

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN BRIOSO AND MARIANO TAEZA, DEFENDANTS-APPELLANTS.

G.R. No. L-28482. January 30, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from a judgment of the Court of First Instance of Abra, in its Criminal Case No. 626, finding the two appellants Juan Brioso and Mariano Taeza guilty of murder, and sentencing each to suffer life imprisonment and to indemnify, jointly and severally, the heirs of Silvino Daria in the sum of P6,000.00 but without subsidiary imprisonment in case of insolvency, and to pay the costs.

An information filed by the Provincial Fiscal dated 16 January 1967 charged the two accused, Juan Brioso and Mariano Taeza, with the crime of murder under Article 248 of the Revised Penal Code, committed as follows:

"That on or about the 23rd day of December, 1966, in the Municipality of Tayum, Province of Abra, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, armed with firearms of different calibers, by confederating and mutually helping one another, with deliberate intent to kill and without justifiable motive, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously, assault, attack and shot one, Silvino Daria, inflicting upon him multiple gunshot wounds on the different parts of his body, which wounds caused his death thereafter.

CONTRARY TO LAW, with the aggravating circumstances in the commission of the crime, to wit: (a) treachery and evident premeditation; (b) advantage was taken of superior strength; and (c) with the use of firearm."

The records of the case show that on 23 December 1966, between 8 and 9 in the evening, the spouses Silvino Daria and Susana Tumulip were in their house at barrio Tiker, Tayum, Abra. The husband was making rope in the annex of their house, while the wife, four meters away, was applying candle wax to a flat iron. Silvino Daria was using a lamp where he worked. Outside, the night was bright because of the moon overhead.

Cecilia Bernal, a niece and neighbor of the spouses, was alarmed by the barking of dogs. She peeped through a crack in the wall of her house and saw appellants herein pass southward in the direction of the house of Silvino Daria that was six meters away. Brioso was carrying a long gun. Her suspicions awakened, she went downstairs and, shielded by the fence, witnessed each appellant point a gun at the bamboo wall of Daria's house. Two detonations followed, and there-after she heard Daria moaning and his wife call for help, saying her husband had been shot. Bernal went to the house and found the victim prostrate, wounded and unable to speak. The widow, however, testified that right after being shot, she rushed to her husband's side and he told her that he was shot by Juan Brioso and Mariano Taeza. Silvino Daria expired one hour later as a result of gunshot wounds in the abdomen and leg. A few days later, Cecilia Bernal and the widow, Susana Tumulip, executed affidavits pointing to the two accused as the killers (Exhibits "B" and "C", respectively).

The cause of the death of Silvino Daria was "Shock due to severe hemorrhage secondary to gunshot wounds at the abdomen and leg", as found by Dr. Isabelo B. Lucas, Municipal Health Officer of Tayum, Abra, contained in his

Medico-Legal Necropsy Report, Exhibit "A".

The motive for the killing appears to have been the dis-approval by the spouses Silvino and Susana Daria of Mariano Taeza's courtship of their daughter, Angelita. Angelita was even sent to Manila for her to avoid Mariano Taeza. The courtship is admitted by Mariano Taeza.

The two accused appealed the conviction and assigned the following errors as committed by the court a quo:

1. The lower court erred in relying on the uncorroborated and contradictory testimony and statement of the prosecution witness Cecilia Bernal on the physical identity of the accused;
2. The lower court erred in disregarding the affidavit (Exhibit 2) of Antonio Daria, son of the deceased, clearing the accused Mariano Taeza, which affidavit had been identified in court by the fiscal before whom the same was executed; and
3. The lower court erred in finding the accused guilty of the crime of murder.

The assigned errors are discussed together, being closely interrelated.

We find no discrepancy in the testimony of Cecilia Bernal on the material points. She stated that she did not see Mariano Taeza carry a gun when both the accused passed by. But this brief observation does not necessarily mean that he was not actually armed or carrying a gun on his person. The fact that he did was proved when both the said accused were seen pointing their respective gun at the victim and each subsequently fired once at him, Taeza using a short weapon (t.s.n Millare, page 17) that could have been carried concealed in his person.

The house of Cecilia Bernal was only six meters away from that of Silvino Daria's. The night was brightly illuminated by the moon. Cecilia Bernal had known both accused for a long time and it is admitted that they also know her. There could have been no difficulty in identifying the accused under the circumstances.

Cecilia Bernal had no motive to impute falsely this heinous charge of murder against the above-said accused, considering that Mariano Taeza is a nephew of the deceased by a first degree cousin. Even Juan Briosio specifically said that he knew of no reason why she should testify against him. Hence, her statement that she came to court only to tell the truth should be believed. The witness also stated that she was hard of hearing and could not understand some of the questions; thus, the alleged inconsistencies in her testimony do not detract from the "positive and straightforward"[1] identification of the accused as the ones who were seen at the scene of the crime and who actually shot Silvino Daria.

It is noteworthy that the trial judge observed witness Bernal closely, warning her several times not to exaggerate, yet in the decision gave her full credence, being obviously satisfied of her truthfulness. The general rule, based on logic and experience, is that the findings of the judge who tried the case and heard the witnesses are not disturbed on appeal, unless there are substantial facts and circumstances which have been overlooked and which, if properly considered, might affect the result of the case[2], which in this case have not been shown to exist.

Moreover, the testimony of Cecilia Bernal finds corroboration in the declaration of the victim, who told his wife that it was Juan Briosio and Mariano Taeza who shot him. This statement does satisfy the requirements of an ante mortem statement. Judged by the nature and extent of his wounds, Silvino Daria must have realized the seriousness of his condition, and it can be safely inferred that he made the same under the consciousness of impending death[3], considering that he died only one hour after being shot.

The defense of both the accused is alibi. Mariano Taeza's own account was that in the evening of 23 December 1966 he was at the barrio clinic of Tiker playing the guitar with Antonio Daria (son of the deceased), Narciso Valera and Jose Cabais. While in the said place, they heard two gun explosions. Soon afterwards, Macrino

Arzadon and Taurino Flores came running towards them, informing Antonio Daria that his father was already dead.

Exhibit "2", the alleged affidavit of Antonio Daria, was presented in court to corroborate Mariano Taea's testimony. But while the said affidavit was identified by the Provincial Fiscal as having been subscribed and sworn to before him, he also stated that he did not know Antonio Daria personally and that was the only time he appeared before him. Exhibit "2" does not have the seal of the Fiscal's Office. More-over, the said exhibit was never identified by the supposed affiant and there was no opportunity for the prosecution to cross-examine him. As stated in *People vs. Mariquina*⁴, affidavits are generally not prepared by the affiants themselves but by another who uses his own language in writing the affiants' statements, which may thus be either omitted or misunderstood by the one writing them. For this reason, and for the further reason that the adverse party is deprived of the opportunity to cross-examine the affiants, affidavits are generally rejected in a judicial proceeding as hearsay, unless the affiants themselves are placed on the witness stand to testify thereon. In view hereof, We find Exhibit "2" of no probative value, and that the lower court did not err when it rejected the same. In this connection, it is noteworthy that the prosecuting attorney stated in open court that Antonio Daria had also executed another affidavit (Exhibit "D") in the Fiscal's office "to the effect that he went to the office of defense counsel, - - - - - and there affixed his thumbmark on a statement that was never read to him". Be that as it may, not one of the other persons who, Mariano Taea claimed, were with him in the barrio clinic (Narciso Valera and Jose Cabais) was produced in court to support his alibi. Mariano Taea's testimony, therefore, remains uncorroborated. It has been repeatedly held that in the face of direct evidence, alibi is necessarily a weak defense and becomes more so if uncorroborated.⁵ It is worse if the alibi could have been corroborated by other persons mentioned by the accused but they are not presented.⁶

By Mariano Taea's own admission, he and the other accused, Juan Brioso, are close friends. It was shown that Mariano Taea's house is only about two hundred meters from that of Silvino Daria's and that the barrio clinic is only about eighty to one hundred meters from the said victim's place. Mariano Taea himself stated that Silvino Daria died "may be less than thirty minutes, may be five minutes" after his arrival-at the victim's house with the latter's son and other persons. As held in another case⁷ the defense of alibi is so weak that in order to be believed there should be a demonstration of physical impossibility for the accused to have been at the scene of the crime at the time of its commission. Mariano Taea was so near the victim's house that it was easy for him to be there when the shooting occurred.

The other accused, Juan Brioso, stated that he was in sitio Catungawan, barrio Basbasa, Tayum, on 23 December 1966. He was there upon invitation of his first cousin, Nestorio Flores, to cut and mill sugar cane. He left his house in Addamay at 8 in the morning of the said day, arriving in Catungawan before the noon meal. They cut sugar cane from 4 to 5 in the afternoon. At 6:30, after supper, he, his cousin, and the latter's son, Felix Flores, started milling the sugar cane which they had cut. The milling lasted up to 2 in the early morning of the following day. He never left the place where they were milling. He learned of the death of Silvino Daria only when he returned to Addamay because his parents informed him of the news. He admitted knowing Cecilia Bernal and that she likewise knows him.

He denied being a close friend of Mariano Taea (thereby contradicting Mariano Taea's testimony)⁸; denied that he had gone to the house of Angelita Daria, and his having knowledge of the courtship of Angelita by Mariano Taea; or that both of them used to drink and go out together. On cross-examination, however, he admitted that he went with Mariano Taea when they attended dances. One such occasion was during the birthday of his first degree cousin in Addamay way back in 1965.

Nestorio Flores was presented to corroborate the alibi of the accused. But while both exhibited wonderful memory

as to what happened between sunset and midnight of 23 December 1966, they contradict each other as to what happened in the earlier hours or events. As already stated, Juan Brioso testified that he left his place in Addamay at 8 in the morning and arrived at his cousin's house before the noon meal of 23 December 1966; but Nestorio Flores asserted that it was 8 in the morning when Juan Brioso arrived. Brioso claimed that they cut sugar cane from 4 to 5 in the afternoon of the said day. His cousin testified that they cut sugar cane in the morning after Brioso's arrival until lunchtime. Brioso stated that they milled sugar cane for the third time in that place in 1966, the first occasion being on 29 November and the second on 8 December. Flores denied this, saying that they did not cut sugar cane in November, 1966, although in other years they did. He further stated that it was already in December of that year that Brioso came. In fact, the same witness showed uncertainty as to the exact date, when he answered even on direct examination that "may be that was the time when he came".⁹ In cases of positive identification of the culprit by reliable witnesses, it has been held that the defense of alibi must be established by "full, clear and satisfactory evidence."¹⁰ It is obvious that this witness, who is a close relative of the accused, was merely presented in court in an attempt to save Juan Brioso from punishment for the crime committed. We believe the trial court when it found that the witness has an in-terest in the fate of the accused Juan Brioso, and, therefore, his testimony should not be given credence.

Evidence also shows that from Tiker to Catungawan is only about nine kilometers and only a two-hour walk. The place is also accessible by motor transportation, although motor vehicles are allegedly rare in the said place. As in the case of Mariano Taeza, it was not physically impossible for Juan Brioso to be at the locus criminis at the time the crime was committed.

It has been clearly and sufficiently proved that the killing of Silvino Daria was qualified by treachery (alevosia)¹¹ The victim was quietly making rope in his own house. He was caught off-guard and defenseless when suddenly and unexpectedly the two accused fired at him. He had no chance either to evade or repel the aggression. The trial court correctly held that treachery absorbs nocturnity and abuse of superior strength.¹² But while these aggravating circumstances are always included in the qualifying circumstance of treachery, the commission of the crime in the victim's dwelling is not,¹³ hence the crime is murder attended by one aggravating circumstance, which has been held to be present where the victim was shot inside his house although the triggerman was outside.¹⁴ There being no mitigating circumstance to offset it, the apposite penalty is death. However, for lack of sufficient votes, the penalty imposable is reduced to life imprisonment.

WHEREFORE, the sentence under appeal is affirmed, with the sole modification that the amount of the indemnity is increased to P12,000.00.¹⁵

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur. Barredo, J., did not take part.

[1] Page 5, Decision.

[2] *People vs. Pareja*, G. R. No. L-21937, 29 November 1969, 20 SCRA, 693.

[3] *People vs. de Gracia*, G. R. No. L-21419, 29 September 1966, 18 SCRA 197.

4 Editor's Note: No corresponding footnote in the original.

5 Editor's Note: No corresponding footnote in the original.

6 *People vs. Mendoza*, L-7030, 31 Jan. 1957, cited in *People vs. Alcantara*, supra.

7 *People vs. Alcantara*, supra.

8 Page 62, t.s.n., Hearing of 19 September 1967.

9 Page 90, t.s.n., Hearing of 19 September 1967.

10 US vs. Pascua, No. 869, 16 January 1903, 1 Phil. 631, and other cases, cited in People vs. Alcantara, supra; See also People vs. Marquez G.R. Nos. L-24373-74, 28 November 1969, 30 SCRA 442.

11 Art. 14, paragraph 16, of the Revised Penal Code.

12 People vs. de Gracia, supra, citing US vs. Estopia, No. 9411, 29 September 1914, 28 Phil. 97.

13 People vs. Ruzol, et al., L-8699, 26 December 1956, 100 Phil. 537; See also People vs. Manobo, L-19798, 20 September 1966, 18 SCRA 30.

14 People vs. Ompad, L-23513, 31 January 1969, 26 SCRA 750.

15 People vs. Casillar, L-28132, 25 November 1969, 30 SCRA 352, citing People vs. Pantoja, L-18793, 11 October 1968, 25 SCRA 468.

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