

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNOLD ZURBITO, DEFENDANT-APPELLANT.

G.R. No. L-35950. July 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal by the accused Arnold Zurbito from a judgment of the Court of First Instance of Masbate finding him guilty beyond reasonable doubt of the crime of double murder, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered:

"1. Finding the accused GUILTY beyond a reasonable doubt of the crime of murder for the killing of Edison Masamoc and imposing upon the accused Arnold Zurbito the penalty of RECLUSION PERPETUA, with all the accessory penalties provided for by law; to indemnify the heirs of the deceased in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency;

"2. Finding the accused GUILTY beyond a reasonable doubt of the crime of murder for the death of Elias Masamoc and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, with all the accessory penalties provided for by law; to indemnify the heirs of the deceased in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs."

Prosecution evidence shows that on June 4, 1961, Alejandro Masamoc, Sr. and his wife left their residence in Nipa, Cauayan, Masbate to look for food, leaving behind their three children, namely: Alejandro Jr., years old; Edison, 18 years Old and Elias, 2 years old. About 12:00 noon, appellant, armed with a bolo (Talibong) and a scythe arrived at the Masamoc's residence and inquired from the three children the whereabouts of their father. When he was told that their father was not around, appellant demanded money and threatened to kill all of them. The threat was accompanied with the spontaneous pointing of his weapon against the children and with the statement that he had already killed three persons. Upon hearing this, Alejandro, Jr. jumped out of the window and ran away to call his father. When they returned, they found the lifeless bodies of Edison and Elias in the adjacent field, with 18 wounds each. Postmortem examination conducted by Dr. Lydia Navea, Municipal Health Officer of Masbate, Masbate shows that the victim sustained the following injuries:

"Edison Masamoc

"1. Incised wound on the abdomen, 1 inch above McBurney's Point, 1 inch long directed downwards to the right, with a piece of peritonium coming out. Probing with the finger disclosed that the wound ran into the subcutaneous tissue to enter the abdominal cavity about 1 inch to the right and above the skin wound.

"2. Incised wound on the abdomen, about 3 inches directly below the xiphoid process, about 2 inches long, directed horizontally, with part of the stomach coming out. The stomach was punctured (1 inch long) with partly digested food coming out of the puncture.

"3. Incised wound, back, on the 7th intercostal space, right side. Probing with the finger disclosed that the wound ran into the subcutaneous tissue to enter the thoracic cavity about 1 inch above and to the right of the

skin wound.

"4. Incised wound, back, left side, about 4 inches directly below the lowest point of the scapula, directed upwards to the right, to enter the thoracic cavity, 1 inch below and to right of the skin wound.

"5. Incised wound, 2 inches long, 2 inches below the left elbow, revealing the subcutaneous tissue under.

"6. Incised wound, 1½ inches long on the left wrist, underside, likewise revealing the subcutaneous tissue under.[1]

"Elias Masamoc

"1. Incised wound on the lower border of the last rib, left side, about 1 inch long, and opening to the abdominal cavity.

"2. Incised wound, on the abdomen, to the right and above the navel, directed downwards to the left, about 1 inch long, with a loop of intestines about ½ foot long coming out of it.

"3. Incised wound, left thorax, 1 inch long, last intercostal space, entering the thorax, 1 inch above and to the right of skin wound.

"4. Incised wound, about the lowest point of the left scapula, L-shape, about 1 inch long on each arm of the L, running through the subcutaneous tissue, and entering the thoracic cavity about 1 inch to the right and above the skin wound.

"5. Incised wound, 1 inch above and to the left of the L-shaped wound, about 1 inch long, entering the thoracic cavity about 2 inches above and the right of the skin wound.

"6. Incised wound, 1 inch long, located about 1 inch and to the right of wound described in #5, entering the thoracic cavity about ½ inch to the right and below the skin wound."[2]

Before the matter could be reported to the police, Patrolmen Arnold Viterbo and Zoilo Perez of the Masbate Police Department arrived. Upon seeing Edison and Elias Masamoc already dead, with many stab wounds, they conducted an ocular inspection of the place and surrounding premises. They saw a pair of pants with blood stains hanging on a tree near the house of appellant. They arrested him and brought him to the Chief of Police that same afternoon.

Appellant denied the charge of double murder for the killing of Edison and Elias, both surnamed Masamoc, saying that at the time of the incident he was busy attending to his copra business in his home which is about half a kilometer away from the residence of the Masamocs. He claimed that he could not have committed the offense imputed to him because he is more affluent than the Masamoc family who were mere share-croppers of Dalton dela Rosa; that it was his late brother, Metudio Zurbito who had a quarrel with the Masamocs and that it was the latter who had threatened to liquidate his brother's family; that it was his brother who had confessed having slain the two children of Alejandro Masamoc; that Metudio was killed in a bolo fight sometime in 1964 and that Metudio had a strong resemblance with him.

In convicting appellant, trial court considered the following circumstantial evidence:

"xxx. First, the accused admitted that his deceased brother had a quarrel with the Masamocs and the Masamocs had threatened to do away with the family of the accused. This could have been the motive of Arnold Zurbito for committing the crime with which he is charged. Second, Arnold Zurbito was in a belligerent and angry mood when he went to the house of Alejandro Masamoc. He was holding a bolo with his right hand and left hand was clutching a scythe. Third, he threatened to kill the children of Alejandro Masamoc when he was told that Alejandro Masamoc was not around. Fourth, he ran after. Antonio Laurio whom he saw in the premises.

Fifth, the deceased Edison and Elias Masamoc were killed with bladed weapons. Sixth, patrolman Arnold Viterbo who arrested the accused noticed a pair of blood-stained pants hanging up on a tree near the house of the accused.

"The foregoing circumstances, taken collectively, produced a conviction in the mind of the Court that it was the accused and no other who had committed the crime. The circumstances are consistent with his guilt and cannot be reconciled with his innocence. In overruling his defense of alibi, the Court considered the fact that his alibi was only upon mere testimonial evidence which is far short of the requirement that an alibi must be established by positive, clear and satisfactory evidence because such evidence is easily fabricated. The accused failed to prove that the distance between his residence and the house of Alejandro Masamoc which is only one-half kilometer is such as to preclude the possibility of his presence in the locus criminis. In addition, the alibi of the accused did not receive any corroboration from any source. It becomes unreliable and must yield to the positive identification made by Alejandro Masamoc and Antonio Laurio that the accused Arnold Zurbito was present in the scene of the crime. The attempt of the accused to place the blame on his deceased brother did not inspire confidence or belief. Perhaps Arnold Zurbito could have been mistaken for his brother Metudio by the children of Alejandro Masamoc but the same could not be said of the other prosecution witness Antonio Laurio who had known Arnold Zurbito even prior to June 4, 1961. The supposed admission made by Metudio to the accused does not deserve any serious consideration. The accused told the Court that he advised his brother to surrender. He further said that if Metudio would not surrender he would have been the one to turn over Metudio to the police. The posture of the accused became untenable when, contrary to what he had intended to do, he kept silent about the supposed admission made by his brother even after he was arrested and charged for the killing of the two children and revealed it for the first time when he testified on September 3, 1969. Surely, this is not the spontaneous reaction of one who has been wrongfully accused of a crime committed by another and who knew the identity of the real culprit."

Appellant assails his conviction and alleged that the lower court erred "in not granting the motion to dismiss and in convicting the accused on the basis of circumstantial evidence and findings which were not sufficient to point to the guilt of the accused or in holding him guilty beyond reasonable doubt."

We find no reversible error in the conclusion reached by the trial court. Prosecution witnesses Alejandro Masamoc, Jr. and Antonio Laurio were one in pointing to appellant as the very person who was in the house of the Masamocs, armed with a bolo and a scythe which he used in threatening to kill the children. They could not have been mistaken in his identity, considering that they have known him for a long time before the incident. Thus, Alejandro Masamoc, Jr. testified as follows:

"Q Who were your companions at that time in your house?

WITNESS

A My companions were my elder brother Edison and my younger brother Elias Masamoc and Antonio Laurio.

FISCAL

Q While you were there in your house, do you remember who arrived?

A Yes, sir.

Q Who then arrived?

A Arnold Zurbito.

Q What did Arnold Zurbito do when he arrived in your house?

A Arnold Zurbito inquired as to the whereabouts of my father and I answered him, 'he is not around.'

Q After that, what else happened?

A He asked money from us and I answered him 'we don't have money.'

Q Who among you did Arnold Zurbito demanded money?

A I was the one.

Q What did you tell Arnold Zurbito?

A He demanded from me money and I answered him 'we have no money', but he said, 'if you will not give me money, I will kill all of you. I am not even afraid to kill three persons' and after hearing the same, I immediately jumped from the window.

Q What did you see in the person of Arnold Zurbito when he arrived in your house?

MAYOR

The question is leading, we object.

COURT

Reform the question.[3]

x x x x x x x x

Q Did you see anything else from Arnold Zurbito?

MAYOR

On the same ground, we object.

COURT

Answer.

WITNESS

Yes, sir.

FISCAL

Q What did you see?

A A scythe and a bolo known as 'talibong.'

Q That bolo which you said is a 'talibong' how long was it?

A It was quite long.

Q How about that scythe, how long was that?

A A short one.

Q Where did you see that talibong and that scythe?

A Held by his hand.

Q What was held by his hand?

A The right hand held a bolo known as talibong while his left hand was holding a scythe.

Q When he said that he will kill you all if you don't, give money, what was he doing with that talibong and that scythe?

A He pointed the same to me.

Q When he told you that I will kill you all pointing that talibong and the scythe to you, what did you do?

A I jumped out of the window.

Q How tall is that window of your house to the ground?

A It has a distance of about 1½ brazas.

Q To where did you run?

A Towards the mountain in order to inform my father.

Q When you jumped out of the window and then ran, what did Arnold Zurbito do?

A I don't know what he was doing then inside the house because I was already running away.

Q Were you able to find your father?

A Yes, sir."^[4]

Likewise, Antonio Laurio, testified as follows:

"Q Where did you look for Dalton?

A In the house at their farm.

Q Were you able to reach that house?

A Yes, sir.

Q Who were then present in that house?

A When I arrived there in the house I saw Arnold Zurbito and Macario Cos.

Q Who else did you see?

A The children.

Q Who were those children?

A Edison Masamoc, Jr., Celeste, Marina, and another one.

Q What about Elias?

MAYOR

We object, your Honor, the question is leading.

COURT

Answer.

FISCAL

Q Now what did Arnold Zurbito and Macario Cos do in that house?

A They asked the children where their father was and then the children answered that their father was looking

for something to eat.

Q Who was asking the children?

A Arnold.

Q And what did Arnold do when he was informed by the children?

WITNESS

A They asked where the money of their father was.

FISCAL

Q And what did the children answer?

A The children answered 'we don't have money.'

Q Who was that child answering?

A Edison.

Q And who was asking where the money was.

A Arnold.

Q Now after that, what else happened?

A He said further 'If you have no money to give me, I will kill all of you.'

Q And who said that?

A Arnold.

Q Then what did the children do?

A He further stated 'I was not even afraid when I killed three persons.'

Q What happened next?

A When I heard that statement, I walked towards a certain distance.

Q After that, what happened?

A When I walked away, Arnold saw me and he chased me.

Q Where did you go?

A I went to the house of Diogenes Sampaga.

Q What about Arnold Zurbito, where did he go?

A I do not know where he went.

Q When you went down that house, who were left behind?

COURT

Q Wait a minute. You walked away and was chased by Arnold?

A Yes, sir.

FISCAL

Q When you went away, who were left?

A The children.

Q Who were those children who were left when you went down the house?

WITNESS

A Edison.

FISCAL

Q Who else?

A Junior, Marina, Celeste and Sayas.

Q Now what did you see in the person of Arnold Zurbito when he went up the house?

A A bolo and a scythe.

Q Where was that bolo when he went up the house?

A The bolo was held by his right hand and the scythe was in the left hand.

Q When he said to the children "I will kill you if you will not tell me where the money was, what was Arnold Zurbito doing with the bolo and the scythe?

A He was just holding the bolo.

Q And when Arnold Zurbito chased you, what was he doing with that bolo?

A He was carrying the bolo.

Q What time was that of June 4, 1961 when he chased you?

A In my calculation, about 10 o'clock in the morning.

Q Now after Arnold Zurbito has chased you, when did you come to know about the fate of Edison Masamoc and Elias Masamoc after that incident for the first time?

MAYOR

No basis, your Honor, objection.

COURT

Sustained.

FISCAL

Q Where is Edison Masamoc and Elias Masamoc?

A They are already dead.

Q When did you know for the first time that Edison and Elias Masamoc were already dead after the incident?

WITNESS:

A When the policemen arrived."[5]

There was no grudge between appellant and Laurio which would have prompted the latter to falsely implicate the former in so grave a crime as double murder.

The defense of alibi cannot prevail over his positive identification by Alejandro Masamoc, Jr. and Antonio Laurio. It is basic and well-entrenched that in the face of positive identification, the defense of alibi sharply loses its credibility; that where there is no evidence, and nothing to indicate, that the principal witnesses for the prosecution were actuated by improper motives, the presumption is that they were not and their testimonies are entitled to full faith and credit. (People vs. Araya 105 SCRA 13). To establish alibi, the accused must not only show that they were present at some other place at about the time of the alleged crime, but also that they were at such other place for so long a time that it was impossible for them to have been at the place where the crime was committed, either, before, during or after the time they were at such other place. (People vs. Muñoz, L-38016, September 10, 1981.)

And, appellant's attempt to impute his criminal liability on his deceased brother, Metudio Zurbito, who allegedly confessed having slain the two Masamoc children is equally without merit. If it were true that Metudio confessed having slain the two Masamoc children, the natural thing for the appellant to do would be to report such confession or admission of his brother to the authorities. This he did not do.

WHEREFORE, the appealed decision is hereby AFFIRMED, with costs against the appellant.

SO ORDERED.

Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.
Teehankee, (Chairman), no part.

[1] Exhibit "A", p. 11, Record.

[2] Exhibit "A", p. 12, Record.

[3] TSN, p. 5, October 11, 1967 hearing.

[4] TSN, pp. 6-7, October 11, 1967 hearing.

[5] TSN, pp. 35-38, January 19, 1968 hearing.

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