

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO IRENEA Y BRIONES, ALIAS “JAIME ALVAREZ” AND JAIME CEBU Y LAURIO, ACCUSED-APPELLANTS.

G.R. Nos. L-44410-11. August 05, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Convicted of Murder in two (2) cases by the Court of First Instance of Sorsogon, Branch II,[*] as principal and accomplice, respectively, Antonio IRENEA y Briones, alias Jaime Alvarez, and Jaime CEBU y Laurio have interposed the instant appeal.

On 27 January 1974, at about 3:00 o'clock in the afternoon, Fidel Gadbilao, an 11-year-old boy, went to the mangrove swamp in Sua, Matnog, Sorsogon, to catch shrimps for bait. On the way, Fidel saw accused IRENEA and CEBU standing by the coconut tree some thirty-two (32) meters away from where he was to catch shrimps. Shortly after, 14-year old Juanita Cula and her 12-year old sister Felicidad Cula came upon Fidel, also to catch shrimps for bait for their eldest brother. Fidel was about six (6) or seven (7) meters away from the two girls.

While the three (3) children were intent on their activity, IRENEA and CEBU, each armed with unsheathed bolos tucked to their waist approached the spot where the three children were catching shrimps. IRENEA approached Juanita, who was then stooping, unsheathed his bolo and hacked her first on the nape, and then on the right side of her head. Juanita fell down. On seeing her older sister hacked, Felicidad tried to flee by crawling up a mound of mud about forty-four (44) inches high. CEBU who was standing beside IRENEA, told his co-accused "hack also the other one." Following that bidding, IRENEA boloed Felicidad hitting her first on the right side of the neck, then on the left side of the forehead, and finally on her back. Felicidad also fell.

Recovering from his shock, Fidel retrieved his fish net and ran as fast as he could to his house about 250 meters away from the swamp. There, he told his mother of the tragedy that had befallen the Cula sisters in the hands of IRENEA and CEBU who had hacked them. The mother quickly relayed the" information to the victims' mother whose house was just beside.

The victims' parents searched for their two daughters and found them in the swamp, lying flat in the water about two (2) meters apart from each other. Both had several wounds and were already dead. Their corpses were then carried to their home.

The next morning, at the office of the Chief of Police, the Municipal Health Officer autopsied the two bodies. Her findings were that Juanita sustained a wound on the neck, two wounds on the head, and abrasion on the scalp. She concluded that the wounds were all inflicted with a sharp instrument, such as a bolo, while the abrasion was caused by contact of the affected spot with a rough, hard surface, which may be the wooden handle of a bolo. She described the wound on the neck as fatal.

With regard to 12-year old, Felicidad, the examining physician found five (5) wounds, the one inflicted on the

neck being the most fatal. She also concluded that all the wounds must have been caused by a sharp instrument such as a bolo.

Learning that the two accused were looking for Fidel, his family spent the night at the house of Rudy Agustin, which was more secure than their own. The family returned to their home the next day but again the two accused stopped by Fidel hid himself under the bed and peeped through a hole in the wall of the house where he was able to see the two accused standing outside. Because of this incident Fidel's family again spent the night at the Agustin house. The same happening occurred the next day and the day after. Out of fear, Fidel's family transferred to Manila to live.

On 30 May 1974, two separate Informations against IRENEA and CEBU for Murder were filed for the hacking to death of the children, Juanita and Felicidad, respectively. The Informations in both cases alleged that the crime was committed with treachery, evident premeditation and abuse of superior strength.

In his defense, IRENEA maintained that he was in his house in Sua, Matnog, Sorsogon, about fifty (50) meters away from the swamp around 1:00 P.M. He was suffering from stomach ache so that he sent his wife to fetch an "herbolario." The pain subsided after he was made to drink water. Around 2:00 P.M., IRENEA was able to go out to watch a volleyball game that was being played near the cockpit some 25 meters away from his house. He was seen thereat by the Barrio Captain on the letter's way to the cockpit at about 3:00 P.M., and then on the letter's way home at about 4:00 P.M. At a little past 5:00 P.M. when IRENEA had returned home he learned from the barrio people that the two children had been killed.

For his part, CEBU also stated that he was at home in the afternoon of the incident. After spending some time in their yard doing nothing in particular he proceeded to the volleyball game and the cockfight which were taking place some fifty (50) meters from his house. He returned home at about 4:30 P.M., where he heard a group of about fifteen (15) persons near his house talking about the killing of the two girls that same afternoon. He joined the group but merely listened to their conversation for about thirty (30) minutes. His only participation in the conversation was to voice his agreement to a comment addressed to him that the incident was gruesome.

On 3 February 1974, IRENEA was arrested by the police. After that apprehension, CEBU and his family left for San Ramon, Uson, Masbate, where he was arrested on 26 July 1974.

After trial, the lower Court convicted IRENEA as principal, and CEBU as accomplice, of the crime of Murder in both cases. The Court held that treachery attended the commission of the crimes but that the prosecution had failed to prove evident premeditation. Abuse of superior strength was deemed absorbed in treachery. The decretal portion of the judgment read:

"WHEREFORE, judgment is hereby rendered:

IN CRIM. CASE NO. 405

[1] finding the accused Antonio Irene y Briones, alias Jaime Alvarez, and the accused Jaime Cebu y Laurio guilty beyond reasonable doubt, the first as principal and the second as an accomplice, in the crime charged; [2] sentencing Antonio Irene, alias Jaime Alvarez, to reclusion perpetua, with the accessory penalties provided by law; and the accused Jaime Cebu to an indeterminate penalty ranging from EIGHT (8) YEARS and ONE (1) DAY of prision mayor, medium, as the minimum, to FOURTEEN (14) YEARS, TEN (10)

MONTHS and TWENTY (20) DAYS of reclusion temporal, medium, as the maximum, with the accessory penalties provided by law; and [3] holding the accused Antonio Irene, alias Jaime Alvarez, and Jaime Cebu jointly and severally liable to the heirs of Juanita Cula in the amount of TWELVE THOUSAND (P12,000.00) PESOS. Each to pay one-half of the costs.

IN CRIM. CASE NO. 415

[1] finding the accused Antonio Irene y Briones, alias Jaime Alvarez, and the accused Jaime Cebu y Laurio guilty beyond reasonable doubt, the first as principal and the second as an accomplice, in the crime charged; [2] sentencing Antonio Irene, alias Jaime Alvarez, to reclusion perpetua, with the accessory penalties provided by law; and the accused Jaime Cebu to an indeterminate penalty ranging from EIGHT (8) YEARS and ONE (1) DAY of prision mayor, medium, as the minimum, to FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of reclusion temporal, medium, as the maximum, likewise with the accessory penalties provided by law; and [3] holding the accused Antonio Irene, alias Jaime Alvarez, and Jaime Cebu jointly and severally liable to the heirs of Felicidad Cula in the amount of TWELVE THOUSAND (P12,000.00) PESOS. Each to pay one-half of the costs.

"SO ORDERED." (pp. 31-32, Rollo)

Attributed as error committed by the Trial Court is that of having convicted appellants of the crime of Murder on the strength of the testimony of the lone witness for the prosecution, an 11-year old boy, Fidel.

Jurisprudence and the evidence on record negative that assertion. The findings of a tribunal of justice are seldom based upon the number of witnesses but more upon their credibility and the nature and quality of their testimonies (People vs. Marasigan, 85 Phil. 427 [1950]). And in respect of child witnesses, the rule is well-settled that unless a child's testimony is punctured with serious inconsistencies as to lead one to believe that he was coached, if he can perceive and make known his perception, he is considered a competent witness (People vs. Cidro, 105 Phil. 238 [1959], citing other cases).

As found by the Trial Court, Fidel's testimony had all the earmarks of credibility specially when it is remembered that he had no motive whatsoever for lying about the identity of the two accused. His detailed description of the gruesome event confirms that he was, in fact, an eyewitness. He not only testified on the number of times the girls were hacked, where they were hit, and who was hacked first (t.s.n., August 30, 1974, pp.12, 38 & 39); but also on the color of the pants and shirts worn by the two accused (ibid., pp. 43 & 44); the kind of bolo used -"not a pointed one" (ibid., p. 29); and the reaction of Felicidad when she saw her sister hacked (ibid., p. 37). The vividness of his description is consistent with his declaration that he was only six (6) or seven (7) meters away from the place where the crime took place (ibid., pp. 14 & 28).

The inconsistencies in Fidel's testimony do not detract from his credibility referring as they do to mere collateral matters, which do not touch upon the commission of the crime itself, for example, whether the two accused came "from a place near the bridge" (ibid., pp. 9 & 28), or whether they were just standing under a coconut tree about four (4) meters away from him (ibid., p. 52). The rule is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony (People vs. Pacala, L-26647, August 15, 1974, 58 SCRA 370).

The spontaneity of the identification of the two accused; the immediate disclosure by Fidel of the incident to his mother, and by the latter, in turn, to the victims' mother; the prompt report to the barrio authorities; Fidel's narration of the position of the victims when they were hacked on different parts of their bodies, which tally with the number, location and nature of the wounds inflicted as disclosed by the autopsy findings; the evacuation of Fidel's family to Manila because the two accused kept hounding him for four (4) consecutive days; the sudden flight of accused CEBU to Masbate - all combine to buttress the case for the prosecution.

The defense of the accused that they were not at the scene of the crime at the time of its commission falls far short of the elements required to establish alibi. The physician who autopsied the two victims at 10:20 A.M. on 28 January 1974 estimated that the death of the two children could have occurred some fourteen (14) to twenty (20) hours earlier. This means that death could have occurred between 2:20 and 8:20 P.M. of 27 January 1974. Between those hours, the two accused were admittedly in Barrio Sua, Matnog, Sorsogon, only a few meters distant from the scene of the crime. The requisites of time and place to establish alibi, therefore, have not been met. Moreover, an alibi cannot prevail over the positive identification of the accused made by a credible witness, besides the fact that the defense of alibi is inherently weak as it can easily be fabricated or contrived.

The apparent lack of motive on the part of the two accused in hacking the two girls to death does not preclude their conviction when the crime and their participation have been definitely established (*People vs. Abigan*, L-69674, September 15, 1986, 144 SCRA 130, citing other cases). Motive is important only when the identity of the accused is in doubt (*People vs. Perante, Jr., et al.*, L-63709-10, July 16, 1986, 143 SCRA 57).

Indubitably, treachery attended the commission of the crimes. Abuse of superior strength, alleged in the Information, is absorbed in treachery (*People vs. Ong*, L-34497, January 30, 1975, 62 SCRA 174).

CEBU's participation was, indeed, that of an accomplice, or one who gives his co-accused some degree of cooperation with the knowledge of the criminal intent which is not indispensable to the murderous assault (*People vs. Tatlonghari*, L-22094, March 28, 1969, 27 SCRA 726). Besides, when doubt exists as to whether a person acted as principal or accomplice, the Court should favor the milder liability (*People vs. Ablog*, L-15310, October 31, 1962, 6 SCRA 437).

The penalties imposed by the Trial Court, however, will have to be modified.

Pursuant to Article 248 of the Revised Penal Code, the impossible penalty should be reclusion perpetua, as imposed by the Trial Court. However, with the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal in its maximum period to reclusion perpetua. In the absence of any modifying circumstances, the penalty is impossible in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years.

For purposes of the indeterminate Sentence Law, the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense is prision mayor in its maximum period to reclusion temporal in its medium period, or, from ten (10) years and one (1) day to seventeen (17) years and four (4) months.

In respect of the accomplice of a consummated crime, the penalty impossible is one degree lower or prision mayor in its maximum period to reclusion temporal in its medium period. In the absence of any modifying circumstances, the penalty is impossible in its medium period, or, from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

WHEREFORE, the judgment appealed from, being in accordance with law and the evidence, is hereby AFFIRMED, except that: 1) the penalties are modified as follows: [a] Antonio Irene y Briones is hereby sentenced to suffer ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8)

months and one (1) day of reclusion temporal, as maximum; while [b] Jaime Cebu y Laurio shall suffer the penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum; and (2) the civil indemnity payable by each of the accused, jointly and severally to the heirs of the victims, in each case, is hereby increased to P30,000.00. Each accused shall respectively pay one-half of the costs in each case.

SO ORDERED.

Paras, Padilla, and Sarmiento, JJ., concur.

[*] Presided by Judge Aquilino P. Bonto.

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