 15, 1976). Considering Donata's injury, the slug ploughing 'thru the left parietal lobe of the brain' and the hemorrhage (Exh. F, p. 16, rec.) (See also Exh. A, p. 102, rec.) describing the bullet wound 'in the direction of the brain substance', it is extremely doubtful if the deceased was capable of comprehending, much less responding. In fact Exh. A states the subject was dead on arrival at the Community Hospital. Moreover, her subsequent testimony is contradicted by her testimony given during the preliminary investigation (p. 35, rec.) where no mention is made of accused as among those who brought Donata to the hospital, or of helping to prepare the body (p. 36, rec.)."

In the end, We are convinced that no overriding consideration exists to disturb the findings of the trial court that the appellant, to the exclusion of all others, is the person who shot his wife, Donata, to death.

However, appellant should also be sentenced to indemnify the heirs of the deceased other than himself in the sum of P30,000.00 and to suffer the other accessory penalty provided for by law.

WHEREFORE, modified as thus indicated, the judgment appealed from should be, as it is hereby, **AFFIRMED**. With costs against the appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Abad Santos, Escolin, and Cuevas, JJ., concur.

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