

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PACIFICO DUNIG Y RODRIGUEZ, DEFENDANT-APPELLANT.

G.R. No. 101799. November 06, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

There were two witnesses who allegedly saw the killing, not to mention the victim herself, who identified her assailant shortly before she died. Yet the Solicitor General, who is usually for sustaining the conviction by the trial court, is unconvinced and has asked for its reversal.

Pacifico Dunig was formally charged with the murder of Marilyn Canatoy, then 14 years old, in an information filed with the Regional Trial Court of Bulacan. The allegation was that on April 5, 1990, in San Ildefonso, Bulacan, he repeatedly stabbed and thus killed the said girl, the attack being accompanied with treachery, evident premeditation and abuse of superior strength.[1]

To prove its case, the prosecution presented three witnesses, besides the doctor who testified on the cause of the victim's death. These were Maylin Montes, her sister, Katherine Montes, and their mother, Teresita Montes.

Maylin Montes, who was ten years old at the time of the trial, said that at about 7 o'clock in the evening of April 4, 1990, she, Katherine, a certain Flory, and her Ate Marilyn went to sleep at the resthouse belonging to one Atty. Andrade. Marilyn slept in a bamboo bed, and the rest of them slept under the bed. Maylin said that at about 3 o'clock in the morning, she saw Dunig stab Marilyn in the neck three times. The three girls ran to Andrade's house about 8 meters away where her father and mother were staying. Marilyn did, too, and collapsed at the door.[2]

Katherine Montes, thirteen years old at that time, corroborated her sister's testimony. She said she also saw Dunig running away after she heard her Ate Marilyn screaming. She said she ran to the house ahead of Marilyn and she heard the stricken girl say, "Nanay, nanay, sinaksak ako ni Pico." [3] "Pico" is Dunig's nickname.

Teresita Montes, the girls' mother, declared on the stand that at about 9 o'clock in the morning of April 4, 1990, she saw Pico and her niece Marilyn quarreling. At about 3 o'clock the following morning, she was awakened when Marilyn knocked at her door. Marilyn's neck was bleeding, and she cried to her: "Nanay, nanay, bigyan ninyo ako ng katarungan dahil sinaksak ako ni Pico." A minute later, she died. Behind Marilyn were Maylin, Katherine and Flory.[4]

Dr. Nicanor Cruz informed the court that Marilyn died of hemorrhage due to multiple stab and incised wounds in the neck. He opined uncertainly that the victim might or might not have been able to speak or run to the house after the stabbing.[5]

Dunig's defense was alibi. He said that on the night in question, he was alone in a nipa hut in Matinbubong, San Ildefonso, Bulacan, where he went to sleep at 9 p.m. and awoke the following morning at 6 o'clock. He swore he was not in the resthouse where, and at the time, Marilyn was killed.[6]

Judge Amado M. Calderon, disbelieving him, found him guilty as charged.[7] This Court, after considering the evidence, holds that the conviction cannot stand.

Alibi is unquestionably a weak defense, and it is clearly so in the case at bar. Dunig has not presented a single witness to corroborate him. There is also the admitted fact that the nipa hut where he supposedly slept was only a kilometer away from the scene of the crime.

However, we have repeatedly stressed that a person's conviction must rest not on the weakness of his defense but on the strength of the prosecution. The accused can rely on the constitutional presumption of his innocence. It is for the prosecution to overcome that presumption with convincing proof that the accused is guilty; otherwise, he must be absolved. In the case at bar, we find that the prosecution has not proved its case.

The testimonies of the two alleged eyewitnesses to the killing are not believable. While insisting that she saw Dunig stab Marilyn, Maylin also admitted that it was pitch dark when they awoke and there was not a single light in the resthouse or nearby. (Or from the moon either, for that matter.) Katherine said she only saw "what looked like a shadow" and concluded it was Dunig. Assuming the sisters did wake up when Marilyn screamed, it would have taken some time before their eyes could get accustomed to the darkness. Yet both said they immediately recognized the accused-appellant.

If there was anything certain about their testimonies, it was their certainty that the resthouse was dark when they allegedly saw Dunig stabbing their cousin.

Maylin agreed it was "so dark."

Atty. Ramirez:

Q: This resthouse where you and Marilyn, Flory and Katherine were sleeping, there was no inside light in that early morning of April 5, 1990?

A: None, sir.

Q: There was no outside light in that resthouse?

A: None, sir.[8]

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Atty. Ramirez:

Q: It was dark inside that resthouse?

A: Yes, sir.

Q: It was so dark inside that resthouse that early morning that you could not see anyone who would enter the resthouse itself?

A: Yes, sir.

Q: It was so dark that you could not even see or you could not recognize anyone who could enter the resthouse?

A: Yes, sir.

COURT:

How could you see if it was dark?

Atty. Ramirez:

No more question, Your Honor.[9]

Katherine demurred, saying "it was not too dark."

Q: You want to impress upon us that immediately before your Ate Marilyn was stabbed, you had seen Dunig?

A: Yes, sir.

Q: Are you sure of that?

A: Yes, sir.

Q: In what particular place did you see Dunig immediately before your Ate Marilyn was stabbed?

A: In the resthouse, sir.

Q: Outside or inside the resthouse?

A: Inside, sir.

Q: The resthouse was unlighted at that time, was it not?

A: No, sir.

Q: It was pitch dark because you could not see anyone or recognize anyone?

A: It was not too dark and a shadow passed by me, sir.

Q: You mean to tell us that you actually saw a shadow that passed?

Fiscal:

The witness said "parang shadow."

Atty. Ramirez:

What I saw something passed looked like a shadow.

Witness:

A: It was really a person, sir.[10]

So much for the sisters for the nonco. Now for their mother.

There is some confusion as to who arrived first in the house, Katherine saying it was she, Maylin and Flory who did while Teresita Montes, her mother, said it was Marilyn. But that is not really important. What is Teresita's testimony that Marilyn said to her a minute before the girl died: "Nanay, nanay, bigyan ninyo ako ng katarungan dahil sinaksak ako ni Pico."

If it is true that the victim did make that statement before she died, it should qualify as a dying declaration and so can be considered an exception to the hearsay rule. Nonetheless, it cannot be automatically accepted as a truthful accusation and is still subject to the test of credibility.

A dying declaration is entitled to the highest credence on the theory that a person who knows he is on the verge of death is not likely to make a false accusation. However, the declaration, albeit presumably in good faith, may still be based on an erroneous identification of the declarant's killer.

In the case at bar, it has been established by the testimonies of the Montes sisters that the resthouse was dark, if not, indeed, completely dark. Like the other three girls who were sleeping there with her, Marilyn could not possibly have seen the person who was attacking her. At best, she could probably only surmise it was Dunig, but that was a most uncertain identification. A surmise is not evidence. A man's honor and liberty cannot be forfeited because the victim supposedly pointed to him as her killer although she could not possibly have seen the person who was stabbing her in the dark.

At that, we cannot even be certain that the dying Marilyn really made that declaration against Dunig. By corroborating their mother's testimony, Maylin and Katherine may have instead enfeebled it because their own credibility regarding what they said they saw in the dark resthouse is also suspect. It must also be noted that the doctor who autopsied the victim's body was not sure if Marilyn would have been able to speak at all after she was stabbed because of the severity and location of her wounds.[11] Significantly, the statement she supposedly made to Teresita was strenuously long for a person who died a minute later.

It would seem that the mother and her daughters have put two and two together and come out with a sum of five. Teresita makes much of the quarrels of Marilyn and Pico to bolster her belief that Dunig is the girl's killer. Such quarrels, if true, may be evidence of motive but not necessarily of murder. In fact, Katherine said that the day before Marilyn was killed, Dunig was in the resthouse and apparently in good spirits, as he was strumming his guitar and singing.

It is noteworthy that Katherine, seeing what looked like a shadow ("parang shadow") pass by her in the dark that morning, immediately concluded it was Dunig who had stabbed Marilyn. As for Maylin, she was sure Dunig was the killer for the preposterous reason that he was in the resthouse in the afternoon of April 4, 1990.

Thus -

COURT:

Q: You stated, Maylin, that it was Pacifico Dunig who stabbed Marilyn. And you also said that there was no light whatsoever that time. How did you know that it was Pacifico Dunig who stabbed Marilyn?

A: Because in the afternoon, he was already there, Your Honor.

Q: Where was he?

A: He was seated in the pavement, Your Honor.

Q: Pavement of what?

A: This is a bamboo and it was encircled with cemented seat, Your Honor.

Q: Is that the only basis in saying that it was Pacifico Dunig who stabbed Marilyn?

A: Yes, Your Honor.[12]

The evidence of the prosecution is a slender reed. It cannot sustain a conviction. The defense is weak, but the prosecution is even weaker, based as it is mainly on the narration of the alleged eyewitnesses who claimed to have seen the killing, one in total darkness and another in near total darkness that enabled her to see a shadow that passed by her. The tales are implausible. We cannot accept them. The Court has no choice but to exonerate the accused-appellant because his guilt has not been proved beyond reasonable doubt.

The following observations in *People v. Pecardal*[13] are appropriate:

A life has been taken and justice demands that the wrong be redressed. But the same justice that calls for

retribution cannot convict the prisoner at bar whose guilt has not been proved. *Justitia est duplex, viz., severe puniens et vere praeveniens*. Even as this Court must punish, so too must it protect. Conceivably, the conviction of the accused-appellant could add another victim in this case.

Accordingly, the appealed decision is REVERSED and SET ASIDE. The accused-appellant is ACQUITTED and must be released immediately. It is so ordered.

Padilla, Griño-Aquino, and Bellosillo, JJ., concur.
Medialdea, J., on leave.

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- [1] Rollo, p. 9.
[2] TSN, February 20, 1991, pp.10-14.
[3] TSN, April 24, 1991, pp. 1-30.
[4] TSN, February 25, 1991, pp. 1-9.
[5] TSN, March 13,1991, pp. 4, 9, 11.
[6] TSN, May 22, 1991, pp. 1-19.
[7] Rollo, p. 18.
[8] TSN, February 20, 1991, p. 29.
[9] TSN, February 20, 1991, pp. 33-34.
[10] TSN, April 24, 1991, pp. 13-14.
[11] TSN, March 13, 1991, p. 9.
[12] TSN, February 20, 1991, pp. 30-31.

[13] 145 SCRA 647.

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