

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS PINTO Y JIMENEZ ALIAS "JAIME"; BUENAVENTURA CASTILLO Y PINTO ALIAS "INCIONG"; AND AQUILINO CASTILLO Y PINTO ALIAS "ADOR,...

G.R. No. 103963. March 09, 1994

Ponente: PUNO, J.

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PUNO, J.:

Accused appeal their conviction by the RTC, First Judicial Region, Br. 57, San Carlos Pangasinan[1] in Criminal Case No. SCC-1624. They were charged with Murder With The Use of Illegally Possessed Firearms in an Information, dated October 10, 1990, which reads:

"The undersigned hereby accuses BUENAVENTURA CASTILLO Y PINTO alias "INCIONG," CARLOS PINTO Y JIMENEZ alias "JAIME" and AQUILINO CASTILLO Y PINTO alias "ADOR" of the crime of MURDER with the use of Illegally Possessed Firearms, committed as follows:

That on or about the 24th day of August, 1990, at barangay Idong, Municipality of Bayambang, Province of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously shoot one Leopoldo de Leon with the use of unlicensed firearms, inflicting upon him the following gunshot wounds:

- '1. Blasted head (from mouth up); beyond recognition.
- '2. GSW, 3 x 1.5 cm., (R) side of the neck, directed upwards, no exit point noted.
- '3. GSW, 1.5 cm. (L) parasternal area, exiting at midaxillary line, 5th ICS (R). Slug recovered at said exit point.
- '4. GSW, 1.5 cm., (L) nipple, with burns, exiting at subcostal area, (R) (slug recovered).
- '5. Blasted proximal half of (L) forearm, medial aspect.
- '6. GSW, 0.7 cm., lateral aspect, middle 3rd, lateral aspect, (L) thigh, exiting at anterior aspect, 3 cm., distal 3rd, (L) leg.
- '7. GSW, 1 cm., proximal 3rd, lateral aspect, (L) thigh, exiting at medial aspect, 1.5 cm., distal 3rd of (L) leg.
- '8. GSW, 1 cm. antero lateral aspect, (R) thigh, proximal 3rd, exiting at (L) inguinal area, shattered.
- '9. GSW, 1 cm., lateral to exit of wound No. 8.'

which caused the death of Leopoldo de Leon as a consequence, to the damage and prejudice of his heirs in the amount of P _____, Philippine Currency.

"Contrary to Art. 248 of the Revised Penal Code."

Upon arraignment, accused-appellants pleaded not guilty and underwent trial.

Accused-appellants are related to each other and to the victim. Buenaventura (alias Inciong) and Aquilino "Ador" Castillo are brothers, while Carlos "Jaime" Pinto is their first cousin. The victim, Leopoldo de Leon, is the appellants' first cousin.

The prosecution presented three (3) eyewitnesses: VICENTE E. DE LEON,[2] TOMAS DALAYOAN,[3] and ROMEO DE LEON.[4] Their four (4) other witnesses were: EDUARDO CREDO-SOQUILA,[5] NORLY TAMONDONG,[6] ELIGIO LOPEZ,[7] DR. NESTOR PASCUAL,[8] and LYDIA E. DE LEON.[9]

From their testimonies, it can be gathered that at around eight o'clock in the morning of August 24, 1990, the victim, Leopoldo de Leon, together with his son, Vicente, and tenant Tomas Dalayoan, were cutting grass in their field.[10] Leopoldo's cousin, Romeo de Leon, was also cutting grass in the same field, some thirty (30) meters away from them.[11] Suddenly, the three accused-appellants arrived. Carlos "Jaime" Pinto and Buenaventura "Inciong" Castillo were armed with armalite rifle while Aquilino "Ador" Castillo was unarmed. Upon seeing them, Leopoldo raised his hands and pleaded, "Cousin, don't kill me because I have no fault." [12] Despite this plea, accused-appellants Carlos Pinto and Buenaventura Castillo released a volley of automatic fire at Leopoldo, killing him instantly.[13] They fired from a distance of three (3) to four (4) meters away from the victim. Accused-appellants fled from the scene of the crime.[14] Dalayoan reported the incident to the father of the victim who passed on the information to their barangay captain.

For his part, Romeo de Leon testified that he saw the three accused-appellants approach Leopoldo.[15] He dropped to the ground when the shooting started.[16] Accused-appellants passed by him while leaving the scene of the crime. He recognized them for they were known to him since childhood.

The body of Leopoldo was taken to the de Leon's house, where Dr. Pascual conducted his post-mortem examination. His findings, quoted in the Information filed against accused-appellants, are embodied in a report, dated August 27, 1990 (Exh. "E"). Dr. Pascual diagnosed the cause of Leopoldo's death as "Cardiorespiratory Arrest due to Hypovolemic Shock/Blasted Brain due to Gunshot Wounds." [17] He recovered two (2) slugs (Exh. "C") from the body of the deceased [18] which he handed over to the investigating officer, Pfc. Eligio Lopez. [19] Twenty-nine (29) M-16 armalite blank cartridges or empty shells (Exhs. "A" and "B") were found at the scene of the crime by the men of Barangay Captain Norly Tomondong, who delivered them to Pfc. Lopez. [20]

The defense forwarded by accused-appellants consisted mainly of denial, and in the case of accused-appellant Carlos "Jaime" Pinto, alibi. Testifying in their behalf, [21] they denied that bad blood or ill-will existed between them and the deceased.

The defense also presented as witness, ANACLETO TAMONDONG, a 33-year-old member of the INP in Urdaneta, Pangasinan and a resident of Barangay Sanlibo, Bayambang, Pangasinan. He corroborated accused-appellant Carlos Pinto's claim of alibi. According to the two, on August 24, 1990, Carlos was in the house of Anacleto starting 7:20 in the morning. [22] He was borrowing one hundred pesos (P100.00) from Anacleto. [23] Carlos stayed until almost noon because he waited for the heavy rain to stop. [24] Both Carlos and Anacleto heard gunfire coming from east of the latter's house. They, however, did not endeavor to ascertain where the shots came from. [25]

The defense further presented testimony regarding the arrest and detention of brothers Juancho and Manuel Gutierrez [26] in connection with the killing of the deceased, Leopoldo. The two were put under protective custody on August 25, 1990, and released on August 29, 1990. [27]

As a result of the killing of Leopoldo de Leon, two criminal cases were filed against the three accused-appellants.

The case at bench was one of them. The second was a case for Illegal Possession of Firearms and Ammunition,[28] which was tried by the RTC of San Carlos, Pangasinan, Br. 56.[29] On December 10, 1990, accused-appellants were acquitted in the Illegal Possession case. On October 30, 1991, however, they were all convicted of the crime charged in the case at bench. They were sentenced as follows:

"WHEREFORE, the Court finds the accused Buenaventura Castillo y Pinto alias "Inciong," Carlos Pinto y Jimenez alias "Jaime" and Aquilino Castillo y Pinto alias "Ador" guilty beyond reasonable doubt of the crime of murder and sentences each of them to suffer the penalty of Reclusion Perpetua and to indemnify the offended party of the amount of FIFTY THOUSAND (P50,000.00) PESOS and to pay the costs of suit.

"SO ORDERED."

Thus, this appeal. It is accused-appellants' contention that the trial court erred:

"x x x IN NOT RESOLVING THE DOUBTS IN FAVOR OF THE ACCUSED;"

"x x x IN COMPLETELY DISREGARDING THE DECISION OF THE REGIONAL TRIAL COURT, BRANCH 56, SAN CARLOS CITY (PANGASINAN) IN CRIMINAL CASE NO. SCC-1623 WHICH RESULTED TO THE ACQUITTAL OF THE ACCUSED;" and

"x x x IN CONVICTING THE ACCUSED ON THE BASIS SOLELY OF THE TESTIMONY OF A FABRICATED WITNESS, ONE WHO IS NOT LISTED AS SUCH IN THE COMPLAINT OR INFORMATION."

Accused-appellants assail their conviction because the trial court allegedly failed to appreciate the following: (1) the arrest and detention of Juancho and Manuel Gutierrez as the killers of the victim; (2) the presentation by the prosecution of Vicente de Leon who was not listed in the Complaint or Information; and (3) their acquittal by Br. 56, RTC of San Carlos, Pangasinan in Crim. Case No. SCC-1623, where the trial judge held it "doubts the veracity of witnesses Tomas Dalayoan and Romeo de Leon."

The appeal lacks merit.

Firstly, there is neither rhyme nor reason in the defense's argument that the arrest and protective detention of the Gutierrez brothers proved accused-appellants' innocence. It is not unusual for the police to arrest various suspects in the commission of a crime. Those whose guilt cannot be established by evidence are later released after investigation. Their release, however, cannot be interpreted that the police authorities erred in prosecuting other suspects against whom they have established a prima facie case. In the case at bench, the prosecution presented no less than three (3) eyewitnesses to the killing of Leopoldo de Leon. Unless their testimonies are shown to be untrue, accused-appellants cannot exculpate themselves.

Secondly, the defenses of denial and alibi cannot prevail over the positive identification of accused-appellants by witnesses Vicente de Leon and Tomas Dalayoan. In this regard, Vicente testified:

"Q (Atty. Calimlim)

Vincent, on August 24, 1990, you were on the field together with your father?

"A Yes, sir.

"Q You were cutting grass?

"A Yes, sir.

"Q And while you were there with your father, what happened?

"A My father was shot to death, sir.

"Q Who shot him to death?

"A Jaime and Inciong, sir.

"Q What is the name of your father?

"A Leopoldo de Leon, sir.

"Q You mentioned two (2) people who allegedly shot your father to death. Do you know them personally?

"A Yes, sir.

"Q You mentioned Inciong. Can you point to Inciong here in court, if ever he is here?

"A Yes, sir.

"Q Will you go down the chair and show to the court that Inciong?

(Witness touched the shoulder of a man inside the courtroom who identified himself as Buenaventura Castillo y Pinto alias 'Inciong')

"Q What is the name of the other person?

"A Jaime, sir.

"Q Do you know him personally?

"A Yes, sir.

"Q Will you go down your chair and if that person is here in court, please point to him.

(Witness pointed to a man inside the courtroom who identified himself as Carlos Pinto y Jimenez, alias 'Jaime')

"Q Do you remember if there were others with the two (2) persons whom you saw?

"A Yes, sir.

"Q What is his name?

"A Ador, sir.

"Q If that Ador is here in court, will you please go down again and point out that person.

(Witness pointed to a man inside the courtroom who identified himself as Aquilino Castillo y Pinto alias 'Ador')

"xxx xxx xxx

"Q After your father was shot, where did the three (3) go, if you know?

(Witness pointed to the south direction.)

"Q Do you mean to say that the three (3) proceeded on the southern direction?

"A Yes, sir.

"Q And the three (3) when they arrived at the scene of the crime were together, is that correct?

"A Yes, sir.

"xxx xxx xxx."

(TSN of February 7, 1991, pp. 3-7.)

On the same matter, witness Tomas Dalayoan declared:

"Q (Atty. Calimlim)

Do you know Leopoldo de Leon?

"A Yes, sir.

"xxx xxx xxx

"Q What caused his death?

"A He was shot, sir.

"Q Who shot him to death?

"A Buenaventura Castillo, Carlos Pinto and Aquilino Castillo, sir.

"Q Do you know those persons who shot him to death?

"A Yes, sir.

"Q If ever they are here now before this Honorable Court, can you point to each one of them?

"A Yes, sir.

"Q Please step down and point to Buenaventura Castillo.

(Witness pointed to accused Buenaventura Castillo.)

"Q Please step down and point to Carlos Pinto.

(Witness pointed to accused Carlos Pinto.)

"Q Please step down and point to Aquilino Castillo.

(Witness pointed to accused Aquilino Castillo.)

"Q You earlier pointed out three (3) persons to this Honorable Court. My question is, why do you know them?

"A Because they are my barriomates, sir.

"Q What kind of firearm did they use in shooting Leopoldo de Leon?

"A A long firearm with black color, sir.

"Q Do you know the name of that firearm?

"A Armalite, sir.

"Q How do you know that it was armalite?

"A I often see armalites when I go to school with policemen, sir.

"COURT

"Q How many firearms did they use?

"A Two (2), sir.

"COURT

"Q Who were holding those guns?

"A Jaime Pinto and Inciong Castillo, sir.

"COURT

"Q They fired together?

"A Yes, sir.

"COURT

"Q How about the other accused, what was he doing?

"A He is holding his hand and watching them, keeping eye in the vicinity, sir.

"xxx xxx xxx

(TSN of February 19, 1991, pp. 27-29)

Epecially telling is the testimony of Vicente. As the son of the deceased, he must be genuinely interested in bringing to justice the real killers. He was eight (8) years old, when he testified, and it is difficult to believe the charge of accused-appellants that he perjured his testimony.

The fact that Vicente was not listed in the complaint or in the Information filed against accused-appellants does not justify characterizing his testimony as "fabricated." It is the high prerogative of the prosecution to choose its witnesses. It is not limited to witnesses listed in the Complaint or Information. In any event, the task of determining the credibility of witnesses, whether listed or unlisted, belongs to the courts which calibrate them considering our different rules on evidence. In the case at bench, the trial court, which had a first-hand opportunity to observe Vicente's countenance during his testimony, chose to give the same its mark of credence. We give great weight to such finding absent any manifest error.

Furthermore, we are ourselves convinced of the credibility of Vicente's testimony. The transcripts show that he was candid in answering the questions propounded to him, and that he possessed intelligence and proper understanding of the seriousness of the matters about which he was testifying. These characteristics are particularly mirrored in Vicente's cross-examination, as conducted by Atty. Tulagan, viz.:

"Q Vincent, are you studying?

"A Yes, sir.

"Q In what grade are you now?

"A Grade I, sir.

"Q What is the name of your teacher?

"A Mrs. Macasieb, sir.

"Q Where are you studying?

"A In Sanlibo, sir.

"Q When were you born?

"A January 31, sir.

"Q And you do not know the year?

"A I don't know, sir.

"Q Do you know the date today, Vincent?

"A No, sir.

"Q How about yesterday, do you know the date yesterday?

"A Not either, sir.

"Q Why do you remember the date in 1990, a particular date in 1990, were you told by your mother?

"A No, sir.

"Q Why do you know your birthday, was that told by your mother to you?

"A Yes, sir.

"Q But, your mother told you only the date but not the year?

"A Yes, sir.

"Q Do you know Valentine's day Vincent?

"A No, sir.

"Q Do you know Christmas day?

"A Yes, sir.

"Q What date is that, you do not know that, is it not?

"A Yes, sir.

"Q There was a date mentioned here about August 24, 1990, this was told to you by your mother, am I correct?

"A Yes, sir.

"Q Before you came to this Honorable Court this morning, did you talk to the distinguished lawyer who asked you the first question?

"A Yes, sir.

"Q And the lawyer who talked to you asked you previous questions, told you about August 24, 1990, is it not Vincent?

"A Yes, sir.

"Q And your lawyer told you to remember this date very well because you will testify on this date in Court, is it not Vincent?

"A No, sir.

"Q Did not your lawyer tell you to cry in Court?

"A No, sir.

"Q When you were in the field, it was raining very hard, is it not?

"A Yes, sir.

"Q And you were wearing a raincoat?

"A Yes, sir.

"Q Your father, Leopoldo de Leon, was wearing a raincoat also, is it not?

"A Yes, sir.

"Q And you were wearing a hat?

"A No, sir.

"Q Your father was wearing a hat?

"A Not either, sir.

"Q So, you became wet, father and son became wet?

"A Yes, sir.

"Q And you said this Romeo de Leon and Tomas Dalayoan were with you, did we hear you correctly?

"A Yes, sir.

"Q What was Romeo de Leon doing in the field?

"A He was also cutting grasses, sir.

"Q Tomas Dalayoan was also cutting grasses with you?

"A Yes, sir.

"Q And you were very near each other?

"A Yes, sir.

"Q So, the four (4) of you, you Vincent, your father, Leopoldo de Leon, Romeo de Leon and Tomas Dalayoan were very near each other gathering grasses, is that correct?

"A Yes, sir.

"Q How far away was Tomas Dalayoan from you and your father?

"A Very near each other, sir.

"Q And Romeo de Leon was very near you and your father?

"A No, sir.

"Q Will you indicate the distance of Romeo de Leon from you and your father and Tomas Dalayoan?

"A From the witness stand up to the road, sir.

"COURT

About 15 meters.

"ATTY. TULAGAN

"Q And Romeo de Leon was wearing a raincoat also because it was raining?

"A No, sir.

"Q So he was soaked?

"A Yes, sir.

"Q These three people you just mentioned, Buenaventura Castillo, Carlos Pinto and Aquilino Castillo arrived together according to you and they were also wearing a raincoat?

"A Yes, sir.

"Q Were they also wearing their hat?

"A No, sir.

"Q But, they have a covering in their face because it was raining, is it not?

"A None, sir.

"Q This Romeo de Leon is related to you by blood, is it not?

"A Yes, sir.

"Q Why is he your relative?

"A He is the cousin of my father, sir.

"Q So Romeo de Leon is your uncle?

"A Yes, sir.

"xxx xxx xxx"

(TSN of February 7, 1991, pp. 8-12)

We note too, that Vicente's testimony that August 24, 1990 was not a school day was corroborated by the prosecution's rebuttal witness, ROSALINA MACASIEB, Vicente's Grade I teacher at the Sanlibo, Elementary School. Mrs. Macasieb explained that there were no classes on that date because the teachers in District II attended a "Learning Activity Cell" session at the District Office in Bayambang.

Accused-appellants likewise posited the view that the trial court should have followed the lead of the RTC of San Carlos, Pangasinan, Br. 56, which acquitted them in Crim. Case No. SCC-1623. There is no merit to this argument. The court a quo cannot be bound by the findings of the court which tried and decided the Illegal Possession case against accused-appellants. Murder and Illegal Possession are two separate and distinct offenses. They have different elements, hence, the acquittal of accused-appellants from the latter charge does not necessarily mean that their acquittal from the case at bench is also in order.

Accused-appellants likewise argued that "(n)o motive whatsoever has been shown or established or even insinuated by the prosecution that would drive the appellants to commit so grave a wrong as killing a person, their own relative at that." [30] This contention deserves scant consideration. We have held many times in the past that proof of motive is unnecessary where there is a clear and positive identification of the accused, [31] as in the case at bench.

Finally, accused-appellants were correctly convicted of murder. The killing of Leopoldo was characterized by treachery. He was shot with armalite weapons while helpless and pleading for his life. With upraised arms, he was

shot from a distance of three (3) to four (4) meters by high-powered weapons. Twenty-nine (29) M-16 blanks cartridges were recovered from the scene of the crime. They indicate the number of times he was shot. Indeed, his head was blasted beyond recognition. He was completely without any defense when shot.

IN VIEW WHEREOF, the Decision of the court a quo, dated October 10, 1991, convicting accused-appellants Carlos "Jaime" Pinto, Buenaventura "Inciong" Castillo, and Aquilino "Ador" Castillo of Murder, is AFFIRMED IN TOTO.

SO ORDERED.

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

[1] Presided by Judge Bonifacio O. Buena.

[2] The deceased's son who was aged eight (8) when he testified before the lower court on February 7, 1991.

[3] Farmer/tenant of the deceased, 21 years old, single, a resident of Sanlibo, Bayambang, Pangasinan. He testified before the lower court on February 19, 1991 and February 20, 1991.

[4] Cousin of the deceased, 23 years old, and a resident of Idong, Bayambang, Pangasinan. He testified on February 7, 1991 and February 8, 1991.

[5] OIC of the Office of the Branch Clerk of Court of Branch 56, RTC of San Carlos City, Pangasinan. He testified on February 19, 1991.

[6] Barangay Captain of Barangay Sanlibo, Bayambang, Pangasinan. He testified on February 19, 1991.

[7] Private First Class of the Integrated National Police, Bayambang, Pangasinan. He investigated the killing of Leopoldo de Leon, and testified on February 21, 1991.

[8] Municipal Health Officer, Rural Health Unit I, Bayambang, Pangasinan. He conducted the post-mortem examination on the body of Leopoldo de Leon. He testified on February 19, 1991.

[9] Widow of the deceased, 41 years old, an elementary school teacher. She testified on February 21, 1991 and on March 5, 1991, regarding the damages prayed for.

[10] TSN of February 7, 1991, pp. 3, 6-7, 15.

[11] Ibid., pp. 11, 16; TSN of February 19, 1991, pp. 31-32.

[12] TSN of February 7, 1991, pp. 3-5.

[13] Ibid., pp. 3-4.

[14] Id., p. 5.

[15] Id., p. 20.

[16] Id., p. 18; TSN of February 8, 1991, p. 8.

[17] Exh. "E", p. 3, RTC Records.

[18] TSN of February 19, 1991, p. 23.

[19] TSN of February 21, 1991, pp. 4-5.

[20] TSN of February 19, 1991, pp. 8-10; TSN of February 21, 1991, pp. 5-7.

[21] Carlos "Jaime" Pinto testified on May 2, 1991; Aquilino "Ador" Castillo, on May 6, 1991; and Buenaventura "Inciong" Castillo, on May 7, 1991.

[22] TSN of March 6, 1991, pp. 4-5; TSN of May 2, 1991, pp. 5, 15.

[23] Ibid., TSN of March 6, 1991; TSN of May 2, 1991, p. 4.

[24] TSN of May 2, 1991, p. 12.

[25] TSN of March 6, 1991, P. 7.

[26] Manuel Gutierrez was presented as defense witness. He testified on May 5, 1991.

[27] This fact is evidenced by a "Certificate of Custodian/Guarantor" (Exh. "5") executed by Mrs. Adelaida Gutierrez (wife of Manuel and sister-in-law of Jauncho) which states that she "received the living persons of (Manuel and Juancho) in good physical and mental condition on this date of August 29, 1990."

[28] Docketed as Crim. Case No. SCC-1623.

[29] Presided by Judge Victor T. Llamas, Jr.

[30] Brief for Accused-Appellants, p. 5; Rollo, p. 51.

[31] See *People vs. Kyamko*, 192 SCRA 374 (1990); *People vs. Yeban*, 190 SCRA 706 (1990); *People vs. Madali*, 188 SCRA 69 (1990); *People vs. Abaya*, 185 SCRA 419 (1990).

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