

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SENEN OLA, DEFENDANT-APPELLANT.

G.R. No. L-47147. July 03, 1987

Ponente: CORTES, J.

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CORTES, J.:

On automatic review by this Court is this criminal case involving the crime of Attempted Robbery with Homicide and Unintentional Abortion wherein the death penalty was imposed by the trial court prior to the effectivity of the 1987 Constitution.

The accused-appellant Senen Ola, was charged before the then Court of First Instance of Marinduque as the principal in the crime of Attempted Robbery with Homicide and Unintentional Abortion punishable under the Revised Penal Code. His co-accused, Jose Bustamante and Rustico Matimtim were charged only as accomplices. The amended information filed against Ola and his co-accused reads, in part:

That on or about November 30, 1970, in the evening thereof, in the barrio of Magapua, municipality of Mogpog, province of Marinduque, Philippines and within the jurisdiction of this Honorable Court, the said accused did, then and there, wilfully, unlawfully and feloniously, with intent of gain, commence the commission of the crime of Robbery directly by overt acts in the following manner, to wit: that while Jose Bustamante and Rustico Matimtim, acting as accomplices, are stationed behind the house of one Lolita Muhi acting as guards or lookouts, the principal, Senen Ola, climb up and enter the house of said Lolita Muhi with the intention of committing the crime of robbery but was unable to perform all the acts which would produce the crime of robbery as a consequence by reason of the fact that Lolita Muhi was awake and attempted to ask for help as a consequence of which, the accused Senen Ola, taking advantage of his superior strength and with a bladed weapon, assault and stab Lolita Muhi, who is in the family way, inflicting upon her the following injuries, to wit:

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which caused her death and the abortion of the foetus in her womb.

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(Rollo, pp. 7-8)

Upon arraignment, Ola pleaded not guilty. The other accused, Bustamante and Matimtim, pleaded guilty to the charge. The case went into trial with respect to Ola, while judgment was reserved as to his co-accused.

In the course of the presentation of the evidence for the prosecution, specifically, after the cross-examination of the accused Bustamante, the accused Matimtim, through counsel, manifested his desire to withdraw his initial plea of guilt and Lo enter a plea of not guilty. The trial court allowed the change of plea "in the interest of justice." (Rollo, p. 12) Trial then proceeded with respect to Ola and Matimtim who were thereafter convicted as principal and accomplice, respectively.

After trial, the lower court convicted the accused Ola as principal in the crime of Attempted Robbery with Homicide and Unintentional Abortion. The death penalty was imposed by the trial court upon a finding that the homicide committed on the occasion of the attempted robbery was murder, (See Article 297, Revised Penal Code) qualified by abuse of superior strength and complexed with the unintentional abortion of the victim's fetus, and therefore deserving of a higher penalty than the prescribed penalty of reclusion temporal in its maximum period to reclusion perpetua (Rollo, pp. 31-32). The accomplice Matimtim, whose participation was unattended by any aggravating or mitigating circumstance, was sentenced to eight (8) years and one (1) day of prision mayor as minimum penalty, to fourteen (14) years and one (1) day of reclusion temporal as maximum penalty (Rollo, pp. 40-41). The other accomplice Bustamante was meted out the penalty of four (4) years and one (1) month of prision correccional as minimum to nine (9) years and one day of prision mayor as maximum because of two mitigating circumstances in his favor (Rollo, pp. 41-42). The two convicted accomplices did not appeal, hence judgment as to them became final and they can no longer be affected by the outcome of this review (See U.S. v. Dagalea, 4 Phil. 398 (1905)).

As in all cases in which the death penalty had been imposed, the complete record of this case as well as the transcript of stenographic notes and the folder of exhibits was elevated to this Court in accordance with Rule 122, Section 8 of the Rules of Court for automatic review (See 2nd par. of Article 47, Revised Penal Code, as amended by Sec. 9 of the Judiciary Act of 1948 [R.A. No. 296]). While this case was under review, all death penalties already imposed were automatically reduced to reclusion perpetua pursuant to Article III, Sec. 19 (1) of the 1987 Constitution which states:

Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

By virtue of the foregoing constitutional provision, those accused whose death penalties had been previously affirmed by this Court shall be spared, and instead, they shall serve their respective life sentences. On the other hand, those whose death penalties are still under review, which includes the accused-appellant Ola, can only be sentenced to the maximum penalty of reclusion perpetua even if We affirm their respective convictions.

The accused-appellant in this case assails the judgment of conviction, first, upon the ground that the testimony of Jose Bustamante comes from a polluted source, and therefore, must be subjected to careful scrutiny (Brief for the Appellant, p. 22). Accused-appellant likewise points out that the accomplice Matimtim repudiated his extrajudicial confession (Exhibit "G") and declared that he was forced to sign the same (Id.) Finally, the defense argues that other than the testimony of Bustamante, there is no evidence positively identifying the accused-appellant as the author of the crime charged, hence his defense of alibi should have been given due significance. (Id., p. 29).

The paramount concern of this Court in reviewing a judgment of conviction is to see to it that no person is made answerable for a crime without proof of his guilt beyond reasonable doubt. This is clearly set forth in U.S. v. Laguna, 17 Phil. 532, 540 (1910), thus:

The requirement that the Supreme Court pass upon a case in which capital punishment has been imposed by the sentence of the trial court is one having for its object simply and solely the protection of the accused. Having received the highest penalty which the law imposes, he is entitled under that law to have the sentence and all the facts and circumstances upon which it is founded placed before the highest tribunal of the land to the end that its justice and legality may be clearly and conclusively determined. Such procedure is merciful. It gives a second chance for life. * * *

Moreover, the Bill of Rights guarantees that any person accused of a criminal offense is presumed innocent until

the contrary is proved (Art. III, Sec. 14 (2). Constitution). The quantum of evidence required by law to overcome this constitutional presumption, and to justify any criminal conviction is proof beyond reasonable doubt (Rule 133, Sec. 2). This is not to say that there should be absolute certainty in every criminal conviction. The law only requires the prosecution to adduce "that degree of proof which produces conviction in an unprejudiced mind" (Rule 133, Sec. 2 and Rule 131, Sec. 2).

All the evidence considered by the trial court in convicting the appellant must therefore withstand close examination by this Court. More so when, as in this case, the conviction under review stands precariously upon the uncorroborated testimony of a confessed accomplice.

After a careful study of the record, the transcript of stenographic notes and the folder of exhibits of this case, We find that the guilt of the defendant-appellant has not been proven beyond reasonable doubt.

1. The testimony of the confessed accomplice Bustamante lacks the credibility and details necessary to establish the guilt of the appellant beyond reasonable doubt. In convicting the appellant, the trial court relied heavily upon the testimony of the confessed accomplice Bustamante, which testimony was supposedly corroborated by the extrajudicial confession of the other accomplice Matimtim (Exhibit "G") and some supporting evidence.

As We delved into the voluminous transcript of the testimonies given by the various witnesses, We found Bustamante's testimony unsettling in its vagueness and incredibility. While stating outright that it was Ola who climbed up the wall of the victim's house on the night that the crime was committed (TSN, June 1, 1973, pp. 33-35), he was suspiciously vague in describing the manner in which Ola was able to do this. Portions of his testimony on this aspect follow:

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(Cross-examination)

Q

When according to you Senen Ola stepped on the unfinished hollow blocks fence, the next thing that he did was to climb up the house of Lolita Muhi. Please tell the court exactly what he did when you said he climbed up. Did he climb up the way a person climbs a coconut tree, and if not, please explain to the court.

A

He stepped on the hollow blocks fence and once already close to the wall of the house and about to climb I did not see him anymore (sic) because I was looking to (sic) the road, sir.

*** **

(TSN, June 1, 1973, p. 46)

*** **

Q

Until Senen Ola, as you claim, was able to enter the house you remained standing at the place near the unfinished hollow blocks fence wall where according to you, you, Senen and Rustico Matimtim stayed upon arrival in that premises, is that correct?

A

Yes, sir.

Q

And yet you could not tell the court how Senen Ola climbed up the wall or entered that wall thru that alleged hole, is that correct?

A

He just passed thru the hole, sir. (Basta sumuot sa butas).

Q

When you said that Senen Ola passed thru the hole or "sumuot sa butas," do you mean to tell the court that Senen Ola entered thru that hole with his head first?

A

Of course, the head should go first. (Siempre po ang ulo ang mauuna).

Q

Did you see Senen Ola's two legs passing thru the hole?

A

I just noticed that he was not outside any more (sic), sir.

*** **

(TSN, June 1, 1973, pp. 48-49)

With the foregoing testimony, Bustamante would like the trial court to believe that Ola climbed up the wall and passed through a hole therein unassisted, yet he could not describe how this was done because according to him, he was looking in another direction. But this is incredible on two counts. In the first place, as a lookout, Bustamante must have been anxious to see that whoever was climbing into the victim's house would be able to get inside undetected, because the slightest miscalculation on the part of the latter could have spelled doom for all of them. Instead, he looked away at the exact moment when Ola allegedly entered the house. In the second place, the testimony of the police investigator, Acting Chief of Police Celso Linayao, on the size of the hole and its relative distances from the ground and from the hollow-block fence referred to by Bustamante, strikes a discordant note in the latter's testimony. The pertinent portion of the police investigator's testimony is quoted below:

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(Direct examination)

Q

How high above the ground is the floor of the kitchen?

A

I think it is about waist (sic) high.

Q

And how high above the floor of the kitchen is the hole?

A

If one has to stand on the stove, sir, his foot could reach the hole, sir.

Q

But how high above the floor in the kitchen is the hole?

A

Maybe up to my neck, sir.

*** **

Q

Could a person who would stand on this hollow blocks marked Exh. 3-a enter that hole thru?

A

No, sir.

Q

Why?

A

The hollow blocks are lower sir, and the distance from the wall is far, sir.

Q

How far is the hole from the hollow blocks?

A

About two yards, sir.

*** **

(TSN, October 29, 1975, pp. 11-12)

Taking the two testimonies side by side, We are disturbed by the emerging incongruity in Bustamante's version of Ola's alleged participation in the crime charged. Even casting aside the size of the hole in the wall, which was not given in more precise terms, and the weakness of said wall made of "basag na kawayan" (TSN, October 31, 1972, p. 8 [Testimony of Diosdado Muhi]), it seems to Us rather difficult for anyone to pass through a hole overhead from a lower level (the hollow-block fence) lying at a distance of about two (2) yards (Linayao's testimony, supra). It requires nothing less than an acrobat to do this, unassisted. We find Bustamante's testimony lacking in credibility and details. Stripped down to its bare essentials, it cannot prop up the prosecution's theory on the manner of the commission of the crime, much less on the identity of the offender.

The trial court, however, ignored the evidence of the police investigator, for no apparent reason. The lower court's decision does not go beyond expressing doubt on the integrity of the police investigator. It offers no explanation for having given more weight to the testimony of a confessed accomplice than to that of a police officer who investigated the case. This Court generally desists from disturbing the conclusions of the trial court on the credibility of witnesses, but We may take exception in order to keep faith with the immutable principle that every criminal conviction must be supported by proof beyond reasonable doubt. We must, therefore, be satisfied that all relevant and competent evidence adduced by the State and by the defense are considered, and that, if any evidence is disregarded by reason of the incredibility of a witness, such fact must appear in the record. In the case at bar, whatever reasons the lower court might have had in discrediting the evidence of the police investigator, the latter should have served, at the very least, to countercheck the accomplice's testimony, which happens to be the only direct evidence pointing to the appellant as the perpetrator of the crime charged.

2. The extrajudicial statements of the accused Matimtim are inadmissible against the appellant Ola for being hearsay. To buttress the testimony of Bustamante, the trial court deemed as corroborative evidence, the extrajudicial statements of the other accomplice Rustico Matimtim, among others. The proper test in determining the corroboration of a testimony is to examine the other evidence with a view to ascertain if these tend to connect the accused to the offense (People v. Alto, L-18660 and L-18661, November 29, 1968, 26 SCRA 342, 365, citing People v. Bagos and Bagos, L-6808 and L-6809, October 29, 1954). With respect to the extrajudicial statements of Matimtim (contained in Exhibit "G") implicating Ola, the trial court should have been guided by the settled rule that:

* * * (e)xtrajudicial statements of an accused implicating a co-accused may not be utilized against the latter unless repeated in open court. (People v. Fraga, 109 Phil. 241, 248 [1960] citing People v. Izon, 104 Phil. 690 [1958]; People v. Gomez, 101 Phil. 1056 [1957]; People v. Serrano, 105 Phil. 531 [1959].

In the instant case, the appellant never had an opportunity to cross-examine Matimtim on the latter's incriminating statements. Not only were said statements not repeated in court, but they were repudiated by Matimtim during his testimony wherein he claimed that he was prevailed upon by Bustamante to implicate Ola (TSN, April 2, 1975, pp. 8-9). The latter expressly denied the facts narrated in his confession which incriminate Ola (TSN, January 24, 1975, pp. 7-13).

Since the appellant in this case never had the opportunity to cross-examine Matimtim on the latter's extrajudicial statements, the same are hearsay as against said appellant (People v. Narciso, G.R. No. L-24480, May 28, 1968, 23 SCRA 844, 852-853; People v. Royo, G.R. No. 52038, May 31, 1982, 114 SCRA 310, 311). This particular evidence having been objected to by the appellant's counsel upon its formal offer (Original Record, p. 147), and even repudiated by the witness during his testimony, the same are inadmissible as evidence of appellant's guilt.

Neither can these be corroborative of Bustamante's incriminating testimony against the appellant Ola.

This is not one of those instances when the extrajudicial statements of a co-accused might be taken into consideration in judging the credibility of the testimony of an accomplice where certain conditions concur, such as: a) the statements are made by several accused; b) the same are in all material respects identical; and c) there could have been no collusion among the co-accused in making said statements (*People v. Badilla*, 48 Phil. 718, 725-726 (1926)). These conditions do not obtain in the instant case, and therefore, said evidence cannot be considered even in the appreciation of Bustamante's testimony.

3. The circumstantial evidence considered by the trial court in convicting the appellant Ola do not prove anything from which We could infer his participation in the crime charged. In addition to the extrajudicial statements of Matimtim, the trial court considered the following circumstantial evidence in convicting the appellant Ola, to wit: a footprint found near the stove in the kitchen of the victim's house, a hole in the wall of said kitchen, the linear cuts or incisions found on Ola's index finger and mandible, and what the lower court considered as the "dying gesture" of the victim, allegedly pointing to the general direction of "Ilaya," where both the accused Bustamante and Ola resided.

We do not agree with the trial court's conclusion that the aforecited evidence are corroborative of Bustamante's incriminatory testimony against the appellant. Circumstantial evidence may be characterized as that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. (*People vs. Modesto*, G.R. No. L-25484, September 21, 1968, 25 SCRA 36, 40) This Court cannot, by any stretch of imagination, infer from said evidence, the identity of the victim's assailant nor the actual participation of the appellant Ola in the crime charged.

The footprint allegedly found on the "abuhan" (near the stove) immediately after the discovery of the crime was never measured nor identified as Ola's, or as of the same foot size as Ola's.

The height and weight of Ola, as well as those of his co-accused, were not taken into account in judging the probability that any of them had indeed passed through the hole in the wall made of light material ("basag na kawayan") without defying the law of gravity. Significantly, the manner in which the culprit could have gained entry into the house of the victim was not satisfactorily explained by the prosecution.

And then, the wounds on the appellant Ola's index finger and on his mandible, which were described in the medical certificate issued by the resident physician of the Marinduque Provincial Hospital in this manner:

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1. Linear cut wound, left index finger medial aspect, middle portion 2 cm. in length
2. Linear abrasion, right mandible, 1" in length traversing the course of the mandible.

Should there be no complication the above wound and injury would require 6-7 days treatment.

*** **

(Exh. "L")

A review of the evidence has revealed that the prosecution failed to connect the wounds to the commission of the crime. The testimony of the physician, Dr. Efren J. Labay, as well as the aforecited medical certificate (Exh. "L"), merely establish the size and location of said wounds (TSN, March 29, 1977, pp. 12-13) found on the person of the appellant as of December 2, 1970 (Id., pp. 9-10), or two days after the commission of the crime.

However, the trial court considered the existence of said wounds as corroborative of Bustamante's narration that

Ola forcibly passed through the hole in the kitchen wall of the victim's house (Rollo, p. 28). This inference is far-fetched. The wounds are too few and too slight to have been caused by the rough edges of the hole in the wall made of crushed bamboo, especially, if, as surmised, the appellant had "forcibly passed through" it. It appears that the trial court made much out of the physician's testimony that the wounds might have been caused by the sharp edge of a split bamboo (Rollo, p. 28). But the witness' statement on this point was not conclusive, thus:

*** **

(Direct examination by the prosecution)

Q

Considering the location, the nature and crack of this linear cut wound on the left forefinger, what could have caused the same?

A

Any sharp instrument or object, sir.

Q

Could it have been caused by the sharp edge of a split bamboo?

A

Yes, possible.

*** **

(TSN, March 29, 1977, p. 13)

(Cross-examination)

Q

You said it must have been caused. You said it could have been caused by a sharp instrument. Could it have been caused by a bolo?

A

It is possible.

Q

Could it have been caused by a knife?

A

Possible.

*** **

(Id., pp. 15-16)

Nowhere in the aforementioned testimony can We discern anything definite as to the cause of the wounds in question, which, by inference, would connect Ola to the crime.

Finally, We find the gesture of the dying woman too vague to be given much probative value in determining the culpability of the appellant. The disadvantage presented by this kind of evidence is that, unlike an oral or a written declaration, a simple gesture of the hand unaccompanied by words is open to various interpretations by the witness who testifies to its existence. Thus, the evidence comes to the courts couched in the witness' second hand perception and possibly, imbued with his personal meanings and biases. This is what makes hearsay evidence objectionable. The second hand evidence is placed before the court without the benefit of cross-examination by the party against whom it is brought, nor of any other means for assessing the competence and credibility of its source.

As a matter of exception to the Hearsay Rule, statements made by the victim at the point of death which qualify as dying declarations may be admitted by the courts (Rule 130, Sec. 31). It is not clear from the decision under review whether the dying gesture was admitted as a dying declaration. Without ruling on the admissibility of said evidence as a dying declaration, We find that such an equivocal act of pointing with the hand does not in anyway corroborate Bustamante's testimony on the identity of Ola as the victim's assailant. Neither does it prove any other fact from which his participation in the crime may be inferred. Whether this piece of evidence exists in the record as a dying declaration or hearsay evidence not objected to, the same shall be treated like any other testimonial evidence. Even as a dying declaration, it is not more sacred than the testimony of a witness presented in court (People v. Aniel, G.R. No. L-34416, February 21, 1980, 96 SCRA 199, 211).

In the case before Us, the witness Diosdado Muhi testified that after he asked the dying victim for the identity of her assailant, she responded by pointing to the direction which the witness referred to as "Ilaya." But that is only one of a number of ways to interpret said gesture. Any direction pointed out from inside an enclosure may refer to a place as near as the next-door neighbor's house, or to somewhere as far as the next barrio, for the obvious reason that both may lie along the general direction indicated. And even if the witness' interpretation is adopted, it does not incriminate Ola alone. All residents of that area lying in the direction of "Ilaya" are thus, equally suspect.

It becomes apparent that the reliance by the trial court upon the circumstantial evidence cited in its decision as corroborative of Bustamante's testimony was misplaced. This leaves Bustamante's testimony standing alone as basis for Ola's conviction.

4. Bustamante's own testimony incriminates himself more than it does the accused-appellant Ola. Time and again, courts have been enjoined to exercise the greatest caution and circumspection in appreciating the uncorroborated testimony of an accomplice (People v. Alto, L-18660 & L-18661, November 29, 1968, 26 SCRA 342, 348-349). Coming as it does from one who is himself not innocent, and without any other evidence to lend it credence, it must be scrutinized before it can, by itself, support any judgment of conviction. After a painstaking review of the transcript, We find that the testimony of Bustamante was able to prove, first of all, that he (Bustamante) was at the scene of the crime in Barrio Magapua, Mogpog, Marinduque on that specific hour that the victim Lolita Muhi could have been killed by an unidentified assailant (TSN, April 6, 1973, pp. 29-36), thus giving him the "opportunity" to commit the crime himself. By his own admission, his presence in that place was brought about by an intention to rob the victim (TSN, April 6, 1973, p. 27), which supplies the "motive" for staging the attempted robbery. Finally, while being in the immediate vicinity of the victim's house on the night of the attempted robbery and the stabbing, he admitted that he was armed with a double-bladed "balisong" Id., p. 33)

which furnishes him with the "means" of committing the crime.

Considering that the foregoing facts culled from Bustamante's testimony reveal the existence of opportunity, motive and means for said witness to have actually committed the very acts he imputed to the appellant Ola, the inescapable conclusion is that, the evidence adduced incriminate said witness more than it does Ola. Reasonable doubt therefore militates against Ola's conviction.

5. There being doubt on the identity of the appellant Ola as the principal in the crime charged, the trial court should have acquitted him, notwithstanding the weakness of his defense. The appellant testified that on the night that the crime was committed on November 30, 1970, he was in his house in Barrio Malusak, Mogpog, Marinduque which was more or less two and one-half (2 ½) kilometers from Barrio Magapua where the victim resided (TSN, February 9, 1977, p. 22). According to him, he had been drinking with three companions, his brother Bienvenido, Nicanor Jamig and Eladio Dimayuga from 6:00 to 10:00 on that fateful night (TSN, February 8, 1977, pp. 8-10). Ola's alibi was corroborated by the testimony of his wife, Pilar Ola (TSN, December 15, 1976, p. 11), and that of one of his drinking companions, Eladio Dimayuga, who happened to be in Barrio Malusak to buy a carabao (TSN, February 7, 1977, pp. 4-7).

Alibi is generally a weak defense since it is easy to concoct and difficult to disprove (*People v. Basuel*, L-28215, October 13, 1972, 47 SCRA 207, 222). However, when the identification of the accused as the author of the crime charged is weak and unreliable, alibi assumes importance. (See *People v. Torio*, L-48731, December 23, 1983, 126 SCRA 265, citing *People v. Bulawin*, L-30069, September 30, 1969, 29 SCRA 710, 721). Thus, in the case before Us, where the proof of the appellant's participation in the crime charged consists only in the uncorroborated testimony of an accomplice, and considering that such testimony lacks details and credibility, the defense of alibi should have been given more weight. And even if it were true that such defense was not satisfactorily proven, this fact alone does not justify the judgment of conviction now under review. The burden of proving the offense charged and the identity of the offender rests upon the prosecution (Rule 131, Sec. 2). Failing in its task to prove that the appellant is the author of the crime, the prosecution cannot rely upon the weakness of the defense in order to secure a conviction (*People v. Formentera*, L-30892, June 29, 1984, 130 SCRA 114, 132; *People v. Somontao*, L-45366-68, March 27, 1984, 128 SCRA 415, 426; *People v. Basuel*, 47 SCRA 222, 223).

Given the weak evidence presented by the prosecution on the participation of the appellant Senen Ola in the crime of Attempted Robbery with Homicide and Unintentional Abortion, reasonable doubt sets in. The prosecution's failure to overcome the constitutional presumption of innocence entitles the appellant Ola to an ACQUITTAL.

WHEREFORE, We REVERSE the judgment of conviction meted out by the trial court. Senen Ola is ACQUITTED of the crime charged and this Court orders his immediate release from detention.

Teehankee, C.J., Yap, Fernan, Narvasa Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Sarmiento, JJ., concur.

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