

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FLORENTINO ALMENDRAS, DEFENDANT-APPELLANT.

G.R. No. L-33327. July 30, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

On August 8, 1970, at about 2:00 a.m. in Cebu City, victim Clemente Abellanosa, while riding at the back of a motorcycle driven by another person, was suddenly shot by a person also riding at the back of another motorcycle driven by somebody else. As a result, the victim died early the next day, after surgery.

After investigation, an information dated August 13, 1970, was filed as Criminal Case No. CCC-XIV-136 in the Circuit Criminal Court, Cebu City, as follows:

"The undersigned Special Counsel of the City of Cebu accuses Florentino Almendras of the crime of Murder, committed as follows:

"That on or about the 8th day of August, 1970, at about 2:00 o'clock A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a .45 caliber revolver, with deliberate intent, with intent to kill, with treachery, did then and there suddenly and unexpectedly attack, assault and use personal violence on one Clemente Abellanosa, by shooting him with said revolver, thereby inflicting upon him the following injuries:

'Ruptured spleen, ruptured stomach, ruptured liver, penetrating wound lung, all secondary to gun shot wound.'

and as a consequence of which said Clemente Abellanosa died a day after.

"Contrary to law."[1]

In the arraignment on August 24, 1970, the accused pleaded not guilty.[2] Following trial on the merits, the trial court rendered its Decision dated February 27, 1971, with dispositive portion as follows:

"WHEREFORE, the Court finds the accused FLORENTINO ALMENDRAS guilty beyond reasonable doubt of the crime of MURDER as charged in the information, and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, to pay the heirs of the deceased the sum of P12,000.00, with all the accessory penalties of the law, and to pay the costs. In the service of his sentence, he shall be credited with the period of his preventive imprisonment as provided for by law. The death weapon Exhibit C, is hereby ordered confiscated in favor of the government.

"SO ORDERED."[3]

The version of the prosecution follows:

In the early morning of August 8, 1970, at about 2:00 o'clock, while Marcelo Alit was driving a motorcycle towards Martinez St., in Cebu City, with victim Clemente Abellanosa riding on the backseat, the two were fired at twice by appellant Florentino Almendras. Almendras, at the time he fired two shots, was also riding at the

backseat of another motorcycle driven by Rogelio Villamor.[4] After firing the two shots, appellant and his companion drove fast towards Mabolo St.[5] When Alit noticed that victim Abellanosa had been wounded, he stopped his motorcycle and Alit placed the victim on the road. About two minutes later, a police patrol car arrived and took the wounded Abellanosa to the City Community Hospital.[6]

In the meantime, Patrolman Dionisio Cabantan of the Mobile Patrol Division, Cebu Police Department, intercepted a flash report of the shooting incident on his radio patrol car. As he was patrolling within the vicinity of the reclamation area, he met two men riding on a motorcycle.[7] Upon learning from the base by radio that the suspects were seen riding on a motorcycle painted red and that one of them wore a red polo shirt, and said description tallied with the men and the motorcycle he saw, Patrolman Cabangan gave chase.[8]

As the two men being chased swerved and turned around towards Mabolo Boulevard, their motorcycle crashed and the two landed on the ground. Appellant pulled out his revolver and threw it among the thick weeds as they ran towards the tall bushes in the vicinity. However, the revolver fell on clear ground. Patrolman Cabantan also drew out his pistol and fired a warning shot in the air. After recovering the thrown weapon (Exh. "C") which had four live rounds of ammunition and two empty shells inside its cylinder, and with the aid of patrolmen in another mobile car, appellants Almendras and Villamor were apprehended and brought to the police headquarters.[9]

At the police headquarters, both Rogelio Villamor and Marcelo Alit identified appellant Almendras as the gun man.[10]

Rogelio Villamor executed an affidavit (Exh. "A") pointing to appellant Almendras as his motorcycle companion on the morning in question. Afterwards, Patrolman Cabantan brought Villamor to Fiscal Bacalla before whom the affidavit, Exh. "A", was subscribed and sworn to.[11]

Despite efforts to save the life of the victim Abellanosa, he died on August 9, 1970.[12]

According to the attending physician, Dr. Max C. Abellana, the victim died due to "ruptured spleen, ruptured stomach, ruptured liver, penetrating wound on lung, all secondary to gunshot wound." [13] A bullet slug was extracted from the body of the deceased.[14]

The defense is predicated on denial and alibi. Appellant explained his presence at the place when he was arrested by claiming that at about 11:00 p.m. on August 7, 1970, he and his common-law wife Remedios Daclison went to Pier IV, to collect some money from a certain Andres.[15] Andres told the appellant and Remedios to wait for a while, as the former was busy checking cargoes at the pier.[16] Appellant, then, felt like moving his bowel, so he went to a place farther away from the pier.[17] While, thus answering the call of nature, appellant heard gunshots nearby. Holding up his trousers, he ran towards a boat and fell into the sea.[18] Appellant was rescued therefrom and arrested by police officers. He was asked by police officers which of the two revolvers recovered near the motorcycle belonged to appellant.[19] Appellant denied knowledge of the matter, and the arresting officers mauled him.[20] Appellant was also taken to the supermarket building at the police headquarters and maltreated some more.[21] Upon request of appellant he was treated for his wounds by Dr. Manuel Lucero, resident physician of the Cebu City Hospital, who later embodied his findings in a medical certificate. (Exh. "1")

The only issue in this case is whether or not the prosecution has presented sufficient credible evidence to sustain a judgment of conviction beyond reasonable doubt, thereby overthrowing the denial and alibi of the appellant.

Appellant claims that prosecution witness Patrolman Cabantan did not clearly and positively identify appellant during that early morning on the basis of his wearing a red polo shirt, as red polo shirts are common and the patrolmen did not correspondingly identify the color of the motorcycle he was riding on which was also red. Appellee correctly argues that appellant's contention is obviously untenable. It may be true that a red-polo shirted

man riding on a motorcycle is a common sight, but two men riding on a motorcycle in the early hour of the morning with the one riding on the backseat wearing a red polo shirt is no longer common. It may even be classified as rare. What is difficult to explain is why appellant tried to run and hide himself among the thick bushes after he was spotted by the police officers. Patrolman Cabantan clearly stated that he saw the appellant throw away his revolver among the tall weeds after the motorcycle appellant was riding on crashed, but the revolver landed on clear ground, so the officer was able to recover it quickly.[22] The identification of appellant by Patrolman Cabantan can be considered both clear and positive under the foregoing circumstances.

Appellant argues that prosecution witness Marcelo Alit was not able to positively identify the former as the assailant, because Alit failed to identify the appellant's companion in the motorcycle, and because Alit failed to mention the color of appellant's polo shirt and the color of the motorcycle he was back riding on. The mere fact that Alit failed to identify appellant's companion in the motorcycle during that incident, cannot alter nor detract from the positive and clear identification made by Alit regarding the appellant.

Although there is nothing in Alit's testimony about the color of appellant's polo shirt and the color of the motorcycle, nobody else, except Alit, could have supplied said description to the police authorities who arrived at the scene of the shooting minutes thereafter, which information was transmitted by radio and picked up by Patrolman Cabantan on his mobile car radio.

Alit cannot be considered a prejudiced or biased witness, as he did not have any relations with appellant previous to the incident, and he had no known reason to falsely testify against appellant.

Appellant's defense of alibi surely cannot stand against the clear and positive testimony of prosecution eyewitness Marcelo Alit who identified appellant as the person who fired two shots at them while back riding on a motorcycle, resulting in the death of victim Clemente Abellanos. The testimony of Pat. Cabantan who stated that he recognized appellant as the backseat rider of the motorcycle, wearing a red polo shirt, who after their vehicle had crash-landed, threw away the murder weapon and hid himself among the grasses in that place, completely belies appellant's alibi.

Any alleged maltreatment of appellant by his arresting officers cannot destroy the strong evidence of guilt presented against him. The erring officers may be charged administratively or criminally, but their alleged wrongful acts have no material bearing on the issue of appellant's guilt. It is likewise very apparent that no evidence of motive is necessary when there is no doubt on the identity of the assailant.

The evidence against the appellant in this case is more than what is required to attain moral certainty in conviction, hence no error was committed by the trial court in its judgment of guilt.

WHEREFORE, and upon recommendation by the Solicitor General, the Decision dated February 27, 1970, in Criminal Case No. CCC-XIV-136-Cebu, by the Circuit Criminal Court, 14th Judicial District, Cebu City, being in accordance with the evidence and the law, is hereby **AFFIRMED** in toto, with costs.

SO ORDERED.

Barredo, (Chairman), Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur. Aquino, J., concurs. The death penalty could be imposed on the accused because of the aggravating circumstance of use of a motor vehicle.

[1] p. 1, Original Record, Criminal Case No. CCC-XIV-136, Cebu City.

[2] p. 22, Original Record.

- [3] p. 122, Id.
- [4] pp. 3-6, t.s.n., December 28, 1970; p. 10, t.s.n., December 16, 1970.
- [5] p. 7, t.s.n., December 28, 1970.
- [6] pp. 6-7, Id.
- [7] pp. 3-5, t.s.n., December 16, 1970.
- [8] pp. 6-7, Id.
- [9] pp. 8-9, t.s.n., December 16, 1970.
- [10] pp. 9-10, 12-14, Id.
- [11] p. 15, Id.
- [12] p. 13, t.s.n., December 29, 1970.
- [13] Exh. "B", p. 2, Record.
- [14] Exh. "C-3".
- [15] pp. 83-84, t.s.n., February 10, 1971.
- [16] pp. 84-85, Id.
- [17] pp. 86-87, Id.
- [18] pp. 87-88, Id.
- [19] pp. 90-91, Id.
- [20] pp. 92-93, Id.
- [21] Id.
- [22] p. 9, t.s.n., December 16, 1970.

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