

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS GONZALES ALIAS MANONG BASSIT, AND ROGELIO GONZALES ALIAS OKEL, DEFENDANTS, ROGELIO GONZALES, ALIAS OKEL, DEFENDANT-A...

G.R. No. L-40727. September 11, 1980

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

REVIEW of the death sentence imposed by the Court of First Instance of Abra upon the accused Rogelio Gonzales alias "Okel" for the murder of Ana Bermudez Azurin and the frustrated murder of Victorino Azurin, James Azurin, and Nancy Azurin. The dispositive portion of the decision reads, as follows:

"WHEREFORE, finding the accused Jesus Gonzales and Rogelio Gonzales guilty beyond reasonable doubt of the offense as charged in the information as principals, both accused are hereby sentenced to suffer the penalty of DEATH pursuant to Article 48 of the Revised Penal Code and to jointly and severally indemnify the heirs of the victim Ana Bermudez the sum of TWELVE THOUSAND (P12,000.00) PESOS; to pay Victorino Azurin representing his hospitalization expenses the sum of ONE THOUSAND (P1,000.00) PESOS and to further pay jointly and severally the sum of EIGHT THOUSAND (P8,000.00) PESOS by way of moral damages to the victims Victorino Azurin, James Azurin and Nancy Azurin. Without subsidiary imprisonment in case of insolvency. With costs equally against the herein accused."

However, the accused Jesus Gonzales alias "Manong Bassit" died on December 1, 1977, and the case was dismissed as to him.[1]

The record shows that at about 6:00 to 6:30 o'clock in the evening of November 15, 1971, while Victorino Azurin and his wife, Ana Bermudez Azurin, and their children were eating their supper in their house, located at Barrio Agtangao, Bangued, Abra, they heard someone from the foot of the stairs calling "Apo". Paterno Serrano, who was seated near the threshold listening to a radio program, took a look at the man calling, and saw his third cousins, Jesus and Rogelio Gonzales, and another man, whose name he did not know, standing at the foot of the ladder. Jesus Gonzales was holding a short firearm, while Rogelio Gonzales was holding a carbine. The third man was unarmed. James Azurin inquired from within: "What is that?" Suddenly, a shot was fired from downstairs, the bullet passing a few inches from the head of Paterno Serrano who immediately sought cover inside the house. The shot was followed by three (3) more shots and then several shots in rapid succession. After the firing stopped, he heard crying in the house. Somebody said: "I am dying." He went toward them and saw his aunt, Ana Azurin, lying on the floor, dead. The others were bleeding from their wounds. Not long thereafter, his Manang Rosie Azurin Parocha arrived and they brought the wounded to the Bangued Christian Hospital for treatment.[2]

Upon hearing the first shot, Rosie Azurin Parocha, who was in the house of her grandmother nearby, "ran and went to the gate of our house downstairs and upon reaching the gate that was the time I heard another group of shots and listen to find out from where they came from." When she learned that the shots came from the house of

her uncle Turing (Victorino Azurin), she ran towards the house. But, she "was not able to right away reach their place because while running towards the house of my uncle Victorino Azurin, I saw three persons down the kitchen of my uncle and upon seeing them I was taken aback that I saw were Jesus Gonzales and Rogelio Gonzales." Jesus and Rogelio Gonzales are her third cousins. She was about 6 meters away from them. "Jesus Gonzales was wearing fatigue suit and brownish T-shirt and Rogelio Gonzales was not able to notice his shirt but I noticed that he was holding a gun (witness indicating a length of about 50 inches long)." Upon seeing them, she "stopped and hid myself behind the trellis (palapala) of ampalaya near the house of my uncle." After a few seconds, she "heard a noise (karaskas) at that time that was the moment all of a sudden the faces of Jesus Gonzales and Rogelio Gonzales were shown to me reason for which I recognized their faces, they turned their faces towards the south," and then "they ran suddenly towards the north." After Jesus and Rogelio Gonzales had gone, she went to the house of her uncle Turing. Inside, she "saw Aunt Ana already dead and Uncle Turing wounded and their daughter also wounded." She went to the house of their neighbor, Guillermo Quemerista, a policeman of Bangued, to ask for assistance. But, Quemerista did not answer her call. So, she returned to the house of Victorino Azurin and brought the wounded persons to the Bangued Christian Hospital for treatment.[3]

Victorino Azurin sustained the following lesions:[4]

"x x x a gun shot wound, through and through where the point of entrance was approximately located at the right, two (2) inches medial to the axillary line, at the level of the seventh rib, two (2) fingers beneath, at the superior portion of the right costal arch, three (3) centimeters diameter.

Point of exit:

Five (5) centimeters at the 6th intercostal space left at the para-sternal line."

Jimmy Azurin suffered "abrasions on the upper arm left" and was sent home after treatment,[5] while Nancy Azurin sustained a "gun shot wound through and through" in her right arm which would heal in 2 to 3 weeks time, barring complications.[6]

The cadaver of Ana Bermudez Azurin was autopsied and the necropsy report showed the following:

"PERTINENT PHYSICAL FINDINGS: - A fairly developed and nourished female cadaver with the following wounds:

(1)

Wound, gunshot, measuring 0.7 cm in diameter oval in shape, located on the lumbar region left, 1 1/2 inches above the iliac crest, directed antero-medially and upwards, penetrating and perforating the subcutaneous tissues, muscles, macerating the inferior aspect of left lobe of the liver, penetrating perforating the lower lobe of the left lung, left ventricle of the heart, fracturing the 7th, 6th, 5th and 4th ribs on its anterior aspect and making an exit, measuring 1 1/2 cm in diameter, irregular in shape, located 2 inches above the left nipple and 2 inches from the sternum.

WEAPON USED: - Firearm.

CAUSE OF DEATH: - Gunshot wounds, body, with severe hemorrhage and traumatic shock."[7]

The incident was reported to the police authorities at Bangued that same night,[8] and PC soldiers and policemen were sent to Agravao.[9] At the scene of the crime, police investigators found four (4) live carbine bullets and seven (7) empty shells "just below the southern part of the bamboo wallings of the kitchen,"[10] and bullet holes on the wall and roof of the house of Victorino Azurin.[11]

As a consequence, Jesus Gonzales alias "Manong Bassit", Rogelio Gonzales alias "Okel" and one John Doe were

charged with the crime of Murder with Frustrated Multiple Murder committed, as follows:

"That on or about the 15th day of November, 1971, in the Municipality of Bangued, Province of Abra, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by conspiring, confederating and mutually helping one another, armed with high-powered firearms, with deliberate intent to kill and without justifiable motive, with treachery and evident premeditation, abuse of superior strength and taking advantage of nighttime, did then and there wilfully, unlawfully and feloniously, assault, attack and shoot VICTORINO AZURIN, ANA AZURIN, JAIME AZURIN and NANCY AZURIN while they were taking their supper inside their house, hitting ANA AZURIN with gunshot wounds which caused her instant death and inflicting multiple gunshot wounds on VICTORINO AZURIN, JAIME AZURIN and NANCY AZURIN in the different parts of their bodies; there-by the accused having performed all the acts of execution which would have produced the crime of MURDER as a consequence upon the persons of VICTORINO AZURIN, JAIME AZURIN and NANCY AZURIN but, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is the timely and able medical assistance administered to the said victims which prevented their death.

CONTRARY TO LAW, with aggravating circumstances in the commission of the crime to wit: (1) treachery and evident premeditation; (2) abuse of superior strength; (3) nighttime; and (4) with the use of firearms."

The accused denied having committed the crime. The accused Jesus Gonzales claim that he was eating "pancit" with another policeman of Bangued, Abra, named Jose Beralde in a restaurant in the poblacion of Bangued, from 6:00 to 7:00 o'clock in the evening of November 15, 1971, the time when the incident in question took place. He attributes to politics the reason why he was implicated in the commission of the crime. He stated that they are at odds with the Azurins in politics.[12]

The accused Rogelio Gonzales alias "Okel", upon the other hand, claims that he was in his house in Barrio Dalnetan, Bangued, Abra, the whole day of November 15, 1971, making sugar from sugar cane. He also claimed that he was implicated in the crime because at one time Victorino Azurin, then a member of the Bangued police force, pledged a shotgun to him for the amount of P30.00 which he sold because he was afraid of keeping it, and Victorino Azurin was angry with him.[13]

After going over the records of the case, We find no reason to disturb the findings of the trial court that the accused Rogelio Gonzales alias "Okel" is criminally liable for the murder of Ana Bermudez Azurin and for the frustrated murder of Victorino Azurin and Nancy Azurin. However, the crime against James Azurin is only attempted murder. Paterno Serrano and Rosie Azurin Parocha, his third cousins, who have no motive whatsoever to testify falsely against him and implicate him in the commission of the crime, positively and categorically identified him as one of the three (3) persons who fired at the house of Victorino Azurin on November 15, 1971, causing the death of Ana Bermudez Azurin and the wounding of Victorino Azurin, James Azurin and Nancy Azurin.

The accused claims that Paterno Serrano could not have been in the house of Victorino Azurin when the incident complained of took place because Rosie Azurin Parocha and Mario Azurin did not state that they saw Paterno Serrano in the house of the victim when they arrived after the shooting; and that Paterno Serrano was not mentioned in the "ante mortem" statement of Victorino Azurin[14] as one of those who could attest to the crime.

Indeed, it is true that Rosie Azurin Parocha and Mario Azurin did not state that they saw Paterno Serrano in the house of Victorino Azurin when they arrived thereat. But, as pointed out by the Solicitor General, these witnesses were not asked whether or not they saw Paterno Serrano in the house of Victorino Azurin when they arrived thereat. Nor will the omission of Paterno Serrano from the "ante mortem" statement of Victorino Azurin destroy the testimony of Paterno Serrano that he was present at the scene of the crime when it was perpetrated. Victorino

Azurin gave the statement while he was in a critical condition in the hospital. His wife had just been shot to death and some of his children wounded. In such a state of mind, he would name only those persons whom he can remember in the spur of the moment and it would not be surprising if he should fail to name all the persons who have knowledge of the commission of the crime. As a matter of fact, he did not mention his daughter Nancy who was also wounded during the incident.

The defense also finds it improbable for Rosie Azurin Parocha to have gone to the house of her uncle Turing upon learning that the shots came from that direction for no one would dare come out of the house immediately because of fear. Persons, however, have different reactions to similar situations. Some may cower or be hysterical, while others may manifest great concern for a loved one. The intrepidity of Rosie Azurin Parocha had been displayed.

The defense has assailed the testimony of the prosecution witnesses, pointing to contradictions and discrepancies in their testimony which would impair their credibility. The contradictory statements pointed out, however, refer to minor details and are not of such a magnitude as to destroy the credibility of the witnesses or the veracity of their declarations.

The defense points to a discrepancy in the affidavits of the witnesses for the prosecution and their testimony in court which would weaken the reliability of these witnesses. Again, the contradictions are not of such serious nature as can impair the substance of their testimony. Moreover, the affidavits were not prepared by the witnesses and could contain certain inaccuracies in the interpretation of their declarations. "An affidavit prepared for a man to swear to will not always disclose the whole facts, and will oftentimes and without design incorrectly describe, without the deponent detecting it, some of the occurrences narrated." [15] "Being taken ex parte, it is almost always incomplete and inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory, and for his accurate recollection of all that belongs to the subject." [16]

The defense presented is an alibi. As has been repeatedly observed, alibi is among the weakest of defenses. It is easy to concoct and may be properly appreciated only if established by convincing and satisfactory proof. It must be clearly shown not only that the accused was at some other place, but that it was also physically impossible for him to be at the scene of the crime at the time of its commission. The accused Rogelio Gonzales claims that he was in their house in Barrio Dalnetan, Bangued, Abra, making sugar from sugar cane at the time of the commission of the crime, and presented his father, Enrique Gonzales to corroborate his statement. But, Enrique Gonzales, with whom he was allegedly working, stated that the place where he was boiling sugar cane juice was about 50 to 60 meters away from the house; [17] that at about 6:00 o'clock in the afternoon, while he was work-ing, he heard gunfire "that is why we were not able to take our time to remove the cooked sugar cane juice from the moulding shells;" [18] and that at that time, Rogelio was in their house. [19] There is, thus, no conclusive proof that Rogelio Gonzales was in the place where he is alleged to be when the crime was being committed. Besides, their house in Barrio Dalnetan is less than a kilometer away from the house of Victorino Azurin in Barrio Agrangao, [20] so that it was not impossible for Rogelio Gonzales to be at the scene of the crime when it was being committed.

Moreover, We find it very strange for the accused and his family, including his father, Enrique Gonzales, to have failed to render assistance to Victorino Azurin when it was requested, despite their close relationship. [21] Nor did they even offer their condolence or sympathy to the bereaved. Such behaviour is indicative of guilt.

Finally, the defense contends that the lower court should have granted a re-trial because the judge who heard the testimony of the witnesses had retired and could no longer decide the case, and the judge who penned the decision

never had an opportunity to observe the demeanor and conduct of the witnesses while on the stand which is vital in the appreciation of the credibility of the witnesses.

However, the retirement of a judge who tried the case is not one of the grounds for granting a re-trial and there is no legal impediment for the new judge to decide the case even if he was not the one who heard it. While the demeanor and conduct of the witnesses on the stand are necessary in evaluating their credibility, the conviction of the accused in the instant case was not based upon the credibility of witnesses exclusively.

For the death of Ana Bermudez Azurin, the crime committed is murder; for the gunshot wound inflicted on Nancy Azurin, the crime committed is frustrated murder; for the gunshot wound inflicted on Victorino Azurin, the crime committed is likewise frustrated murder; and for the injuries inflicted on James Azurin, the crime committed is attempted murder, all of them qualified by the circumstance of treachery, without any aggravating or mitigating circumstance present.

Evident premeditation, although alleged in the information, cannot be appreciated as an aggravating circumstance in the absence of clear proof that the accused had committed the crime after a cool and deliberate consideration of the consequences of the intended act. It appears that the accused and Jesus Gonzales and their companions were seen drinking gin at about 4:00 o'clock in the afternoon of November 15, 1971 and the crime was committed at about 6:00 o'clock in the same afternoon. Two hours is not sufficient time for the accused to have deliberated coolly on the consequences of the crime.

Nocturnity and abuse of superior strength are absorbed by treachery. The use of firearm is not one of those enumerated under the law as an aggravating circumstance, and cannot be considered as such.

The offenses committed do not constitute a complex crime as defined and penalized under Art. 48 of the Revised Penal Code. Therefore, the penalties of imprisonment We impose are as follows:

- For the crime of murder for the death of Ana Bermudez Azurin, life imprisonment.
- For the crime of frustrated murder committed against Victorino Azurin, an indeterminate penalty of 6 years and 1 day of prison mayor, as minimum, to 12 years and 1 day of reclusion temporal, as maximum;
- For the crime of frustrated murder committed against Nancy Azurin, an indeterminate penalty of 6 years and 1 day of prison mayor, as minimum, to 12 years and 1 day of reclusion temporal, as maximum; and
- For the crime of attempted murder committed against James Azurin, an indeterminate penalty of 1 year, 7 months and all days of prison correccional, as minimum, to 6 years and 1 day of prison mayor, as maximum.

WHEREFORE, thus modified, the judgment under consideration is hereby affirmed in all other respects. With proportionate costs against the accused.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

[1] Rollo, pp. 101, 109.

[2] pp. 4-36, t.s.n. of April 16, 1973.

[3] pp. 6-15, t.s.n. of Oct. 24, 1972.

- [4] See Exhibit "B".
- [5] See Exhibit "C".
- [6] See Exhibit "D".
- [7] See Exhibit "A".
- [8] p. 60, t.s.n. of June 6, 1974.
- [9] p. 16, t.s.n. of March 29, 1974; p. 64, t.s.n. of June 6, 1974.
- [10] See Exhibit "E"; also p. 35, t.s.n. of December 27, 1972.
- [11] See Exhibit "F"; also p. 39, t.s.n. of December 27, 1972.
- [12] p. 25, t.s.n. of March 29, 1974.
- [13] pp. 21-22, t.s.n. of February 8, 1974.
- [14] Exhibit "3".
- [15] 2 Moore on Facts, p. 1098.
- [16] Id., pp. 1094-1095.
- [17] t.s.n. of Oct. 19, 1973, p. 59.
- [18] Id., p. 60.
- [19] Id., p. 61.
- [20] t.s.n. of June 29, 1973.
- [21] t.s.n. of Feb. 8, 1974; p. 16, t.s.n. of March 29, 1974, pp. 46-48.

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