

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FLAVIANO MATILDO, ACCUSED-APPELLANT.

G.R. No. 107643. March 02, 1994

Ponente: NOCON, J.

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NOCON, J.:

Essential in this day and age is man's need for money; however, some idolatrously lust for it. Reason, most of the times, vanishes at the sight of a few pieces of gold and silver. In the instant case, accused-appellant, Flaviano Matildo, is charged with the crime of Murder for killing his friend for a meager sum of One Peso and Fifty Centavos (P1.50). Killed instantly, the victim, Vicente Baradillo sustained a stab wound causing massive intra abdominal visceral bleeding.[1] Accused-appellant anchors his defense on alibi.

The facts of the case are as follows:

It was in the afternoon of May 17, 1984, at around 4:00 when accused-appellant and the victim, Vicente Baradillo had an altercation inside a cockpit at San Isidro, Gigaquit, Surigao del Norte. The altercation arose from a game of "Lucky 9" or "Bakarat." The problem started on how the amount of P1.50 would be divided between the victim and herein accused-appellant.

One hour later, Vicente Baradillo and his daughter Evangeline, together with accused-appellant Matildo rode on a passenger jeepney going home. Accused-appellant was seated in front of Baradillo while Evangeline was seated at the rear portion of the jeepney. Evangeline noticed that while on the jeepney, accused-appellant gave dagger looks at Vicente.

Upon reaching home, at around 6:00 p.m., Vicente and Evangeline ate their supper. It was at this point when accused-appellant arrived and shouted "canaug - -" at Vicente which meant in English, "Vicente, come down, let's kill each other." [2] Vicente disregarded the challenge and instead slept.

However, at around 9:00 p.m. that same evening, Evangeline and Vicente woke up because of the sounds created by their two (2) carabaos fighting outside their house. Vicente went downstairs to find out what was going on. Evangeline, who was about three (3) arms length from her father, followed the latter. Vicente, who was about five (5) meters away from their house, was treacherously stabbed by accused-appellant with a long, sharp-pointed bolo. Evangeline witnessed what happened and could even vividly remember that accused-appellant had to clean his blood-stained bolo with banana leaves right at the feet of his bloodied father.[3]

Thereafter, Evangeline ran to their neighbors and asked for help. Diomedes Bohol and Rolando Pepino, two of their neighbors, responded to the call of Evangeline. Upon reaching the scene of the crime, Diomedes Bohol and Rolando Pepino saw accused-appellant standing at the feet of Vicente still armed with his bolo.[4]

Consequently, accused-appellant was arrested and charged under the following information:

"That on the 17th day of May, 1984, at or about nine (9:00) o'clock in the evening, in Sitio Bungtod, Barangay San Isidro of the municipality of Gigaquit, Province of Surigao del Norte, and within the jurisdiction of this

Honorable Court, accused with all freedom, intelligence, criminal intent, intent to kill, without unlawful aggression and provocation coming from victim (Vicente Baradillo), specially securing and taking advantage of the cover of the night, with evident premeditation did then and there voluntarily, unlawfully and feloniously attack and stab with the use of a sharp-pointed bolo one VICENTE BARADILLO inflicting upon the victim (Vicente Baradillo) 'stab wound at the epigastrium longitudinal 6.0 cm. with dual prong at the inferior ends approximately 7.0 cm. deep injuring the liver, stomach, pancreas and spleen 'which wound directly cause (sic) the death of Vicente Baradillo consequently inflicting upon the heirs actual, moral and exemplary damages in the sum of P100,000.00.

"This killing is qualified to Murder by the circumstances of treachery and evident premeditation.

"Contrary to law."[5]

Accused-appellant pleaded not guilty to the crime charged but was subsequently convicted after trial on the merits of the crime of Murder, in a decision rendered by the trial court, the dispositive portion of which reads:

"WHEREFORE, the Court finds accused FLAVIANO MATILDO, guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code and metes the penalty of Reclusion Perpetua. To indemnify the heirs of Vicente Baradillo the sum of FIFTY THOUSAND (P50,000.00) PESOS and TEN THOUSAND (P10,000.00) PESOS actual and moral damages, without subsidiary imprisonment in case of insolvency; to suffer the accessory penalty provided for by law and to pay the costs (sic)."[6]

Hence, this appeal.

Accused-appellant raises the following as errors of the court a quo.

I

IN FINDING FROM THE LONE TESTIMONY OF EVANGELINE BARADILLO, A 13-YEAR OLD DAUGHTER OF DECEASED VICENTE BARADILLO, THAT IT WAS APPELLANT FLAVIANO MATILDO WHO KILLED HER FATHER.

II

IN FINDING THAT THE TESTIMONY OF EVANGELINE BARADILLO IS CORROBORATED BY THE TESTIMONIES OF ROLANDO PEPINO AND DIOMEDES BOHOL, BESIDES BEING TAINTED BY SUPPRESSION OF HER AFFIDAVIT TAKEN AS PART OF THE RES GESTAE.

III

IN FINDING THAT IT WAS DEFENDANT-APPELLANT WHO STABBED VICENTE BARADILLO WHEN THERE WAS NO EYEWITNESS TO THE ACTUAL STABBING, ONLY THE PRESENCE OF APPELLANT AT THE SCENE OF THE CRIME, TOGETHER WITH ANTECEDENT CIRCUMSTANCES, LED TO THE CONCLUSION THAT IT WAS THE APPELLANT WHO STABBED THE DECEASED.

IV

IN CONVICTING THE DEFENDANT-APPELLANT OF THE CRIME OF MURDER AND SENTENCING HIM TO RECLUSION PERPETUA AND TO INDEMNIFY THE HEIRS OF VICENTE BARADILLO WITH (sic) SUM OF FIFTY THOUSAND PESOS (P50,000.00), TO PAY ACTUAL AND MORAL DAMAGES OF TEN THOUSAND (P10,000.00) PESOS, WITHOUT SUBSIDIARY IMPRISONMENT IN CASE OF INSOLVENCY, AND TO SUFFER THE ACCESSORY PENALTIES PROVIDED FOR BY LAW

AND TO PAY THE COSTS."[7]

A careful examination of the records and evidence before us brings to fore the weakness of the defense of alibi as to deserve scant consideration.

All assigned errors of the court a quo shall be discussed jointly as they are interrelated with each other.

Well settled is the rule that the defense of alibi cannot prevail over the positive identification of the accused by the witnesses for the prosecution and to establish it, accused must show that he was at some other place for such period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission.[8]

Alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable but also because of its easy fabrication without much opportunity at checking or rebutting it.[9]

In the case at bar, the testimony of Evangeline deserves full faith and credit. At the tender age of thirteen years, it is highly improbable for Evangeline to concoct, contrive, orchestrate and hatch a story regarding the death of her father and lay the blame on a man who is her father's friend, if she were not certain that indeed it was accused-appellant who stabbed and killed her father.

We quote the testimony of Evangeline during cross-examination:

"Q. And you said you followed him?

A. Yes, I followed.

Q. At this point, when he reached at this distance, how far have you gone from the edge of your house?

A. To that table. (Witness indicating a distance half a distance reached by her father).

Q. Why did your father stop that place?

A. He was stabbed, sir.

Q. And you claimed (sic) before this Honorable Court that it was the accused who stabbed your father. Is it not?

A. Yes, sir. It was Flaviano Matildo who stabbed my father.

Q. And you were picturing (sic) this Honorable Court that you saw the killing of your father because you were following at (sic) your father?

A. Yes, sir.

Q. And you were not at the porch of your house when you saw the incident?

A. No. I was not at the porch.

Q. At that time when your father was stabbed by the accused, Flaviano Matildo, could you tell us how Flaviano Matildo stab (sic) your father?

A. Yes, sir.

Q. How?

A. Like this, sir. (Witness demonstrating with the use of her right hand thrusting it on a semi-horizontal direction)."[10]

The defense contends that the affidavit of prosecution witness Evangeline Baradillo which was executed on May 18, 1984 before the Gigaquit Police was not presented during trial and hence, there was a willful suppression of evidence.

We do not agree.

There is no need to present Evangeline Baradillo's affidavit because she has already testified in open court regarding the circumstances of the crime. Well settled is the rule that an affidavit is not considered the best evidence if affiant is available as a witness.[11]

Moreover, inconsistencies in the affidavit and testimony on the witness stand of the prosecution witnesses, Diomedes Bohol, do not necessarily discredit him. In fact, testimonial evidence carries more weight than affidavits.

On this point, the case of *People vs. Gabatin*,[12] had this to say, to wit:

" x x if there is an inconsistency between the affidavit and the testimony, the latter is to be given more weight since affidavits, being taken ex-parte, are almost incomplete and inaccurate. Thus in *People vs. Loveria*, the Court held:

‘x x x The appellant further claims that Richard Bales did not implicate him in his affidavit but pointed to him on the witness stand. Affidavits, taken ex-parte, are generally considered to be inferior to the testimony given in open court (*People vs. Pacola*, G.R. No. L-26647, August 14, 1974, 58 SCRA 370). The Court has consistently held that an affidavit taken ex-parte, is almost always incomplete and inaccurate, sometimes from partial suggestions, sometimes from want of suggestions and inquiries, without the aid of which the witness maybe unable to recall the connected collateral circumstances necessary for the correction of the 13 first suggestion of his memory and for his accurate recollection of all that belongs to the subject (*People vs. Tan*, 89 Phil. 337 (1951); *People vs. Gonzales*, G.R. No. L--40727, Sept. 11, 1980, 99 SCRA 697; *People vs. Avanzado, Jr.*, G.R. No. 73116, Feb. 29, 1988, 158 SCRA 427).’”

Be that as it may, accused-appellant admitted that prosecution witness Diomedes Bohol is his very close friend.[13] Hence, Bohol could not have been actuated by an improper motive in testifying against him. When there is no evidence to indicate that a witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[14]

Indisputably, we have two opposing versions of what actually happened that led to the death of Vicente Baradillo, that of the prosecution and that of the defense. In situations like this the matter of assigning values to the testimony of witnesses is best performed by the trial courts because, unlike appellate courts, they can weigh such testimony in the light of the demeanor, conduct and attitude of the witnesses at the trial.[15] The exception is when the trial court has overlooked certain facts of substance and value that, if considered, might affect the result[16] which we do not find in the case at bar.

WHEREFORE, finding no reversible error in the decision appealed herefrom, the same is hereby **AFFIRMED** in toto. Costs against accused-appellant.

SO ORDERED.

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

[1] Exhibit "A".

- [2] T.S.N., June 25, 1985, p. 9.
- [3] Id. at p. 10, 13.
- [4] T.S.N., May 20, 1986, p. 6.
- [5] Records, pp. 1-2.
- [6] Records, p. 885.
- [7] Appellant's Brief, pp. 7-8.
- [8] Id.
- [9] People vs. Devaras, G.R. No. 48009, 205 SCRA 676 (1992).
- [10] T.S.N., May 20, 1986, pp. 29-30.
- [11] Ayco vs. Fernandez, G.R. No. 84770, 195 SCRA 328 (1991).
- [12] G.R. No. 84730, 203 SCRA 225 (1991).
- [13] T.S.N., November 10, 1989, p. 7.
- [14] People vs. Ruedas, G.R. No. 83372, 194 SCRA 553 (1991).
- [15] People vs. Catalino, No. L-25403, 22 SCRA 1091, 1098 (1968).
- [16] People vs. Cabiling, No. L-38091, 74 SCRA 285 (1976).

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