

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN ANIÑON, ACCUSED APPELLANT.

G.R. No. L-39083. March 16, 1988

Ponente: CORTES, J.

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CORTES, J.:

In this appeal from the decision of the trial court appellant alleges the non-adherence of the trial court to the established procedure for the discharge of an accused utilized as a state witness, aside from impugning his conviction for the crime of murder.

Benjamin Aniñon and Policarpio Saycon were charged with the murder of Cesar Agustin under the following information:

That on or about the 12th day of September, 1963, in Barrio Balayong, Municipality of Pamplona, Province of Negros Oriental, Philippines, and within the jurisdiction of this Court, the above-named accused, conspiring together and helping one another, and acting upon a common purpose, with intent to kill, evident premeditation, treachery, taking advantage of nighttime, did then and there willfully, unlawfully and feloniously attack, stab and club Cesar Agustin with the use of a dagger and a piece of wood with which they were armed at the time, thereby inflicting a stab wound at the left supra-scapular area, a depression at the glabella, an abrasion at the left zygomatic bone and abrasion at the left eyebrow, which wounds caused the death of Cesar Agustin.

Contrary to Article 248 of the Revised Penal Code. [Rollo, p. 3].

Upon arraignment, Aniñon and Saycon pleaded not guilty. In the course of trial, Saycon was discharged and utilized as a state witness.

The trial court convicted Aninon, the dispositive portion of its decision reading:

IN VIEW OF ALL THE FOREGOING, the Court finds the accused Benjamin Aninon guilty beyond reasonable doubt of the crime of Murder as charged in the Information penalized under Article 248 of the Revised Penal Code, and without the attendance of any aggravating or mitigating circumstance, hereby sentences the accused to suffer the penalty of Reclusion Perpetua, to indemnify the heirs of the deceased Cesar Agustin in the sum of TWELVE THOUSAND PESOS (P12,000.00) without subsidiary imprisonment in case of insolvency, to suffer the accessory penalties of the law, and to pay the costs. [Rollo, p. 49.]

To arrive at its decision, the trial court considered the testimony of Dr. Antonio R. Trasmonte who testified as to the wounds suffered by the victim: a stab wound, approximately 1 inch in length, about 1 and 1/2 mm. in width, and about 3 inches deep at the left supra-scapular area; a depression, 1 and 1/2 mm. in a circular form and about 2 mm. deep at the glabella; an abrasion, about an inch, circular in form, at the left zygomatic bone; and, an abrasion, about the size of a pea at the left frontal region, just 1 and 1/2 inches above the left eyebrow. Dr. Trasmonte described the depression, which was caused by the head of a nail, a blunt instrument, or a circular stone, as the

most fatal wound. The stab wound, which caused a hemorrhage, was caused by a bladed weapon like a dagger or a bolo. He concluded that the cause of death was "internal hemorrhage either from the brain or from the stab wound."

The trial court also gave weight to the testimonies of Lauro Ibalig and Policarpio Saycon, who witnessed the commission of the crime.

The trial court said in its decision:

Testifying for the prosecution, Lauro Ibalig declared that about 8:30 o'clock in the evening of September 12, 1963, while in the store of Severino Galicano at barrio Balayong; he heard a shot followed by two more successive; that he hid behind one of the posts of the house. Later, he saw three persons proceeding towards the store of Severino Galicano; that Cesar Agustin then arrived and when he was about to enter the store, he was immediately stabbed by the accused Benjamin Aniñon using a dagger and hitting Cesar Agustin at the back. This witness recognized the accused when he stabbed the deceased because he was only 1-1/2 meters from herein accused and that there was light coming from the kerosene lamp at the door of said store. After being stabbed by the accused, Cesar Agustin fell to the ground, after which, the accused and his two companions left the scene of the crime.

Another eye-witness was presented by the prosecution in the person of Policarpio Saycon who declared among other things that on September 12, 1963, he was attending the fiesta at barrio Balayong; that in the evening of said date, he saw the accused Benjamin Aniñon who was 1-1/2 meters from him stabbed (sic) Cesar Agustin with a hunting knife. The stabbing took place in front of the house of Melecio Gabas at barrio Balayong. This witness declared that when Cesar Agustin was about to enter the door of the house of Melecio Gabas, the accused suddenly stabbed Cesar Agustin hitting the latter at his back and [he] fell to the ground. The accused then fled from the scene of the crime.

* * *

It is therefore evident that, as established by the prosecution according to the testimonies of its two witnesses, Lauro Ibalig and Policarpio Saycon, it was the accused who inflicted the fatal injuries on the person of the deceased Cesar Agustin

The attack was too sudden, without giving the deceased a chance to repel or defend himself, which circumstance therefore constitutes Alevosia qualifying the crime as Murder. [Rollo, pp. 59-61.]

Vehemently contesting the decision of the trial court, Benjamin Aniñon appealed its decision to this Court, assigning the following errors:

I

THE LOWER COURT ERRED IN DISCHARGING ACCUSED POLICARPIO SAYCON AND ALLOWING HIM TO TESTIFY AGAINST HIS CO-ACCUSED BENJAMIN ANIÑON AFTER THE PROSECUTION WAS THROUGH WITH THE PRESENTATION OF THEIR EVIDENCE.

II

THE LOWER COURT ERRED IN GIVING FULL CREDENCE TO THE CONFLICTING TESTIMONIES OF WITNESS LAURO IBALIG AND DISCHARGED ACCUSED POLICARPIO SAYCON IN FINDING ACCUSED BENJAMIN ANIÑON GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

III

THE LOWER COURT ERRED IN FINDING THAT IT WAS ACCUSED BENJAMIN ANIÑON WHO INFLICTED THE STAB WOUND AND THE DEPRESSION DESCRIBED IN PARAGRAPHS 3 AND 4 OF

THE MEDICAL CERTIFICATE OF CESAR AGUSTIN ISSUED BY THE MEDICO-LEGAL OFFICER DR. ANTONIO TRASMONTE.

IV

THE LOWER COURT ERRED IN CONVICTING ACCUSED BENJAMIN ANIÑON GUILTY BEYOND REASONABLE DOUBT OF THE MURDER OF CESAR AGUSTIN AND SENTENCING HIM TO RECLUSION PERPETUA.

- In his brief, appellant Aniñon questioned the discharge of his co-accused Policarpio Saycon. Thus, he contends that "it was grave error for the Lower Court to discharge accused Policarpio Saycon after the prosecution was practically through with the presentation of their evidence and the accused had already started in their defense in the cross-examination of the witnesses for the prosecution" [Brief for Defendant-Appellant, p. 3].

The Court finds no error committed by the trial court on this score.

Rule 119 of the Revised Rules of Court, before its amendment in 1985, stated:

Sec. 9. Discharge of one of several defendants to be witness for the prosecution. -- When two or more persons are charged with the commission of a certain offense, the competent court, at any time before they have entered upon their defense, may direct one or more of them to be discharged with the latter's consent that he or they may be witnesses for the government when in the judgment of the court:

- (a) There is absolute necessity for the testimony of the defendant whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;
- (c) The testimony of said defendant can be substantially corroborated in its material points;
- (d) Said defendant does not appear to be the most guilty;
- (e) Said defendant has not at any time been convicted of any offense involving moral turpitude. (Underscoring supplied.)

In a recent case, the Court enumerated the requisites for a valid discharge under this rule:

The requisites for the discharge of an accused in order that he may be made a witness for the prosecution are the following:

(1)

Two or more persons are charged with the commission of a certain offense;

(2)

The petition for discharge is filed before the defense has offered its evidence;

(3)

There is absolute necessity for the testimony of the defendant whose discharge is requested;

(4)

There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;

(5)

The testimony of said defendant can be substantially corroborated in its material points;

(6)

Said defendant does not appear to be the most guilty; and

(7)

Said defendant has not at any time been convicted of any offense involving moral turpitude. [Mangubat v. Sandiganbayan, G.R. No. 60613-20, April 20, 1985, 135 SCRA 732; Underscoring supplied.]

The discharge contemplated is one effected or which can be effected at any stage of the proceedings, from the filing of the information to the time the defense starts to offer any evidence [People v. Mendiola, 82 Phil. 740 (1949); People v. Ganiban, 91 Phil. 840 (1952); People v. Ibanez, 92 Phil. 933 (1953); Flores v. Sandiganbayan, G.R. No. 63677, August 12, 1983, 124 SCRA 109]. Records show that the motion to discharge was filed on August 27, 1965 and was granted on September 14, 1965. At that time the prosecution had already presented three witnesses with the cross-examination of its third witness, Lauro Ibalig, just having been completed on July 14, 1965. The defense called their first witness only on May 9, 1967. It cannot therefore be said that the defense had already commenced to offer its evidence when the discharge was ordered.

However, the discharge of Policarpio Saycon could have been challenged on other grounds. The absolute necessity for his testimony is open to doubt. Neither was there a showing that there was no other direct evidence available for the proper prosecution of the offense committed, except the testimony of Saycon.

It has been ruled in this connection that the discharge of a defendant to be utilized as a state witness for the prosecution, should be availed of only if there is absolute necessity for the testimony of the accused whose discharge is requested or the accused is the only one who has knowledge of the crime and not when his testimony would simply corroborate or otherwise strengthen the evidence in the hands of the prosecution, (People vs. Ibanez, 92 Phil 933; People vs. Borja, G.R. No. L-14327, January 30, 1960). Furthermore, one of the requirements for the discharge of the defendant under Sec. 9, Rule 119 of the Rules of Court is that there is no other direct evidence of the prosecution for the offense committed except the testimony of the defendant. . .

* * *

It is the rule that all the conditions set forth in the aforesaid rule (Sec. 9, Rule 119) must be complied with. For the law seeks to regulate the manner of enforcement of the regulations in the sound discretion of the court. (U.S. vs. Abanzado, 37 Phil. 658; Guiao vs. Figueroa, 94 Phil. 1018). The discharge of an accused that he may

turn state witness is expressly left to the discretion of the court. The court has the exclusive responsibility to see that conditions prescribed by the rule exist. (*People v. Ibanez*, supra). The grant of discretion in cases of this kind under this provision was not a grant of arbitrary discretion to the trial courts, but rather a sound judicial discretion to be exercised with due regard to the correct administration of justice. (*U.S. vs. Abanzado*, 37 Phil. 658). [*People v. De Atras*, G.R. No. L-27267, May 29, 1969, 28 SCRA 389; Underscoring supplied.]

In the instant case, the failure to comply with the requisites established by law and jurisprudence is apparent. There was no absolute necessity for the testimony of Saycon, since the prosecution had already presented Dr. Antonio Trasmonte, who testified on the victim's wounds and his cause of death, Lauro Ibalig, who positively identified Aniñon as the person who stabbed Cesar Agustin, and Rodolfo Tagaboin, who corroborated Ibalig's presence at the scene of the crime when it was committed. Thus, it cannot be said that there was no other direct evidence available for the prosecution of the offense committed except the testimony of Saycon. His testimony merely served to corroborate and strengthen the earlier testimony of Lauro Ibalig and furnish further details on antecedent events.

The irregular discharge of Policarpio Saycon, however, will not invalidate his acquittal. Under the then applicable provision of Rule 119, his acquittal becomes ineffective only if he fails or refuses to testify against his co-accused:

Sec. 10. Discharge of defendants operate as acquittal. -- The order indicated in the two preceeding sections shall amount to an acquittal of the defendant discharged and shall be a bar to future prosecution for the same offense, unless the defendant, in the case provided in section 9 fails or refuses to testify against his co-defendant.

The Court explained the import of the acquittal contemplated in the above-quoted provision in this wise:

Before the discharge is ordered, the prosecution must show and the trial court must ascertain that the five conditions fixed by section 9 of Rule 115 are complied with. But once the discharge is ordered, any future development showing that any or all of the five conditions have not been actually fulfilled, may not affect the legal consequences of the discharge, as provided by section 11 of Rule 115. Any witting or unwitting error of the prosecution in asking for the discharge and of the court in granting the petition, no question of jurisdiction being involved, cannot deprive the discharged accused of the acquittal provided by section 11 of Rule 115 and of the constitutional guarantee against double jeopardy. [*People v. Mendiola*, 82 Phil. 740 (1949)]

Further, the improper discharge of Policarpio Saycon will not render inadmissible his testimony nor detract from his competency as a witness [*People v. Castaneda*, 63 Phil. 480 (1936); *People v. Dagundong*, 108 Phil. 682 (1960); *People v. De Leon*, 108 Phil. 800 (1960)].

- Appellant's second, third and fourth assignments of error all relate to his liability for the death of Cesar Agustin and, hence, they shall be resolved as one.

After careful scrutiny of the record of the case, this Court is convinced that the finding of the trial court that it was the appellant who stabbed the victim is fully supported by the evidence. Witnesses Lauro Ibalig and Policarpio Saycon in their testimonies have positively identified Benjamin Aniñon as the person who stabbed Cesar Agustin.

From the records, the surrounding facts may be deduced.

On September 12, 1963, on the occasion of the fiesta, Benjamin Aniñon accompanied his father, Mayor Sergio Aniñon, to Barrio Balayong, Pamplona, Negros Oriental. A political rally was also scheduled to be held that afternoon since the local elections were forthcoming. Mayor Aniñon's party arrived at around noontime. The rally started at mid-afternoon [TSN, August 28, 1973, pp. 225-226]. At around four o'clock in the afternoon,

before Mayor Aniñon was to start his speech, a fistfight broke out in the crowd, thus disrupting the rally. Eventually, the rally proceeded after order was restored. After the rally finished, the accused Benjamin Aniñon, his brother Solomon, Policarpio Saycon, and several other persons, began to walk home. Some twenty (20) meters from the house of Melecio Gabas, a gunshot coming from the direction of said house was heard, causing the accused and his companions to seek cover behind some coconut trees. Two more successive shots were fired. After the gunshots ceased, Benjamin Aniñon, Solomon Aniñon and Policarpio Saycon resumed to walk towards the house of Gabas. It was then approximately 8:30 in the evening. As they approached the house, a man appeared from the side of the house carrying two bottles. As the man was about to enter the door of the house, he was stabbed at the left upper part of the back by Benjamin Aniñon with the hunting knife he was then carrying. The man immediately fell to the ground. The accused and his companions, Solomon Aniñon and Policarpio Saycon, filed [TSN, June 9, 1964, pp. 65-72; TSN, February 23, 1966, pp. 119-134].

The victim was discovered later to be a certain Cesar Agustin.

In an effort to discredit the witnesses for the prosecution, the appellant tries to capitalize on a seeming inconsistency between the testimony of Lauro Ibalig, who said that Aniñon stabbed the victim at the entrance of the store of Severino Galicano, and that of Policarpio Saycon, who said that Aniñon stabbed Cesar Agustin at the door of the house of Melecio Gabas. However, such can be reconciled. The store of Galicano and the residence of Gabas are located in the same structure, Galicano being a tenant in the building owned by Gabas [TSN, June 22, 1967, p. 127]. Anyhow, minor inconsistencies in the testimony of prosecution witnesses do not affect their credibility, as what is important is that they positively identify the accused as the assailant [People v. Dava, G.R. Nos. L-41642-45, May 15, 1987, 149 SCRA 582]. Rather than discredit the testimony of the prosecution witnesses, such a discrepancy on a minor detail serves to add credence and veracity to their spontaneous testimonies [People v. Canada, G.R. No. 63728, September 15, 1986, 144 SCRA 121].

The defense of alibi, upon which the appellant solely relies, will not save him from conviction. Alibi is an inherently weak defense for it is easy to fabricate [People v. Badilla, 48 Phil. 718 (1926); People v. Bagsican, G.R. No. L-13486, October 31, 1962, 6 SCRA 400; People v. Perante, Jr., G.R. Nos. 63709-10, July 16, 1986, 143 SCRA 56; People v. Coronado, G.R. No. 68932, October 28, 1986, 145 SCRA 250].

It is unavailing against the positive identification of the accused by witnesses [U.S. v. Garcia, 9 Phil. 434 (1907); People v. Garcia, G.R. No. L-26105, February 18, 1986, 141 SCRA 336; People v. Monteverde, G.R. No. 60962, July 11, 1986, 142 SCRA 668; People v. Canada, supra; People v. Abigan, G.R. No. 69674, September 15, 1986, 144 SCRA 130; People v. Ocaya, G.R. No. 75074, September 15, 1986, 144 SCRA 165; People v. De Jesus, G.R. Nos. 71942-43, November 13, 1986, 145 SCRA 521; People v. Dava, supra].

For the defense of alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed but that it was physically impossible for him to have been at the scene of the crime [U.S. v. Oxiles, 29 Phil. 587 (1915); People v. Perante, Jr., supra; People v. Coronado, supra; People v. Petil, G.R. No. 70223, March 31, 1987, 149 SCRA 92; People v. Melgar, G.R. No. 75268, January 29, 1988]. In the instant case, at the time of the commission of the crime, defense witnesses testified that the accused was a mere six (6) kilometers away from the scene of the crime, in a place accessible by motor vehicle [TSN, February 1, 1968, p. 108]. It cannot therefore be said that it was impossible for the accused to have been at the scene of the crime.

The Court, however, does not agree with the trial court that the crime committed was murder.

The trial court concluded that since the attack was sudden, thereby depriving the deceased of a chance to repel the attack or defend himself, there was treachery which qualified the crime to murder.

While the Court has in several cases found that treachery was present where the attack was sudden, it has also held that the mere suddenness of the attack is not sufficient to constitute treachery when the mode adopted does not positively tend to prove that the assailant knowingly intended to insure the accomplishment of his criminal purpose without risk to himself arising from the defense [People v. Delgado, 77 Phil. 11 (1946); People v. Cadag, G.R. No. L-13830, May 31, 1961, 2 SCRA 388; Perez v. Court of Appeals, G.R. No. L-13719, March 31, 1965, 13 SCRA 444; People v. Macalisang, G.R. No. L-24546, February 22, 1968, 22 SCRA 699]. "The suddenness of the attack does not, of itself, suffice to support a finding of alevosia, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. . . . The qualifying circumstance of treachery may not be simply deduced from presumption as it is necessary that the existence of this qualifying or aggravating circumstance should be proven as fully as the crime itself in order to aggravate the liability or penalty incurred by the culprit" [People v. Ardisa, G.R. No. L-29351, January 23, 1974, 55 SCRA 245].

The law is very clear on the matter and it cannot be construed in any other way. "There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make" [Art. 14, para. 16, Revised Penal Code].

There is nothing on the record that will tend to show that the appellant, by suddenly stabbing the victim, knowingly intended to ensure the accomplishment of his criminal purpose without risk to himself arising from whatever defense the victim may make. The qualifying circumstance of treachery not having been proved, the crime committed was homicide, not murder.

The penalty for homicide is reclusion temporal. In the absence of mitigating or aggravating circumstances, the imposable penalty is reclusion temporal in its medium period. For purposes of applying the Indeterminate Sentence Law, the Court, in its discretion, fixes the minimum term at prision mayor in its medium period. Therefore, the range of penalty is prision mayor in its medium period to reclusion temporal in its medium period, or, from eight (8) years and one (1) day to seventeen (17) years and four (4) months.

WHEREFORE, the decision of the Court of First Instance in Criminal Case No. 7362 is hereby MODIFIED. Accused-appellant Benjamin Aniñon is hereby found guilty beyond reasonable doubt of the crime of homicide and is accordingly sentenced to suffer the indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of prision mayor in its medium period, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal in its medium period, as maximum, with the accessory penalties provided by law, and to idemnify the heirs of Cesar Agustin in the amount of THIRTY THOUSAND PESOS (P30,000.00).

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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