

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANOLITO MALAZARTE ALIAS NOLLY, DEFENDANT-APPELLANT.

G.R. No. 108179. September 06, 1996

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Appellant Manolito Malazarte with Arnold Morales were charged with the crime of murder in the following information filed with the Regional Trial Court of Cebu City:

That on or about the 14th day of April, 1991, at about 11:30 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and shot one Jimmy Balansag[1] with handgun hitting the latter upon vital parts of his body and inflicting upon him the following physical injuries:

HEMORRHAGE INTRABANIAL (sic), EXTENSIVE, SEVERE, SECONDARY TO GUNSHOT WOUND OF THE HEAD, LEFT SIDE

and as a consequence of said injuries Jimmy Balansag died few minutes later.

CONTRARY TO LAW.[2]

A warrant for the arrest of the two accused was issued on May 2, 1991.[3]

On May 6, 1991, counsel for accused Morales filed an Urgent Motion for Reinvestigation and Reconsideration assailing the inclusion of the said accused in the information despite the admission of Malazarte that he alone planned and perpetrated the killing. The motion also alleged that the supporting affidavits of the witnesses were not sufficient to establish a prima facie case of conspiracy between the two accused.[4] The trial court granted the motion.[5]

In his reinvestigation report, Assistant Prosecutor Rodolfo V. Perez recommended the dismissal of the case as against accused Morales as "there is no sufficient evidence to engender a well-founded belief that accused Arnold Morales connived and conspired with Manolito Malazarte in the killing of Jimmy Balansag." [6] The report was with the express approval of City Prosecutor Jufelinito R. Pareja.[7] On June 3, 1991, the trial court ordered the dismissal of the case with respect to accused Morales.[8]

During the hearing on July 25, 1991, appellant Malazarte manifested willingness to plead guilty to the lesser offense of homicide, but the widow of the victim opposed the manifestation. Hence, a plea of not guilty was entered on behalf of appellant.[9]

The facts as established by the record are as follows:

Aileen Balanzar[10] was with her husband, victim Jimmy Balanzar, on the night of April 14, 1990 at the Abellana basketball court, at Sitio Abellana, Barrio Luz, Cebu City. Jimmy was the coach of the Sto. Nino team which was

to play at the second game. Aileen was seated behind her husband, who was standing and cheering. Appellant who was "wobbling" and appeared to be high on drugs, was standing at Aileen's left side. Suddenly, appellant shot Jimmy with a .38 caliber handgun. The victim fell and died instantaneously. As appellant was leaving, he fired two more shots.

The medico-legal report prepared by Dr. Tomas P. Refe showed that 23-year-old Jimmy Balanzar died of a single gunshot wound in the head. The bullet entered the left side of the occipital region, proceeded forward and upward through the skin and soft tissues, lacerated the brain and lodged underneath the fractured frontal bone.[11]

Dr. Refe testified that the assailant must have fired the gun from behind the victim at a distance beyond 24 inches because there was no evidence of near contact firing, like gun powder tattooing and burning. Based on the trajectory of the bullet and the fact that the victim was standing, the assailant must have been standing also.[12]

Aileen Balanzar was presented by the defense as a hostile witness to prove that she did not witness the actual shooting and that appellant "was under the influence of liquor." [13] Aileen testified that as early as seven o'clock in the evening of April 14, 1990, she and her husband were in the Abellana basketball court. The first game, which was between the Abellana and the New Era teams, started at 7:30 and lasted until nine o'clock in the evening. The second game between the Lambag and the Sto. Nino teams started at 9:30 p.m. A lot of people were at the game but she noticed appellant and Arnold Morales who arrived together. She was about a meter away from them when she heard Morales ask appellant in the vernacular, "Shall we do it now?" The latter answered, "No, later on." [14] Morales gave something to appellant and went to the gate about five meters away. Appellant then took the seat to Aileen's left. Thirty minutes later, appellant shot her husband.

Prior to the incident, Aileen did not know the names of the two accused although appellant lived in their neighborhood. She came to know appellant's name only after the incident as he lived a bit far from their place. As to Arnold Morales, Aileen came to know his name through a certain Atil who told her that, earlier that day, Morales was looking for Arnel Balansag (sic), the brother of her husband. [15]

The defense also presented Antonio Cadungog, a Social Security System pensioner who sold cigarettes to earn additional income. He claimed to be the friend of appellant's father and had known appellant since he was a child. [16] On the night of April 14, 1990, Cadungog passed by appellant's house on his way to the Abellana basketball court to sell cigarettes. Hence, appellant's mother knew that he witnessed the incident and requested him to testify.

According to Cadungog, at about eleven o'clock that night, he saw two men grappling for possession of a firearm. The people around scampered because of fear but he stayed to watch. One of the men got the gun and shot the other one as the latter was running away. Upon inquiry, he learned that the victim was Jimmy Balansar while the assailant was Arnold Morales. Cadungog did not see appellant when the shooting occurred but he knew that appellant appeared later probably to ask about the incident. He did not have the chance to talk to appellant that night as appellant later left with Morales. [17]

On February 28, 1992, the trial court rendered the assailed Decision [18] convicting appellant of the crime of murder. The dispositive portion reads as follows:

THE FOREGOING CONSIDERED, this Court finds the accused Manolito Malazarte guilty beyond reasonable doubt of the crime of murder as defined and penalized in accordance with Article 248 of the Revised Penal Code and hereby imposes upon him the penalty by way of imprisonment, of reclusion perpetua, to indemnify the surviving spouse and the heirs the amount of P50,000.00 and finally with costs against him.

SO ORDERED.

Appellant contends that the trial court erred in giving full credence to the testimonies of the prosecution witnesses and disregarding that of the defense. He asserts the trial court erred in convicting him of the crime of murder despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

Appellant points out that Aileen Balanzar, in paragraph 3 of her affidavit, made a categorical declaration that she and her husband were sitting on the bench of the Sto. Niño team, but she did not declare that she saw him shoot her husband from behind.

He stresses that during Aileen's testimony in court, she contradicted her affidavit by saying that while watching the basketball game, she was standing behind her husband with him on her left side and, for no apparent reason, appellant shot her husband.

He further claims that Aileen's declaration in her affidavit that she was beside her husband when he was shot is more realistic and consistent with human experience because a wife always wants to be by her husband's side. In such a position, appellant contends, it was impossible for her to identify the people standing or sitting behind her or notice what they were doing, without turning her head.

Appellant concludes that Aileen did not see the assailant fire the shot which killed her husband.[19]

Appellant asserts that, on the contrary, the testimony of Antonio Cadungog is more credible as this does not suffer from any inconsistencies. Furthermore, Cadungog's testimony that appellant was not the assailant is of the highest degree of sincerity and honesty as it was not motivated by any ill feeling towards the prosecution.

Appellant's arguments hinge primarily on the issue of credibility of witnesses.

This Court has held in a long line of cases that the findings of the trial court on the issue of credibility of witnesses should not be disturbed on appeal, as the trial court is in a better position to decide the question, having observed the deportment of the witnesses and their manner of testifying during the trial, unless certain facts of value have been plainly overlooked, which, if considered, might have affected the outcome of the case.[20] We do not see any reason to depart from this well-entrenched rule.

There is actually no discrepancy between Aileen's affidavit and her testimony in court. They can be reconciled. In paragraph 4 of her affidavit,[21] she said she saw two persons conspiring with each other, shoot her husband once, hitting him on the back of his head, although she did not mention who actually pulled the trigger. Perhaps, because of the existence of conspiracy between the two accused, she believed, it was not particularly important to point out who of them actually shot her husband. Assuming that there is such a discrepancy, the same does not destroy Aileen Balanzar's credibility. This Court has consistently held that:

The general rule has always been that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex-parte affidavits are generally incomplete. Affidavits are generally subordinated in importance to open court declarations because they are oftentimes executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to them.[22]

As regards the circumstances of the crime, testimonial evidence carries more weight than affidavits.[23]

Furthermore, Aileen's testimony in court is consistent with that of Dr. Tomas P. Refe, the medico-legal officer who autopsied the victim.[24] Her testimony that as she was standing behind her husband, and that appellant, who was on her left side, shot her husband, dovetails with Dr. Refe's finding that, based on the trajectory of the bullet, the assailant must have been behind the victim who must have been standing like the assailant.

Appellant's allegation that it is unbelievable for him to have committed the crime considering that, as Aileen herself admitted, no bad blood existed between him and the victim, simply does not hold water. Lack of enmity or "bad blood" between the culprit and the victim prior to the incident does not affect the credibility of the prosecution evidence.[25] Crimes have been attributed to persons who appear to have no reason for committing them as long as they have been clearly identified as the offenders. Motive gains importance only when the identity of the culprit is suspect. Such is not the case here.[26]

On the other hand, it was not established that the sole prosecution witness had a motive to testify against appellant. Absent evidence to show any reason or motive why witnesses for the prosecution should have testified falsely, the logical conclusion is that no such improper motive exists and that their testimony is worthy of full faith and credit.[27]

We agree with the trial court that the crime committed is murder qualified by treachery. There is treachery when the offender commits any crime against a person, employing means, methods or forms in the execution thereof which tend directly and especially to insure its execution, without risk to himself arising from the defense which the offended party might make.[28] As found by the trial court, appellant strategically positioned himself behind the victim and aimed the fatal shot at his head at the time when the victim's attention was on the basketball game.[29] Such mode of attack deliberately resorted to by the appellant did not give the victim any opportunity to defend himself.

Under Art. 248 of the Revised Penal Code, the crime of murder is punishable by reclusion temporal in its maximum period to death. In the absence of any mitigating or generic aggravating circumstances, the penalty shall be imposed in its medium period[30] or reclusion perpetua.

WHEREFORE, the decision of the Regional Trial Court of Cebu City finding appellant Manolito Malazarte guilty beyond reasonable doubt of the crime of murder and imposing upon him the penalty of reclusion perpetua and the payment to the heirs of Jimmy Balanzar the indemnity of P50,000.00, is hereby AFFIRMED. No costs.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug and Hermosisima, Jr., JJ., concur.

[1] Appears as Balazar in the records.

[2] Original Record, p. 1.

[3] Id., at p. 11.

[4] Id., at 12.

[5] Id., at 17.

[6] Original Record, p. 19.

[7] Id., at 20.

[8] Id., at 23.

[9] Ibid.

[10] She signed her name as Aileen Balanzar (not Balansag) in the sworn statement found on page 3 of the Record.

[11] Exhibit A.

[12] TSN., August 7, 1991, pp. 2-4.

[13] TSN., August 21, 1991, p. 1.

[14] In her sworn statement, Aileen Balanzar heard one of them say, "Unsa ku-anon na nato" while the other answered, "Onia na lang" (Record, p. 3).

[15] TSN., August 21, 1991, pp. 4-10.

[16] Appellant was 20 years old when the crime transpired. (Exhibit B.)

[17] TSN, September 18, 1991, pp. 3-7.

[18] Penned by Judge Bernardo Ll. Salas.

[19] Appellant's Brief, Rollo, p. 67.

[20] *People v. Cabiles*, 248 SCRA 207 (1995); *People v. Acuña*, 248 SCRA 668 (1995).

[21] See note 1 at p. 3.

[22] *People v. Manuel*, 236 SCRA 545 (1994) citing *People v. Sarellana*, 233 SCRA 31 (1994) and *People v. Ponferada*, 220 SCRA 46 (1993).

[23] *People v. Matildo*, 230 SCRA 635 (1994).

[24] *People v. Amaro*, 235 SCRA 8 (1994).

[25] *People v. Flores*, 237 SCRA 653 (1994).

[26] Thirty-nine (39) residents of Barangay Luz in Cebu City submitted a petition endorsed by Barangay Captain Nemesio Pagador appealing for the reduction of appellant's liability from that of murder to homicide on the ground that appellant is "not a brazen criminal but he was only able to do the killing because of the brutal murder of his older brother and the constant provocation of the victim who was the younger brother of the murderer of his older brother." (Rollo, p. 46) This possible motive was not brought out at the trial but even if it was, still the Court will arrive at the same conclusion as to the crime committed by appellant considering the sufficiency of evidence therefor.

[27] *People v. Pacapac*, 248 SCRA 77 (1995).

[28] *People v.* 248 SCRA 609 (1995).

[29] Decision, see note 1 at p. 62.

[30] Art. 64(1), Revised Penal Code.

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