

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS JIMENEZ, JULIAN JIMENEZ AND GERMAN JIMENEZ, ACCUSED, JULIAN JIMENEZ, APPELLANT.

G.R. No. 108773. August 15, 1994

Ponente: MELO, J.

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MELO, J.:

Accused Jesus Jimenez, German Jimenez, and Julian Jimenez were charged with murder in an Information reading as follows:

That on or about the 14th day of September, 1983, at around 2:00 o'clock in the morning, more or less, in Barangay Lanas, Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and mutually helping each other, with deliberate intent and intent to kill, with treachery and known premeditation, did then and there willfully, unlawfully and feloniously attack, assault and strike pieces of stones therewith Eustaquio Bacarro, in the different parts of the body, and as a result of which, said Eustaquio Bacarro died instantly, and the cause of death is, "Cardio Respiratory Arrest Secondary to Intracranial Hemorrhage Severe. With Skull Fracture Traumatic."

All contrary to law, and with the qualifying circumstance of alevosia, and the generic aggravating circumstance of known premeditation and night time.

(p. 7, Rollo.)

As accused Julian Jimenez had not then yet been apprehended, trial proceeded only against Jesus Jimenez and German Jimenez who were both found guilty as charged in a decision rendered on November 25, 1985 by the trial court, sentencing them to suffer the penalty of reclusion perpetua. Both Jesus and German accepted the verdict and did not appeal.

Subsequently, on March 12, 1990, Julian Jimenez was arrested and a separate trial was held against him. On September 4, 1992, the trial court found him guilty in a decision, the dispositive portion of which reads:

WHEREFORE, for all the foregoing premises, the Court finds the accused Julian Jimenez, GUILTY beyond reasonable doubt, as principal, of the crime of Murder as charged, and sentences him to suffer the penalty of reclusion perpetua and indemnify the heirs of Eustaquio Bacarro the sum of Ten Thousand (P10,000.00) Pesos, without subsidiary imprisonment in case of solvency and to pay one-third (1/3) of the costs.

(p. 33, Rollo.)

Interposing the instant appeal, accused-appellant would justify reversal upon the following alleged errors:

I. The trial court erred in convicting accused-appellant based on the uncorroborated, biased and highly doubtful or improbable testimony of prosecution witness, Mrs. Valeriana Rivera;

II. The trial court erred in not giving probative value to the testimonies of accused Julian Jimenez and its witnesses Jolito Reyes, Felix Jimenez and Engr. Alberto Ceniza;

III. The trial court erred in finding accused Julian Jimenez guilty beyond reasonable doubt of the crime of murder.

(p. 1, Appellant's Brief.)

The findings of fact of the trial court are supported by the evidentiary record, for which reason, said findings are hereby adopted to wit:

That on the 14th day of September, 1983, at early dawn at 2:00 a.m., Valeriana Rivera, together with Heracleo Arabis and his wife Clarita, were walking on the road between Barangay Lanas, Naga, Cebu and Baranqay Cantabaco, Toledo City on their way home. They had just come from the fiesta celebration of Lanas, Naga, Cebu in the house of Quirino Abatayo. After about 1/2 kilometer distance from Abatayo's house they heard a shout for help. They approached the place from whence they heard the shout for help and saw the deceased Eustaquio Bacarro a few meters from them, kneeling before the accused Jesus Jimenez. Bacarro was pleading for mercy but Jesus Jimenez struck Bacarro with a piece of stone, saying - "We will kill you" hitting Bacarro on his face. Then German Jimenez took his turn and struck Bacarro with another piece of stone, hitting him on the head. The accused Julian Jimenez also approached and struck Bacarro with still another piece of stone, hitting him, at least twice on his face until Jesus Jimenez told him to stop as - "he is already dead". German Jimenez and Julian Jimenez were stripped bare from the waist up while Jesus Jimenez was fully clothed. After seeing Bacarro motionless on the ground, the three Jimenezes ran away.

(p. 86, Rollo.)

Accused-appellant impugns the testimony of prosecution witness Valeriana Rivera as replete with inconsistencies and contradictions. He points out that Valeriana Rivera's testimony on cross-examination that there were bushes from where she was when she saw accused-appellant hit the victim is inconsistent with her direct testimony that the area was a kaingin or clear area. A careful reading of the testimony of Valeriana Rivera does not uphold the contention of accused-appellant. The testimony of Valeriana Rivera that there were bushes and cogon grass refers to the place from where she witnessed the killing of the victim, Eustaquio Bacarro. On the other hand, her declaration that the area was a kaingin or clear area describes the site where the victim was killed. Therefore, it can readily be seen that there exists no contradiction or discrepancy in her declaration.

Valeriana Rivera's testimony on direct examination that accused-appellant delivered the first blow against the victim is apparently inconsistent with her testimony on cross-examination that accused-appellant was the last one to strike the victim. This inconsistency in her testimony is minor and unimportant. Whether accused-appellant struck the first blow or the last blow is of little significance. The essential thrust of her testimony is that accused-appellant was one of the assailants of the victim, and her testimony is positive and categorical on this point and must be given full evidentiary weight. At any rate, inconsistencies or contradiction on minor matters do not impair the credibility of a witness (*People vs. Sabellano*, 198 SCRA 196 [1991]).

Accused-appellant further contends that the testimony of Valeriana Rivera that the scene of the crime was illuminated by an electric bulb from a nearby school was refuted by defense witness Alberto Ceniza, Jr., head of the Transmission and Distribution Department of the Visayan Electric Company (VECO), who testified that Barangay Lanas was energized by VECO only on June 23, 1989. Again an earnest examination of the record accords no support to the contention of accused-appellant. On cross-examination, defense witness Ceniza admitted that he did not know whether CEBECO, a cooperative distribution body whose franchise area includes Toledo City, had energized Barangay Lanas, situated between Naga and Toledo City, prior to 1989. Furthermore, he admitted that he did not know whether the school house near the scene of the crime was already energized in

September, 1983.

Moreover, the identification of accused-appellant by Valeriana Rivera cannot be faulted for the simple reason that she is familiar with accused-appellant, related as he is to her husband. From the time Valeriana got married in 1958, accused-appellant was their neighbor until 1972 when she left Lanas, Naga and moved to Cantabaco, Toledo City. Nonetheless, she still frequently visited her relatives in Lanas, Naga where she usually saw accused-appellant. Too, accused-appellant often went to Cantabago where she used to see him.

Further, accused-appellant maintains that the testimony of Valeriana lacks corroboration and should, thus, be considered unworthy of credence. This contention is devoid of merit. The testimony of a lone prosecution witness, as long as the same is credible and positive, is sufficient to establish the guilt of an accused beyond reasonable doubt (*People vs. Francisco*, 213 SCRA 746). Not a shadow of evidence appears on record to blacken Valeriana Rivera's credibility.

The defense of alibi set up by accused-appellant that he was out at sea fishing is unavailing in the face of his positive identification by Valeriana as one of the perpetrators of the crime. Alibi is one of the weakest defenses that an accused may interpose, not only because it is inherently weak and unreliable but also because of the ease with which it can be fabricated (*People vs. Devaras*, 205 SCRA 676 [1992]; *People vs. Martinado*, 214 SCRA 712 [1992]; *People vs. Calope and Torres*, G.R. No. 97284, January 21, 1994), and it cannot prevail over the positive identification of the accused by the prosecution witness (*People vs. Catubig*, 205 SCRA 643 [1992]; *People vs. Rendoque*, 205 SCRA 783 [1992]).

In the final analysis the issues raised by accused-appellant concern credibility of the witnesses. Time and again we have upheld the rule that findings of fact of the trial court should not be disturbed on appeal unless the trial court has ignored or overlooked certain facts or circumstances of weight and significance which, if considered, would alter the result of the case (*People vs. Arenas*, 198 SCRA 172 [1991]), for trial judges are in the best position of weighing conflicting declarations of witnesses in the light of the court's opportunity to observe and examine the witnesses' conduct and attitude at the trial and in the witness chair (*People vs. Bolasa*, 209 SCRA 416 [1992]). A sedulous examination of the record fails to disclose any such facts or circumstances.

WHEREFORE, the appealed decision is hereby AFFIRMED, with the modification that the civil indemnity is hereby increased to P50,000.00.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Vitug, JJ., concur.

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