

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LINO GREGORIO, DEFENDANT-APPELLANT.

G.R. No. L-35390. June 29, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Convicted by the Court of First Instance of Misamis Occidental of robbery with homicide and serious physical injuries, based mainly on the testimony of Nilo Junio, a 15-year old boy, and sentenced to Reclusion Perpetua, Lino Gregorio now appeals to this Court.

Evidence shows that in the evening of June 6, 1971, 15-year old Nilo Junio, an elder married brother, Alfredo Junio, and his four younger brothers were sleeping in their house situated in Talingting, a mountainous barrio in Aloran, Misamis Occidental. Their parents, together with Nilo's elder sister and Alfredo's wife, had left in the early afternoon of said date for Toril, same province. At midnight, Nilo Junio was awakened by gunfire and the pounding at the door of their house. Frightened, Nilo, who was lying in the kitchen, proceeded to the bedroom, climbed up the storage compartment for the mats and pillows, and peeping through a hole saw five men outside, some of whom were firing until the door latch was destroyed. Thereafter, three of the intruders entered, all armed with guns. One of the men asked Alfredo Junio where the money was kept but the latter answered that they had none. Thereupon, Alfredo was struck with a gun at the forearm that felled him. The other two men entered the room, ransacked the trunks and boxes and finding no money, they transferred to another room but also found nothing.

Returning to Alfredo who was now able to stand up, the men again asked him where the money was kept. Alfredo took the piggy bank containing P60.00 hidden in the ceiling and after handing it to the robbers, he was shot at three times, killing him. All this was seen by Nilo Junio because of a kerosene light burning in the sala.

Afterwards, one of the robbers entered the room, and seeing Nilo Junio in the pillow compartment fired and hit him at the left forearm and left chest. Luckily, the bullet did not penetrate his chest because of a breastbone which obstructed it. The robber fired a second shot at Nilo but missed. Seeing the robber about to fire at him for the third time, Nilo jumped from the storage compartment but he was stabbed by the robber at the right hip. As a result, he fell and cried. As for Nilo's younger brothers they were able to hide from the malefactors. Thereafter, the men left.

Arriving at early dawn of June 7, 1971, Beatriz Junio found her son, Alfredo, already dead and Nilo, wounded. Nilo was carried by his barriomates to the town of Aloran, passed by the municipal building, and thence to the Misamis Occidental Provincial Hospital at Oroquieta where he was confined for more than two weeks.

The main issue in this case is the identity of the appellant as one of the malefactors.

Early morning of June 7, 1971, shortly after the commission of the crime, Nilo was rushed in a pedicab from Aloran to the Oroquieta Provincial Hospital. The pedicab stopped for a while at the municipal building of Aloran and Pat. Hirohito Macalisang talked with Nilo. Pat. Macalisang testified among others, as

follows:

"

Q -

On June 7, 1971, in the very early morning of that day, you remember having come across a person bringing a boy named Nilo Junio in the municipal building of Aloran?

A -

Yes.

Q -

Why were you there in the municipal building of Aloran, in the early morning of June 7, 1971?

A -

Because I was the guard there.

Q -

Please tell the Court what was the purpose of this person of bringing that boy named Nilo Junio in the municipal building of Aloran, Misamis Oca, in that early morning of June 7, 1971?

A -

I asked him what happened to them and this Nilo Junio answered that they were robbed.

Q -

What more question did you ask to Nilo Junio regarding his answer that they were robbed?

A -

I also asked him whether he recognized the person who robbed them.

Q -

What was the answer?

A -

He answered he did not recognize them because it was night time. ?" (pp. 45-46, tsn, Jamorol)

This testimony of Pat. Macalisang was not rebutted by Nilo Junio or by any other prosecution witness.

On June 10, 1971 a policeman brought two persons for the identification of Nilo Junio. Nilo told the policeman that they were not the robbers. The policeman returned with another man to have him identified by Junio who stated that he was not one of the malefactors.

On June 11 Pat. Macalisang, on orders of Sgt. Faustino Labares, brought the appellant Lino Gregorio, to Nilo

Junio for identification. What took place during the confrontation was testified to by four witnesses, two for the prosecution and two for the defense. Nilo Junio, on cross examination, testified as follows:

" **ATTY. CATANE:**

Q

When this Lino Gregorio was brought before you in the hospital on June 11 by a policeman, did you tell the policeman that this is the fellow who stabbed you and shot you?

A

No, sir.

COURT:

... ..

Q

The Court is asking you now that on June 11, the policeman brought somebody to the hospital where you were confined to be identified by you?

A

Yes, sir.

Q

A

Did you identify him to be the accused in this case?

No, because I was afraid." (p. 64, tsn, Suan) Beatriz Junio, mother of Nilo, also testified as follows:

Q

" Now, the following day June 11, 1971, was there any other person brought to the hospital again where Nilo Junyo was confined?

A

On June 11, 1971, there was one person brought to the hospital.

Q

When he was brought in the hospital, what happened?

A

When this person (appellant) was brought inside the hospital, my son Nilo Junio stared at him and when he was asked by the policeman whether this person was among those who robbed the previous night, my son did not say anything." (pp. 8-9, tsn, Suan)

On the other hand, Pat. Macalisang, who brought the appellant to the hospital for the identification of Nilo Junio testified as follows:

"Q

As a policeman of Aloran, Misamis Occidental, do you remember having brought a person to the hospital of Oroquieta to be identified by Nilo Junio?

A

Yes, sir.

Q

Why did you bring that man to the provincial hospital at Oroquieta City to be identified by Nilo Junio?

A

Because I was ordered by my sergeant to pick up Lino Gregorio (appellant) and have showed to Nilo Junio at the Misamis Occidental Provincial Hospital where he was confined.

Q

Are you referring to that Lino Gregorio, the person who is accused in this case and now facing trial?

A

Yes, sir.

Q

And did you actually bring Lino Gregorio to the hospital at Oroquieta City in order to be identified by Nilo Junio as commanded by your superior officer?

A

Yes, sir.

Q

Were you able to see Nilo Junio in the hospital while you brought with you Lino Gregorio there?

A

Yes, sir.

Q

What did you do when you saw Nilo Junio at the hospital while you were bringing Lino Gregorio there?

A

Itold him, is this the one Loy who robbed you?

Q

Are you referring to the name Loy as the boy Nilo Junio?

A

Yes, sir.

Q

What answer, if any, did Nilo Junio give you when you accosted him of the identification of the robber?

A

He said no, including his swinging of his head. " (pp. 46-47, tsn, Jamorol)

The testimony of Pat. Macalisang was corroborated by the appellant Lino Gregorio, as follows:

"Q

On your part, while you were being confronted face to face with Nilo Junio in the hospital, did you say anything towards Nilo Junio?

A

There was.

Q

What did you say?

A

I told the boy, 'Dong, look if I am the one who made the robbery in your house. I am not a kind of a robber.'

Q

What did the boy answer, if any?

A

He was lying at that time and he looked at me from head to foot, but while lying down, he shook his head and said, 'He is not the one.'

Q

Beside Nilo Junio, who, if any, was his companion in the bedside?

A His mother.

Q

Do you remember if his mother said anything, if any, during the time when you were brought face to face with Nilo Junio?

A

When the policeman told Nilo Junio to carefully verify if he is the one, yet the boy said that he is not the one and even the mother told Nilo Junio to be sure or identify if he is the one, still the boy insisted in saying, 'He is not the one ' ' ' (pp. 96-97, tsn, Suan)

The People's evidence, however, shows that Nilo revealed to his mother that it was Lino Gregorio who shot and stabbed him. Thus, the Solicitor General, in his brief said:

"As soon as Lino Gregorio and policeman Macalisang had departed, Nilo Junio immediately confided to his mother that the fellow just presented to him was the one who shot and stabbed him (pp. 66, 67, tsn, Suan); whereupon she left for Aloran and reported to Chief Labares the revelation made by her son (pp. 6, 7, 10, 11, tsn, Suan;p. 18, tsn, Jamorol). Sgt. Labares repaired to the hospital to whom Nilo Junio gave a statement (Exhs. G-4, G-7) positively identifying Lino Gregorio as one of the culprits and the one who shot and stabbed him (pp. 19, 25, tsn, Jamorol; pp. 6, 143, rec). Consequently, Lino Gregorio was apprehended and brought to the PC headquarters for investigation (p. 11, tsn, Suan.)" (pp. 7-8, Solicitor's Brief)

And, explaining why he did not point to the appellant as one of the malefactors during the confrontation at the hospital on June 11, 1971, Nilo stated that he was afraid. Hereunder is his testimony on this point:

"Q

Why were you afraid?

A

Because that fellow (appellant) was making noise and making movements of his arm.

Q

Where was he doing those things-making noise and showing unusual movements of the hands?

A

There, when he entered the hospital.

Q

What noise was he making?

A

He said: 'Where is that boy, where is that boy, this policeman is only guessing.'

Q

To whom did he (appellant) address those words when he said where is the boy?

A

The other patients.

Q

Was he already inside your room in the hospital when he was uttering those words?

A

Yes, sir.

Q

And what movements of the hands did he make?

A

He was pinpointing at me." (pp. 64-65, tsn, Suan.)

The foregoing testimony does not indicate any threat which would make Nilo afraid. At any rate, the foregoing testimony of Nilo was denied by Pat. Macalisang who brought the appellant to the hospital. The patrolman testified as follows:

"Q

During the time that this Lino Gregorio was brought by you before Nilo Junio in the hospital, before you asked Nilo Junio whether the man you were bringing was the robber, did you notice any act made by Lino Gregorio?

A

None.

Q

How did you conduct Lino Gregorio in the presence of Nilo Junio?

A

I held him. (witness was demonstrating by holding the left arm.)

Q

Did you hear Lino Gregorio uttered something at the time you brought him to Nilo Junio for identification?

A

Yes.

Q

What did he say?

A

He said, 'am I the one Loy, see or look at me if I am the one.'

Q

Did Nilo Junio answer?

A

Yes, he answered by saying, no, he was not the one.

Q

When Lino Gregorio, uttered those words, 'am I the one Loy,' was it in loud voice, in a natural way or soft tune?

A

In a natural voice." (p. 48, tsn, Jamorol)

The appellant also denied that he ever made any threatening acts during the confrontation at the hospital when he testified as follows:

'Q

Nilo Junio in his direct testimony here declared that when you were conducted by a policeman in the Provincial Hospital at Oroquieta City to be identified by him if you were one of the culprits or one of the robbers on the night of June 6, 1971, he was forced to tell the policeman that you were not the one because he was afraid of you because you were brandishing your hands in a threatening mode to him. What can you say as to that?

A

I was not threatening him. As a matter of fact, I was being held by a policeman and the policeman asked Nilo Junio to identify me." (pp. 95-96, tsn, Suan)

We find it difficult to believe the explanation of Nilo Junio why he did not identify the appellant during the confrontation at the hospital. There was no reason to be afraid. Assuming that what was uttered by the appellant were the words testified to by Nilo himself, there was no threat in the statement: "Where is that boy, where is that boy, the policeman is only guessing."

The Solicitor General, however, in his brief, made this unfortunate statement:

"At any rate, any uncertainty (on whether there was a threat or not) in Nilo's testimony is dispelled by appellant's own admission that during the confrontation with Nilo at the Hospital, he told the boy, 'Do, be careful, you may be inviting' (p. 110, tsn, Suan) which words, even if said in a natural voice could have sufficiently cowed the ailing 15-year old into silence." (p. 14, Solicitor's Brief)

The Solicitor misquoted what was allegedly stated by the appellant. A verification of the transcript shows that what was stated by the appellant was the following: "Do, be careful, you may be inventing," not "inviting. " "Inviting" may be a veiled threat to mean "inviting trouble" or "inviting danger" or "inviting harm." On the other hand, the correct word "inventing" does not convey any threat.

We are more inclined to believe that Nilo Junio pointed to Lino Gregorio as one of the malefactors on suggestion of the investigator Sgt. Faustino Labares. This came out during the examination of Nilo Junio by the court as follows:

"COURT:

Q Do you know Sgt. Labares?

A Yes, sir.

Q He came to see you in the hospital?

A

Yes, sir.

Q He told you about Lino Gregorio?

A Yes, sir.

Q And he even told you that Lino Gregorio is the man who shot you?

A

Yes, sir.

Q In other words, had it not been of Sgt. Labares telling you that it was Lino Gregorio who shot you, you should not have also told your mother?

A When they left, I told my mother that that is the man who stabbed and shot me." (pp. 66-67, tsn, Suan)

"... Her failure to mention in her report the fact that she could identify two of the alleged malefactors because she had previously known them at least by face—a very essential detail in the solution of a crime—engenders a suspicion that she was not altogether candid and truthful in her testimony. At any rate, the omission on so important a point, has rendered the evidence for the prosecution insufficient to establish appellants' guilty connection to the requisite degree of moral certainty." (People vs. David and Baesa, 75 Phil. 778)

On the other hand, the appellant reacted very strongly against his being picked up as a suspect by Pat. Macalisang. Upon leaving the hospital, after Nilo Junio failed to identify him as one of the malefactors, the appellant confronted Pat. Macalisang, as follows:

"What is the business of bringing me here and being identified as a robber when in fact, I am not a robber?"

Pat. Macalisang replied, "This is the action of Labares (Sgt. Labares). This Labares is fond of suspecting." (p. 97, tsn, Suan)

Upon learning that Sgt. Labares was responsible in his being brought to the hospital as a suspect, the appellant, instead of going home to his hometown in Jimenez, went directly to Aloran to see Sgt. Labares whom he found in

the public market of Aloran. What took place in the market was brought out in the following examination conducted by the Court:

"Q

Did you actually see Sgt. Labares in the market of Aloran?

A

So I walked towards the market place with the intention that I might meet on the way Sgt. Labares. Upon reaching the market place, I saw Labares sitting with his legs crossing, at a distance of 10 meters, policeman Macalisang also arrived. At that time, Labares did not notice me, but I heard him ask Macalisang, 'Is he the one?' Macalisang answered, 'He is not the one.'

ATTY. CATANE:

Q

What did you do?

A

So approaching Sgt. Labares, I confronted him his purpose in having told and be identified to which he answered that, 'Dong, I just told you so that you can also help solve this problem in this case.' " (pp. 98-99, tsn, Suan)

Sergeant Labares was the only rebuttal witness for the prosecution; he did not rebut the foregoing testimony of the appellant.

Due to the doubtful identification of the appellant, We give credence to the alibi of the appellant. The evidence for the defense shows that at about 6:00 in the afternoon of June 6, 1971, the appellant took his meal in the carenderia of Bartolome Acedera in the Municipality of Jimenez, which is 10 kilometers from the Municipality of Aloran. The barrio of Talingting, where the crime was committed, is two hours away by hiking from the Municipality of Aloran. The appellant stayed in the carenderia of Acedera up to 10:00 in the evening together with four companions who joined him in drinking. Thereafter, the appellant and his companions left the carenderia and were met at the corner of Calderon and Washington Streets by Patrolmen Rufino Putis and Romeo Matratar who were then on patrol duty. Noticing that the appellant was drunk, Pat. Putis advised him to go home. Instead of going home, the appellant drank beer at the ABC Hall

with Ramon Jemino, after which he proceeded to the direction of his house but stopped at a waiting shed where he fell asleep. He was awakened by Cpl. Balais who told him to go home.

The foregoing evidence was established by the testimonies of the appellant, Pat. Putis, Pat. Bala-is and Bartolome Acedera, the owner of the carinderia.

"Where the evidence of the prosecution is weak and betrays lack of concreteness on the question on whether or not the defendant is the author of the crime charged, alibi as a defense assumes importance." (People vs. Bulawin, 29 SCRA 710.)

"Where the identification of the accused as the author of the crime is unreliable, his defense of alibi assumes importance and may be given credence. (People vs. Cunanan, 19 SCRA 769.)"

"Although alibi is the weakest defense that an accused can avail of, it acquired commensurate strength where

no positive and proper identification has been satisfactorily made by witnesses of the offender's identity. (People vs. Baquiran, 20 SCRA 451.)"

We believe that the guilt of the appellant has not been established beyond reasonable doubt.

WHEREFORE, the appealed judgment is hereby reversed and the appellant acquitted, with costs de oficio.

SO ORDERED.

Teehankee (Chairman), Makasiar, Melencio-Herrera, Plana and Vasquez, JJ, concur.
Gutierrez, J., dissents.

DISSENTING OPINION

GUTIERREZ, J.:

I am convinced from the records of this case that the guilt of defendant-appellant Lino Gregorio has been proved beyond reasonable doubt and that the decision of the lower court should accordingly be affirmed.

I find eyewitness Nilo Junio both competent and credible. His detailed narration of the events relative to the robbery and the killing is clear and convincing. The evidence fails to show any mistaken identification of appellant Lino Gregorio. The defendant-appellant was not a stranger to Junio. The latter had known him prior to the incident. No motive appears in the records why Junio should single out Lino Gregorio from among several suspects to be one of the culprits in the grave crime of robbery with homicide. The identification was not only categorical—"Because he was the one who stabbed me"—but was repeated in other parts of his testimony as efforts to impeach his credibility were made.

What transpired in the hospital on June 10, 1971 was not a failure to identify but a silence arising from fear. As between the testimony of Patrolman Macalisang about the answer "No" accompanied by a swinging of the head and the testimony of Nilo Junio himself, I find the latter testimony more credible. When the appellant was brought before the hospital bed of the young witness, the appellant was loudly asking, "Where is that boy, where is that boy" and making threatening motions with his hands. The witness merely stared at the man who had inflicted the serious stab wound which almost killed him. The boy was afraid. But the day following the confrontation, Junio declared categorically in an affidavit taken by Sgt. Faustino Labares, that he recognized Lino Gregorio because he usually saw him in Aloran, Misamis Occidental and, in fact, could even recognize his voice. Part of the statement reads:

"Q -

Yesterday, Thursday, June 10, 1971, do you remember that there was a man taken by the police here in the hospital named Lino Gregorio, was he one of the persons who robbed you there on June 6, 1971, in your house in Talingting, Aloran, Misamis Occidental, at about 12:00 o'clock more or less midnight according to your affidavit of June 9, 1971?

A -

Yes, I remember he was the person of Lino Gregorio, one of the persons who robbed us last June 6, 1971 because I know him by his face or person I usually see him in the town of Aloran, Misamis Occidental when I go downtown even his voice I recognize him.

Q -

When you saw Lino Gregorio as one of the members of the robbers, did you declare in his presence yesterday, June 10, 1971 that he was one of the members of the robbers who robbed your house?

A -

No because I was afraid.

Q -

I am asking you again, why do you recognize him that he was (Lino Gregorio) one of the members of the robbers that time?

A -

Because there was light not yet put out when they entered that is why I clearly saw him.

Q -

Why were you afraid at the time when you saw him?

A -

Because of the movements of his hands together with the way he talk very sharp at me specially he was staring at me.

Q -

I am asking again about the same man Lino Gregorio, was he the very person?

A -

Yes, he was the very person because I recognized him by face and voice.

Q -

What was he doing at the time of the robbery?

A -

He was the one who shot me while I hide at the compartment for mats and pillows.

Q -

After you were shot, what did you do?

A -

I alighted because I was hit.

Q -

When you alighted what did he do?

A -

While I alighted I was stabbed by his hunting knife.

Q -

After that incident, what did they do next?

A -

They finished my elder brother because he was still alive." (Exhibit "G-3", page 142)

Furthermore, the appellant's participation in the crime was categorically asserted in open court. The trial court believed the prosecution witnesses.

In view of the above, I vote to affirm the sentence of conviction.

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