

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR MARTINEZ, JOHN DOE, RICHARD DOE, PETER DOE, DONAL DOE, GEORGE DOE AND MIKE DOE, ACCUSED-APPELLANTS.

G.R. No. 100813. January 31, 1992

Ponente: MELENCIO-HERERRA, J.

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MELENCIO-HERERRA, J.:

A Murder case certified to this Court by the Court of Appeals by reason of the penalty of which it had imposed.

The crime scene is at a place called the Flamingo Cocktail in Lounge, situated along M. Castillo St., Mangagoy, Bislig, Surigao del Sur. The respective groups of both the victim Arnulf Piatos and Appellant Nestor Martinez were habitués of said place. Appellant's group, mostly Forest Rangers employed by the Paper Industries Corporation of the Philippines (PICOP), was usually armed.

In the evening of 7 December 1988, Appellant Martinez and his group of six (6) (TSN, 20 March 1989, p. 5) arrived at the lounge and was entertained by the lounge's five (5) lady entertainers, among them, one Nenita Aclao (TSN, 14 June 1989, p. 6). Appellant and his group had beer and Tanduay Rum, while the ladies were served ladies' drinks (TSN, 20 March 1989, p. 6). After a short while, a member of Appellant's group, who was described to be "short, slim, of old age and ugly" (TSN, 21 March 1989, pp. 9-10) approached the lounge's manager, Jean Pareño, impolitely complaining about the cold treatment they allegedly got from one of the lounge's entertainers. He bragged about their connections with a certain Col. Cruz.

At around 10:00 o'clock, the Victim's group of five (5) to six (6) people arrived. One of the lounge's entertainers, Ivony Sayson (a.k.a. Geraldine), joined the group while they were having beer.

Not long afterwards, Appellant's group left the place, huddled and conversed with somebody just outside the lounge near a yellow-colored pick-up vehicle belonging to PICOP (TSN, 21 March 1989, p. 16). However, before leaving the lounge, Appellant castigated the cashier for allegedly charging them a very high amount (TSN, 21 March 1989, p. 12).

Back inside the lounge, one Arturo belonging to the Victim's group was informed about a certain friend wanting to talk to him outside the lounge (TSN, 21 March 1989, p.18). Arturo obliged but forced Ivony Sayson (Ivony, for short) to accompany him. Once outside, Arturo was manhandled by Appellant's group. Ivony also received some of the blows as Arturo held on to her in an effort to shield himself from his attackers. Appellant, standing a meter away from it all, simply watched the melee (TSN, 20 March 1989, pp. 8-9).

By this time, the affray had attracted the attention of the lounge's waiter Ronie Salazar, who, upon rushing outside, saw Arturo lying on the ground with Ivony on top of him seemingly trying to protect the former. Salazar tried to extricate Ivony from Arturo's grip, seeing the former in pain from the blows coming from Arturo's attackers. Failing in this, Salazar watched helplessly beside the lounge's door (TSN, 20 March 1989, p. 9).

Soon, the Victim himself was seen rushing out to help (TSN, 20 March 1989, p. 9). The Victim succeeded in

pulling Ivony from Arturo's clutches and in helping both get up. A man in Appellant's group, apparently resenting this interference, drew and pointed his gun against the Victim. The latter also drew his gun and pointed the same against another man belonging to Appellant's group. But Appellant's group all drew their guns and pointed the same at the Victim (TSN, 20 March 1989, p. 10). Seeing that he was on the losing end, the Victim tucked his gun, turned his back and proceeded to re-enter the lounge (TSN, 20 March 1989, pp. 10-11). With the Victim not even having taken two steps forward, Appellant aimed his gun at the former's head and pulled the trigger. The Victim was hit at the nape and died almost instantly. Ronie Salazar, standing beside the lounge's door, was hit by splinters from the lone gunshot (TSN, 20 March 1989, p. 4). There were no other persons at the time of the incident except Appellant's group (TSN, 20 March 1989, p. 38).

An Information, dated 20 December 1988, was filed with the Regional Trial Court, Bislig, Surigao del Sur, against Appellant and six (6) other unnamed accused, for Murder.

Upon arraignment, Appellant entered a "not guilty" plea and trial ensued. Ronie Salazar, a waiter at the lounge, was the star prosecution eyewitness. He described the occurrence as above narrated.

On the other hand, Appellant did not take the witness stand but relied on the testimonies of his two alleged eyewitnesses, namely Joselito Rosal, a former waiter of the lounge, and Nenita Aclao, an entertainer. Rosal and Aclao testified that it was not Appellant who shot and killed the Victim but another man in Appellant's group, with a bigger body than Appellant, a round face, and sporting a moustache.

On rebuttal, the prosecution presented Jean Pareño, the Lounge's manager, to disprove Joselito Rosal's presence in the Lounge on the night of the incident, and P/FC Tomas M. Feliscuzo, Chief Investigator, to disprove Nenita Aclao's alleged eye-witness account.

On sur-rebuttal, the defense presented Annie Gallero, an entertainer, to prove Rosal's presence at the Lounge that fateful night.

The Trial Court[1] gave "no credibility to the declaration of Aclao in trying to exculpate Martinez from criminal liability. There is no showing that Ronie Salazar and Cpl. Tomas Feliscuzo were harboring evil motive to falsely testify against Nestor Martinez. The court have (sic) observed that when Nenita Aclao testified she could not spontaneously answer all the questions even of the defense counsel; it takes her several seconds even minutes to think before answering any question propounded to her. Her demeanor in testifying created a serious doubt of (sic) the court of his sincerity and truthfulness" (RTC Decision, p. 15). Judgment was thus rendered finding Appellant guilty. The dispositive portion of the decision reads:

"WHEREFORE, finding accused Nestor Martinez guilty beyond reasonable doubt of the crime of Murder, the court sentences him to suffer the penalty of reclusion temporal in its maximum period or an imprisonment of Seventeen (17) years, Four (4) months and One (1) day to Twenty (20) years, to be served by him in the National Penitentiary, Muntinlupa, Metro-Manila, with cost against him.

"The accused is hereby ordered to pay the heirs of the victim the amount of P30,000.00 for his death; the amount of P92,000.00 which was spent during the funeral; the amount of P20,000.00 for moral damages; and P10,000.00 for exemplary damages without subsidiary imprisonment in case of insolvency." (Record, p. 199).

Elevated to the Court of Appeals, a Decision was rendered affirming the Court a quo's findings but modifying the sentence to . Although the Appellate Court had, in fact, rendered judgment, upon the Solicitor General's Motion, the case was certified to this Court for review pursuant to Section 13, Rule 124 of the Rules of Court[2] due to the penalty of that it had imposed.

Appellant, in professing his innocence of the crime, alleges a number of errors:

- I. That the Honorable Trial Court grossly erred in appreciating the facts of the case and the evidence presented by the prosecution;
- II. That the Honorable Trial Court grossly erred in taking credence to the testimony of Ronie Salazar, allegedly the lone eyewitness to the crime;
- III. That the Honorable Trial Court erred in finding accused Martinez of the crime of murder 'guilty beyond reasonable doubt.'

We see no reason to deviate from the findings of the Trial Court, as affirmed by the Court of Appeals. Settled is the rule that given the opportunity to observe the witnesses on the stand and to assess their credibility not only on the nature of their testimony but also their demeanor under questioning and absent the usual exceptions, the findings of the Trial Court on questions of fact are accorded the highest respect on appeal. (*People v. Francisco*, G.R. No. 69580, 15 February 1990, 182 SCRA 305).

As to which story is more acceptable and credible, the rule in this jurisdiction is that unless there is showing that the Trial Court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, the Appellate Court will not disturb the factual findings of the lower Court (*People v. Baduya*, G.R. No. 44448, 7 February 1990, 182 SCRA 57; *People v. Ablaza*, G.R. No. L-27352, 30 SCRA 173 [1969] ; *People v. Javier*, G.R. No. 77756, 26 March 1990, 183 SCRA 182 citing *People v. Jose Pirreras*, G.R. No. 63462, 6 November 1989 and *People vs. Eduardo Paco y Tamayo*, G.R. No. 76893, 27 February 1989).

The main bone of contention is the testimony of prosecution eyewitness, waiter Ronie Salazar, which, allegedly, is inconsistent as to how said witness learned about Appellant's name. Thus, he stated that he came to know Appellant's name before the shooting incident because the waitresses told the waiters the names of customers so that the waiters could easily serve them. Later, however, he testified that he came to know Appellant's name when one of the waitresses, Annie, visited him at the hospital and informed him of the name.

Minor inconsistencies in the testimony of prosecution witnesses, however, do not affect their credibility, as what is important is that they had positively identified the accused as the assailant (*People v. Ferrera*, G.R. No. 66965, 18 June 1987, 151 SCRA 113). The matter of how Salazar learned about Appellant's name is inconsequential as long as the identity of the person the witness saw at the scene of the crime is consistent with the identity of the person he identifies in open court. Categorical is Salazar's pronouncement in this regard.

R. Salazar: cross

"Q.

A. Nobody told me that it was Nestor Martinez except myself, I saw him personally shot (sic) the victim" (TSN, 20 March 1989, p. 30).

Besides, it was not the first time Appellant was seen in the lounge. Appellant was a habitue of the lounge. He had thus become a familiar figure therein, thereby, ruling out mistake in identification. Prosecution witness Salazar (TSN, 20 March 1989, p. 19) and defense witnesses Nenita Aclao (TSN, 14 June 1989, p. 5) and Joselito Rosal (TSN, 2 June 1989, p. 4) testified to this effect. Moreover, the scene of the crime was well lighted, the lounge having "series of lights or alternating lights or neon lights" (TSN, 2 June 1989, pp. 11-12).

No motive may be imputed, nor has any been alleged, on the part of witness Salazar to falsely identify Appellant as the assailant. His statement is entitled to full faith and credit (*People v. Demecillo*, G.R. No. 83186, 4 June 1990, 186 SCRA 161, citing *People v. Berbol*, G.R. No. 71527, 10 August 1989, 176 SCRA 202; and *People v. Espinosa*, G.R. No. 72883, 20 December 1989, 180 SCRA 393), in the absence of evidence to the contrary.

Nor can we ascribe negative implications to Salazar's failure to execute an Affidavit following the investigation, the Court having taken judicial notice of reluctant witnesses to a crime (*People vs. Sagun*, G.R. No. 86818, 14 May 1990, 185 SCRA 405). The initial reluctance of witnesses to volunteer information about a criminal case and their unwillingness to be involved in criminal investigations due to fear of reprisal is common and has been judicially declared not to affect credibility (*People v. Rosario*, G.R. No. 46161, 25 February 1985, 134 SCRA 497). Salazar, himself a victim of the shooting incident, admitted hesitation to file a case for fear of Appellant and his men. Thus, he said:

R. Salazar: direct

"Q. You were a victim also of that shooting incident, why did you not file a case also against Nestor Martinez and companions?

A. I did not file because I was afraid.

Q. Afraid of what?

A. For they might come back, sir.

Q. They might what?

A. I was a victim and it is very difficult for me because they might come back.

Q. But why are you testifying now?

A. I testified because I pity Mrs. Piatos, because she come to me and requested me to help her" (TSN, 20 March 1989, p. 15).

Failure to reveal or disclose at once the identity of the accused does not necessarily affect, much less impair, the credibility of witnesses (*People v. Valdez*, G.R. No. 75390, 25 March 1988, 159 SCRA 152). Besides, Salazar's three (3)-month silence can hardly be considered unreasonable.

Appellant takes further issue with the non-presentation of the Victim's companions, who, he alleges, may be vital witnesses. We have repeatedly held, in criminal cases, that the non-presentation of all the probable witnesses does not detract from the case for the prosecution since the number of such witnesses, who should be called to testify, is addressed to the sound discretion of the prosecuting officer (*People v. Aldeguer*, G.R. No. 47991, 3 April 1990, 184 SCRA 1 citing *People v. Castillo*, G.R. No. 32864, 8 March 1989; *People v. Andiza*, G.R. No. 71986-87, 19 August 1988, 164 SCRA 642). Assuming that the Victim's companions were vital witnesses and their testimonies material, nothing could have prevented the defense from presenting them as their own witnesses in order to discredit the testimonies of those who testified for the prosecution. The presumption of suppressed evidence does not apply when the same is equally accessible or available to the defense (*People v. Araya*, G.R. No. 24780, 29 June 1981, 105 SCRA 133).

The same rule applies with the non-presentation of the weapon used, this being merely cumulative evidence and the post mortem examination report having substantially established the gun shot wound as the cause of death (Exhibit "E") and which suffices to prove corpus delicti (*People v. Ferrera*, G.R. No. 66965, 18 June 1987, 151 SCRA 113; *People v. Gupo*, G.R. No. 75914, 24 September 1990, 190 SCRA 7).

Appellant also decries his alleged frustrated desire to testify in Court. But this is now water under the bridge. Appellant had all the right (Rule 115 [i] [d]) and opportunity to do so. He was properly represented by his counsel of choice and there was no hindrance to his testifying except his own volition. While Appellant's silence will not in any manner prejudice him, he cannot now be heard to complain for his failure to avail of his right to be a witness in his own behalf. If Appellant felt that he was deprived of his rights, he could have easily moved for new trial or reconsideration. He did not.

All things considered, we hold that the degree of proof required in criminal cases has been met, moral certainty being the judicial measure by which an accused maybe convicted (Rule 133[2]).

The aggravating circumstance of treachery, indeed, qualifies the killing to Murder, all the elements thereof being attendant in this case (People v. Sorio, G.R. No. 86211, 17 October 1990, 190 SCRA 548). The Victim was shot at the nape after he had turned his back and when he was completely defenseless having tucked his gun back to his waist. The risk arising from any defense that the Victim could have made was completely nil.

However, as the Court of Appeals has held, the penalty imposed and the civil indemnity fixed by the Trial Court needs modification, thus:

"Murder is punishable with reclusion temporal in its maximum period to death. Since there is neither aggravating nor mitigating circumstance, the penalty should be imposed in its medium period, which is . The civil indemnity should also be raised to P50,000.00 (People v. Sison, G.R. No. 86455, September 14, 1990)" (CA Decision, p. 10).

WHEREFORE, the Decision of the Court of Appeals under review is hereby **AFFIRMED**, in toto. Costs against accused-appellant, Nestor Martinez.

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

[1] Judge Martin V. Vera Cruz, Presiding.

[2] Sec. 13. Quorum of the court. x x x

Whenever a Criminal Cases Division should be of the opinion that the penalty of death or life imprisonment should be imposed in a case, the said Division after discussion of the evidence and the law involved, shall render judgment imposing the penalty of either death or as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

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