

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO VALIENTE, ACCUSED-APPELLANT.

G.R. No. 103269. September 02, 1992

Ponente: NOCON, J.

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NOCON, J.:

From the decision of the trial court, accused Reynaldo Valiente filed an appeal with the Court of Appeals, having been found guilty beyond reasonable doubt of the crime of Murder by the trial court and was sentenced accordingly to suffer an indeterminate penalty of from 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 and to pay the heirs of the deceased Renato Portullano an indemnity of P30,000. The prosecution, likewise interposed an appeal challenging the penalty imposed.

The appellate court sustained the finding of guilt and conviction of the accused, but modified the penalty imposed to reclusion perpetua and increased the civil indemnity to P50,000.00. Thus this case was certified to Us for review.

Finding no reversible error, We uphold the decision of the Court of Appeals.

The Information filed against Reynaldo Valiente states:

"That on or about July 29, 1987, in the Municipality of Calinog, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above named accused, armed with a firearm, without any justifiable motive, with treachery, evident premeditation and taking advantage of the nighttime to better realize his purpose, with deliberate intent and decided purpose to kill, did then and there wilfully, unlawfully and feloniously attack, assault, shoot, hit and wound one Renato Portullano with the firearm with which he was provided at that time, thereby inflicting two (2) gunshot wounds on the vital parts of his body which caused his death immediately thereafter." [1]

A brief statement of the facts reveal that on July 29, 1987, at about 9:00 p.m., Renato Portullano, a patient at the male ward of Calinog District Hospital, Calinog, Iloilo, while lying on his bed was shot twice by a masked gunman. The first shot hit him on his right jaw, while the second, his lumbar region on his left side back. The victim died while under the medical attention of Dr. Roberto Castronuevo, resident physician and OIC, and the nursing staff of the said hospital.

The identity of the assailant was established mainly through the statements of three eye-witnesses, namely Primitiva Portullano, Nenita Portullano and Brenda Portullano, the first being the mother of the victim while the latter two were his sisters.

The three witnesses' account of the incident tend to show that on the said fateful day Renato Portullano, who was then seriously ill of influenza, was being attended to by his mother and two sisters. Nenita was then at the door of the female ward from where she can see the patients of the male ward, while her mother, Primitiva and her sister,

Brenda, were lying together on a bed beside that being occupied by the victim. When Primitiva stood up to go to the bed of her son, a thud coming from the outside was heard. After a while, they saw a person running towards the male ward and entered it. The assailant fired two successive shots, with a 5-second interval, hitting the victim and then a supposed third shot was fired hitting the glass jalousie near the victim.

Primitiva and Brenda ran out of the room after the second shot, to shout for help. But while Brenda went to the female ward, her mother stayed at the door of the male ward and as she was standing there she recognized a man coming towards her as the accused. Reynaldo Valiente. The assailant shouted to the doctors that nobody should go out and ordered Primitiva to lie flat on her stomach, which she did. The accused stood near her for a while then ran outside of the hospital. At that instance, Primitiva stood up and shouted for Dr. Castronuevo who immediately came and proceeded to the male ward together with Primitiva and Brenda. But while inside, they saw a person at the window near the victim, pointing a gun at them.

Dr. Castronuevo and Brenda then ran out of the room, while Primitiva sought cover under the bed of her son, pulled him down from the bed and when he was already on the floor, dragged him outside the room near the information table. Primitiva became hysterical and proceeded to the female ward crying and shouting that it was Valiente who killed her son.

On the other hand, accused testifying in his behalf, denied responsibility for the shooting leading to the death of Renato Portullano. He alleged that he was on duty as maintenance man of the Calinog District Hospital on July 29, 1987 from 8:00 a.m. to 4:00 p.m. From work, he proceeded home to Barangay Bahi, San Julian, Calinog, which is about 3 kilometers from the hospital. From there, he went to his farm and applied fertilizer on his rice plantings. He returned to his house at the poblacion which is about 1 kilometer from the hospital at about 6:30 p.m.

At about past midnight that same day, a group of persons went to his house, invited him to go with them to the Municipal Building, as he was suspected of shooting "Commander Turko" in the hospital. Valiente did not accept the invitation, not until Mayor Alex Castigador intervened and convinced him to go with the authorities. The following day, he was subjected to a paraffin test.

Appellant alleged that before the paraffin test was conducted, he washed his hands which was full of grease, having helped in fixing the jeep they were riding on, and then lighted up with a match 3 mosquito coils upon instruction of a policeman.

Valiente denied having known the victim while still living, nor having talked to the mother and her daughters, Brenda and Nenita, on any occasion. He, however admitted having a brother, an NPA member by the name of Ramon Valiente, who was killed in an encounter with the 12th Infantry Battalion in 1986. He likewise denied knowing the deceased as Commander Turko or that his brother Ramon was known in NPA circle as Ka Tirso.

The main issue in this case is whether the masked man who shot the victim twice was positively identified by the prosecution witnesses as the accused-appellant.

It is the contention of the accused that his conviction was not supported by that quantum of proof necessary for conviction. He particularly questions the court's giving credence to the testimonies of the prosecution witnesses, who are the mother and sisters of the victim, whose testimonies are tainted with bias and prejudice, and hence incredible, doubtful and unbelievable.

We do not believe so. On the contrary, We find the conclusions of the court a quo to be well substantiated by the evidence on record as to warrant conviction of the accused beyond reasonable doubt. The fact that the prosecution witnesses are related to the victim, does not necessarily cast serious doubt upon their credibility in the absence of

an improper motive in making the witnesses testify against the accused.[2] In the case at bar, We find none. As properly observed by the appellate court:

"While evidence as to the identity of the accused as the person who committed the crime should be carefully analyzed, it has been held that where conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should normally be accepted. And this is more so where the witnesses are near relatives, as in this case, because these people usually strive to remember the faces of the assailants.'"[3]

As to the witnesses' identification of the accused as the gunman, the trial court had this to say:

"The Court is convinced that while the identification of the accused as the masked gunman, who had his face covered with a colored handkerchief, as testified to by Brenda Portullano and wearing a hat as pointed to by Primitiva Portullano in her version, with his eyes visible through his own device, may have been obscure at first because of the inherent difficulty that said witnesses encountered, the testimony of Dr. Roberto Castronuevo to the effect that Primitiva Portullano, the mother, who was with him at the hospital staff (sic), giving emergency procedures to the victim, had even shouted 'He is from the hospital who is the killer,' and 'Valiente surely is the killer,' lend some color of truth to the mother's identification of the accused, whom she had seen shortly that evening and while his (sic) son was first confined at the hospital from July 4 to 29, 1987 and heard him converse with his (sic) son. The motherly instincts of Primitiva Portullano, who only reached Grade 6, could not have failed her when she identified the masked gunman as the accused, through his physical build and voice characteristics, and she wanted this to be confirmed through his (sic) son as pointed out by Dr Castronuevo who declared that while he was attending to the victim, Primitiva confronted her son, asking him 'Toto, it is Valiente for sure?' but the son could no longer answer.

" . . . Nenita Portullano, in her testimony also recalled having known him (the accused) for 7-years having been classmates with the accused in high school. He (sic) also saw him in the poblacion of Calinog and was familiar with his build and physical features. Brenda once rode with the accused in a passenger jeep bound for Roxas City to attend a rally of the League of Filipino Students in 1984 or 1985."[4]

x x x

"On the other hand, Primitiva and Brenda were aware of the hostile attitude of the accused to the victim, during the time when Renato was confined for the first time at the Calinog Hospital, on July 4, 1987 and was about to be discharged therefrom on July 6, 1987. According to Primitiva, she was present when after the accused entered his room, her son asked the accused, 'Nalds, you are here, are you working here?' to which the accused gave a curt 'No' answer. Then, when he was about to be discharged, there was an altercation regarding her son's refusal to have his picture taken. The accused was heard to say that during the time that Renato arrived, he could have killed him, to which her son replied that he should not go after him since he is willing to reform and live a new life.'"[5]

x x x

"It has been held that a person can be identified in the dark by his voice and structure of his body.[6] In the case at bar, the place where the accused shot the victim was even lighted. The Court is therefore persuaded to hold that by the concurrence of several characteristics, namely, the size of the person, his gait and tone of voice, the accused was properly identified by the prosecution witnesses, Nenita, Primitiva and Brenda as the masked gunman who shot the victim, Renato Portullano, to death in the evening of July 29, 1987, inside the male ward of the Calinog District Hospital in Calinog, Iloilo."[7]

As against the positive testimonies of the prosecution witnesses that the accused was the assailant, the latter's defense of alibi cannot prosper. Valiente himself testified that at the time of the incident, he was then at his house, which is some 1 to 3 kilometers from the District hospital where the shooting occurred.[8] He further said that, at

that time he was in the company of two men, Lorencio Lego and Ronnie Lou Lego,[9] who were not, however, presented as witnesses to corroborate his defense. The rule is that defense of alibi is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it is easily fabricated. For an alibi, as defense, to overcome the positive identification of the prosecution, it must satisfy the test of "full, clear and satisfactory evidence." This test requires not only proof that the accused was somewhere else other than the scene of the crime but clear and convincing proof of physical impossibility for the accused to have been at the place of the commission of the crime.[10]

On the alleged inconsistency of the testimonies of prosecution witnesses Primitiva, Nenita and Brenda Portullano with the testimonies of prosecution witness, Dr. Castronuevo and defense witnesses, Daquita and Lacuesta regarding the number of shots actually fired, the apparent conflict was resolved by the trial court as follows:

"The variance in the testimonies of the three prosecution eye-witnesses, Nenita Portullano, Primitiva Portullano and Brenda Portullano regarding the number of shots fired by the gunman and that of Dr. Castronuevo, Efren Daquita and Arthur Lacuesta, can be explained by the fact that in his testimony Efren Daquita who was at the main door of the hospital and who ran to the next building after hearing a loud noise there, declared that he fired a warning shot with his gun after he was pointed to by a masked man, and after he had (sic) fell flat on the floor and crawled outside." [11]

Other circumstances which the trial court relied upon are the following:

"1. The facility by which the masked gunman entered the hospital building through the main door, locked it and after shooting Renato in the male ward, had waited and threatened Dr. Castronuevo with a gun pointed at him from outside the window of the male ward, and thereafter made good his escape without any trace. This shows that the masked man was familiar with the location of the rooms and the entrance and exit doors of the hospital and said knowledge can only come from the accused, being the building maintenance man.

"2. The telephones in the information, drug store and a certain Jasmin had no dial tone, which could have been the work of a man conversant with the facilities in the hospital, and such familiarity, could have only come from the accused, who was the hospital repair man.

"3. The accused as the brother of Ramon Valiente, an NPA member, could have taken it against Renato who had the rank of Commander Turko for having surrendered to the military and in the process, reveal the secrets of the organization. In fact, there is reason to believe that accused and Renato were intimate friends, when Renato allegedly addressed the accused as 'Nalds', "[12]

Finally, the accused maintains that the positive result of the paraffin test conducted on him by Lt. Zenaida Zinfuego, Forensic Chemist of the PC Crime Laboratory, was merely circumstantial and should not be given any probative weight.

We do not agree. As a matter of fact, the trial court made a very interesting analysis on how the paraffin test gave the accused away as the real perpetrator, and We quote:

"As against the claim of the accused that in the afternoon of July 29, 1987, he went to his rice farm, with an area of 2 hectares and applied fertilizer thereon, consisting of 2 (and) 1/2 bags of mixed fertilizers, and that when he was at the laboratory room preparatory to being made to undergo a paraffin test, he was made to light three (3) 'kato' mosquito killers with matches, and the findings of Lt. Zinfuego on the result of the paraffin test, (Exhibits "A" and "B"), the Court finds that the latter deserves more credence than, and its probative value outweighs, the highly improbable version of the accused.

"The Court is not inclined to accept the testimony of the accused that he only washed his hands with water, without using soap after applying fertilizer on his farm, when he returned home to the poblacion and even before eating supper, and subsequently thereafter or for a period of 3 days, until he was in Camp Delgado,

where he was made to wash his hands with water before the paraffin test, it being contrary to the common experience and the ordinary habits of mankind. Moreover, the version of the accused that he was made to light with matches, three mosquito (Katol) killers after he had washed his hands with water and wiped them with a dirty piece of cloth before the paraffin test was conducted at the PC Crime Laboratory by S/Stg. Liderato Sidel was denied by the latter in his rebuttal testimony. This witness (Sidel) declared that after the accused had washed his hands, without soap, these were left to dry, without wiping them and that once the subject had washed his hands, the suspect cannot light a match or a mosquito killer, before the paraffin test is conducted.

“Clinching the prosecution's theory that the accused had recently fired a gun due to the presence of gunpowder residues embedded in his pores after the dermal paraffin test was conducted, is the findings of Lt. Zenaida Zinfuego, Forensic Chemist, of the PC Crime Laboratory, and a qualified expert on paraffin test, to the effect that the gunpowder residue found on both hands of the accused, are distinguishable from the specks caused by contaminants, because the latter float and are clustered in form and there is immediate reactions, while in gunpowder, there is a gap of five minutes before it reacts.

"Her explanation that the presence of more nitrate on the left hand than on the right hand of the accused as shown on the "XS" marks in Exhibit "D", results from the fact that the left hand was more exposed since it was covering the right hand when the gun was fired, is supportive of the prosecution's version that the accused was holding the gun with both hands when he fired it two times, hitting the victim and that the left hand was clutching the right hand. The Court finds no cogent reasons (sic) to depart from the findings of Lt. Zinfuego on the result and interpretation of the paraffin test made on the accused, Reynaldo Valiente." [13]

As to the proper imposable penalty, accused having been found guilty of the crime of murder, the latter should be meted the penalty of reclusion perpetua, there being no mitigating or aggravating circumstance. The civil indemnity for the death of the victim, Renato Portullano, should be P50,000.00 as ruled by the appellate court.

WHEREFORE, accused Reynaldo Valiente, having been found guilty of the crime of murder beyond reasonable doubt is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P50,000.00.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Melo, J., no part.

[1] Original Records, p. 1.

[2] *People v. Tunhawan*, G.R. No. L-81470, 166 SCRA 638 (1988).

[3] *People v. Alvarez*, G.R. No. 70446, 169 SCRA 730 (1989), citing *People v. Bernat*, G.R. No. L-55179, 120 SCRA 918 (1983). Decision, p. 12-13.

[4] Trial Court's Decision, pp. 12-13.

[5] *Ibid*, p. 11.

[6] *People v. Domen*, G.R. No. 47675-76, 120 SCRA 486 (1983).

[7] Trial Court's Decision, p. 13.

[8] TSN, September 21, 1989, pp. 4-5.

[9] TSN, *Ibid*, p. 5.

[10] *People v. Gaddi*, G.R. No. 74065, 170 SCRA 649 (1989).

[11] Trial Court's Decision, p. 9.

[12] *Ibid*, p.13.

[13] *Ibid*, pp. 14-15.

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