

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BUENAFE AZUGUE Y AMADOR, ACCUSED-APPELLANT.

G.R. No. 110098. February 26, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The accused alleges alibi and attacks the credibility of the prosecution's lone witness. As these defenses are addressed essentially to the trial court's discretion and because the accused failed to discredit the court a quo's findings thereon, necessarily the appeal must fail.

This is an appeal from the Decision[1]dated January 8, 1993 of the Regional Trial Court, 6th Judicial Region, Branch 15,[2] stationed in Roxas City, convicting accused Buenafe Azugue of murder and sentencing him to reclusion perpetua.

The Amended Information[3]filed by Asst. City Prosecutor Salvador B. Dellota before the trial court on November 20, 1990 reads as follows:

“The undersigned Asst. City Prosecutor accuses MORITO SALVADOR y ADONAY, BUENAFE AZUGUE, residents of Brgy. Cogon, Roxas City, and BERTITO BETURIN y ALBALADEJO, a resident of Brgy. Cogon, Roxas City, but presently detained in the City Jail of Roxas City, of the crime of MURDER, defined and penalized under Art. 248 of the Revised Penal Code, committed as follows:

That on or about the 27th day of October, 1990 in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, without justifiable cause and with treachery and evident premeditation, with intent to kill one Joebe Arrobang, did then and there wilfully (sic), unlawfully and feloniously attack, assault, stab and wound with a knife the said Joebe Arrobang, thereby inflicting upon him a mortal wound which caused his death.

That as a direct consequence of the unlawful act of all the accused, the heirs of the said Joebe Arrobang suffered actual, moral and other damages in the amount of Thirty Thousand Pesos (P30,000.00), Philippine Currency.

Contrary to law, with the qualifying circumstance of treachery, the accused having employed means, methods or forms in the execution of the crime which tended directly and specially to ensure its execution, without risk to themselves arising from the defense which the deceased might have made, for immediately after the deceased had alighted from the jeep which got stuck on the mud, the accused Morito Salvador suddenly and without any warning, stabbed the deceased with the said knife while being held on both arms by the accused Bertito Beturin and Buenafe Azugue, and the generic aggravating circumstance of evident premeditation.”

Accused Buenafe Azugue, assisted by counsel de parte Federico Billones, was arraigned on August 12, 1992, and pleaded not guilty to the crime charged.[4] The case against Accused Bertito Beturin was dismissed by the trial court “without prejudice to its refiling if and when evidence is available to the prosecution.” Morito Salvador was never arrested and remains at large. So the case proceeded only in regard to accused-appellant.

The Facts

The facts of the case as summarized by the trial court[5] are as follows:

“From the evidence adduced by both parties it was duly established that around 7:00 o’clock in the evening of October 27, 1990 at Brgy. Cogon, City of Roxas, the victim, Joebe Arrobang, was stabbed by accused, Morito Salvador, causing his death. He was brought to St. Anthony Hospital for medical attendance. Nevertheless, he died. Dr. Gervacio Diaz, attending physicial, issued a certificate of his death.

Considering that a medico legal examination is a function of the City Health Office, the victim, Joebe Arrobang, was referred to Dr. Rafael Almalbis, Jr., then one of the City Health Officer, (sic) City of Roxas, for Post Mortem Examination. The latter conducted a Post Mortem Examination on the cadaver of the victim at Funeraria de Jesus and issued his findings as follows:

‘I -- Rigor Mortis:

II. -- External Findings:

1 -- Thru and thru stab wound:

Point of entrance -- stab wound located at the right flank of the abdomen at the level of the umbilicus about 6 cm. above the antero-superior iliac crest, measuring 3 cm. in length traversing toward the opposite side of the abdomen and exit at the lateral side, measuring 3/4 cm. in width.

Eveseration (sic) of small intestine

CAUSE OF DEATH:

SHOCK, 2nd to internal hemorrhage due to stab wound of the abdomen.’

The sole prosecution witness to the incident against herein accused was Porferio Delmo, a fish vendor, who testified that around four o’clock in the afternoon of October 27, 1990, while he was riding in a public utility jeep from Barangay Punta Cogon, it suddenly stopped because its rear tire got stuck in the mud. The victim, Jolly (sic) Arrobang, being the conductor, alighted from the jeep to verify its cause. Thereupon, herein accused, Buenafe Azugue, held the victim on both forearms while in face to face with the victim and immediately, his co-accused, Morito Salvador, from behind, stabbed the victim, hitting him on his right hips. The victim shouted ‘I was stabbed’ while herein accused and Morito Salvador ran away from the scene going towards the direction of Barangay Punta Cogon. He did not alight from the jeep anymore after seeing two (2) men helped the victim. However, he rode in the same jeep which brought the victim to the hospital.

Porferio Delmo positively saw herein accused as the one who held the victim on both forearms after which his co-accused, Morito Salvador, stabbed the victim because he was two (2) armslength from them. Besides, he knew the two (2) accused even before the incident happened.”

According to the Defense

The defense’s version, as gleaned by the trial court from the testimony of witnesses, reads:

“Accused, Buenafe Azugue, interposed a defense of alibi. He testified that in the morning of October 27, 1990, he went to Barangay Ilas Norte, Municipality of Dao, Province of Capiz, together with Wilfredo Buenvenida, (sic) his father-in-law. He returned to his place of residence at Barangay Cogon only on October 28, 1990. Thus, at the time of the incident he was not in Barangay Cogon, Roxas City, but in Barangay Ilas Norte, Dao.

His father-in-law, Wilfredo Buenvenida, (sic) partially corroborated the alibi of herein accused. He claims that he and the accused, Buenafe Azugue, left for Ilas Norte, Dao, Capiz, on October 7, (1990) to harvest palay. They returned to Barangay Cogon, Roxas City, only on October 30, 1990.

To emphasize that it was not herein accused who stabbed the victim but Morito Salvador who acted alone, Mrs. Merlinda Fajartin, sister of accused, Morito Salvador, offered a different version of the incident. She testified that around 6:30 in the evening of October 27, 1990, he (sic) heard Joebe Arrobang shouting in the street facing the house of Morito Salvador and challenging the latter to come out if he is brave. Upon hearing said voice, she went downstairs and she saw Joebe Arrobang carrying a bench which was usually used in a passenger jeep to set (sic) extra passengers ready to hit his opponent. Suddenly, his (sic) brother, Morito appeared on the side of the victim, stabbed him and run away. She was stunned on what she saw. Since then, they did not know the whereabouts of his brother up to the present. She further testified that at the time of the incident, her brother, Morito, had no companion. Neither there was any passenger jeepney around as claimed by the prosecution.”[6]

The Trial Court’s Ruling

On January 8, 1993, the trial court rendered its decision, the decretal portion of which is as follows:

“WHEREFORE, the court finds the accused, Buenafe Azugue y Amador, guilty beyond reasonable doubt for the crime of murder penalized under Article 248 of the Revised Penal Code. There being no mitigating nor aggravating circumstance, said accused is sentenced to suffer a penalty of Reclusion Perpetua and to pay the heirs of Joebe Arrobang the sum of P50,000.00 as civil indemnity by reason of such death.

Said accused being detained, the whole period of his detention shall be deducted in full from the whole period of his imprisonment provided he had abided with the rules imposed upon him as a detention prisoner otherwise he shall be deducted only four-fifths of the whole period of his detention in accordance with Article 29 of the Revised Penal Code as amended.

With the conviction and penalty herein imposed, no bail is allowed on the accused herein pending finality of this judgment.

Costs against the accused.”[7]

The Issues

In his brief, the appellant assigned the following “errors”:[8]

“I

The trial court erred in giving weight and credence to the incredible testimony of the lone prosecution witness Porferio Delmo.

II

The trial court erred in disregarding the defense of alibi of accused-appellant which was corroborated by that of Buenavenida.”

The Court’s Ruling

First Issue: Credibility of Witness and Sufficiency of Prosecution’s Evidence

The accused-appellant Buenafe Azugue contends that the evidence presented by the prosecution was not enough to prove his guilt beyond reasonable doubt. This contention is based largely on appellant Azugue’s submission that the only eyewitness presented by the prosecution “never gave a statement to the police authorities nor presented himself before the Office of the City prosecutor. In fact, he was not listed as one of the witnesses both in the Information and the Amended Information. The first time that he gave a statement relative to the stabbing incident that resulted in the death of Joebe Arrobang was on October 19, 1992, when he testified before the court

a quo, or almost two (2) years from October 27, 1990, when the crime was committed. What made his testimony highly incredible was the fact that all those time he was the neighbor of the private complainant.”[9] Appellant, therefore, impugns the credibility of the prosecution’s only eyewitness.

After a thorough scrutiny of the entire records of this case, the Court found that the trial court correctly gave credence to the eyewitness testimony of prosecution witness Porferio Delmo. He gave a straightforward and unequivocal account of the stabbing incident worthy of belief, viz.:

Q:

Now, prior to the stabbing of Juvy Arrobang, where did he come from when you saw him?

A:

When the jeepney stopped, Juvy Arrobang jumped off from the jeep.

Q:

Why did Juvy Arrobang jumped (sic) off from the jeep?

A:

He jumped off from the jeep to find out what happened why the jeepney stopped because Juvy Arrobang was the conductor of the jeepney that I was riding at that time.

Q:

After he was able to alight from the jeep what else had happened?

A:

Somebody approached him and held him.

Q:

Do you know the person who held Juvy Arrobang?

A:

Yes, sir.

Q:

If the person that held Juvy Arrobang is inside the courtroom kindly identify him if he is now in court?

A:

(Witness standing from the witness stand and pointed to a man wearing an orange t-shirt as the person whom he saw held Juvy Arrobang).

Q:

Do you know the name of this fellow you just pointed before the court this morning?

A:

Yes, sir.

Q:

And who (sic) is the name of this fellow that you have just pointed to the court?

A:

Buenafe Asugue (sic).

Q:

Why did (sic) you know him?

A:

I know (sic) him even before the incident and also that I used to pass at Barangay Cogon.

Q:

When you saw this Buenafe Asugue (sic) held (sic) the arms of the deceased Juvy Arrobang, how did he do it. Kindly demonstrate before the court? I reform the question. Where did this Buenafe Asugue (sic) hold the victim?

A:

(Witness holding both arms of the interpreter demonstrating how the two was holding the arms of Juvy Arrobang at the time and the accused and the victim were facing (each other), face to face.

Q:

While accused Buenafe Asugue (sic) was holding both arms of the victim, Juvy Arroabang, (sic) what else had happened?

A:

Somebody came near to the victim.

Q:

From what direction did this fellow you saw come from?

A:

That person who came nearer came from behind

Q:

After this fellow whom you saw came nearer x x x what else did he do?

A:

I saw him stabbed Juvy Arrobang.

Court:Q:

To whom do you refer to (by) him?

A:

Morito Salvador stabbed Juvy Arrobang.

Q:

And how far were you from that fellow, Morito Salvador when you saw him stabbed (sic) Juvy Arrobang?

A:

About two armslength.”[10]

The fact that prosecution witness Porferio Delmo did not make a statement regarding the stabbing before the police authorities or city prosecutor is of no moment. Delmo sufficiently clarified this lapse during the trial. He explained that, since the other passengers of the jeepney during that fateful dusk had reported the incident already, there was no need for him to make his own statement.[11] This does not diminish the veracity of his court testimony. Appellant’s attack against prosecution witness Delmo’s credibility for being a neighbor of the deceased is misplaced. Delmo was not shown to have any ill motive in testifying against accused-appellant. In fact, even the stronger tie of family relationship with the victim will not necessarily taint testimony. This Court teaches that “x x x the clear and positive testimony of witnesses is not devalued or impaired by the mere fact of relationship to the victim, when there is no showing of improper motive on the part of said witness.”[12] Moreover, the lapse of two years from the stabbing to Porferio Delmo’s testimony does not necessarily impugn its accuracy. One who witnesses a stabbing that occurred a mere two armslength away, involving two people he already knew may be expected to remember the details of the extraordinary occurrence, including the identity of the principal actor therein.

In deciding this appeal, the Court reiterates the well-settled principle that:

“x x x when the question is raised as to whether to believe the version of the prosecution or that of the defense, the trial court’s choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses’ demeanor and deportment on the witness stand, and the manner in which they gave their testimonies, and therefore could better discern if such witnesses were telling the truth; the trial court is thus in the best position to weigh conflicting testimonies. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.”[13]

Thus, as aptly stated by the court a quo:

“The court finds the testimony of Porferio Delmo, sole prosecution witness, as worthy of belief. The accused, Buenafe Azugue, was positively identified by said eye-witness (sic) who was just two (2) armslength from the victim. No dubious or evil motive whatsoever has been proved which would cause or compel him to falsely testify against said accused. It is much a matter of judicial acceptance that a witness would not falsely impute to an accused a serious criminal offense if it is not the untarnished truth. The categorical identification made by this witness should be given full faith and credit especially in the total absence of any ill motive, grudge or animosity on his part.

X X X X X X X X

From the demeanor of prosecution (sic) sole witness as he testifies, the court finds his testimony credible and worthy of full faith and credit. There is no showing that said witness had any motive to testify falsely against the accused.”[14]

Second Issue: Is Alibi Proper?

The appellant raises the defense of alibi propped up by his allegation that “in the morning of October 27, 1990, he went to Barangay Ilas Norte, Municipality of Dao, Province of Capiz, together with Wilfredo Buenavenida, his father-in-law. He returned to his place of residence at Barangay Cogon only on October 28, 1990. Thus, at the time of the incident he was not in barangay Cogon, Roxas City, but in Barangay Ilas Norte, Dao. (TSN, November 23, 1992, pp. 2-8)”[15]His version was corroborated by defense witness Wilfredo Buenavenida. The latter testified that “he and the accused, Buenafe Azugue, left for Ilas Norte, Dao, Capiz on october (sic) 7, 1992

to harvest palay. They returned only on October 30, 1990. (TSN, November 23, 1992, pp. 2-8)”[16]

Appellant’s defense of alibi is unworthy of credence. “It is an oft-repeated rule that alibi is one of the weakest defenses an accused can invoke, and courts have always looked upon it with caution, if not suspicion, not only because it is inherently unreliable but likewise because it is rather easy to fabricate. It cannot prevail over the positive identification of the accused by the prosecution’s witness who has no motive to testify falsely against (him). For the defense of alibi to prosper, the accused must show that he was at such other place for such a period of time that it was physically impossible for him to have been at the place where the crime was committed at the time of its commission.”[17]In the instant case, the appellant failed to satisfy this requirement of time and place. The difference in the testimony of appellant Azugue and his witness Buenavenida regarding the time they allegedly went and stayed at Ilas Norte, Dao, Capiz plainly showed that both of them made up a story. Furthermore, Buenavenida himself testified that the crime scene was approximately a mere one hour away traveling by jeep.[18] Hence, it was not even physically impossible for appellant to have gone to Ilas Norte, Dao, Capiz and return to Barangay Cogon to commit his foul deed. The Solicitor General correctly observed that:

“As can be gleaned from the testimonies of appellant and his father-in-law, there are glaring inconsistencies which logically lead to the conclusion that their testimonies were mere concoctions and fabrications.

On direct examination, appellant said:

‘Q: On October 27, in the morning of October 27 up to October 28 on the following day, was there an occasion that you have gone home to Roxas City?

A: Yes, sir.’ (TSN, November 23, 1992, p. 16)

Clearly, appellant stated that he went back to Brgy. Punta Cogon, Roxas City on October 28, 1990, which contradicts his father-in-law’s statement that they went back on October 30, 1990.

While both appellant and Buenvenida (sic) gave their testimonies on the same date, in the morning of November 23, 1992, with Buenvenida testifying ahead of appellant, and the latter heard in toto the testimony of the former, yet their testimonies were inconsistent, which indicates that both were not telling the truth.”[19]

Based on the foregoing discussion, the testimony of Merlinda Fajartin, which seeks to place the crime scene in another location and to limit the perpetrator to her brother alone who is at large, is discredited. It is not at all farfetched that Merlinda concocted her version of the crime so that accused-appellant Azugue, a friend and co-conspirator of her brother, would thereby be acquitted. Thus, her testimony is simply unworthy of belief and serious consideration by the Court.

Conspiracy Attended the Commission of the Crime

The evidence on record reveals that the accused-appellant Buenafe Azugue’s participation in the killing is limited to his having held both hands of the victim Joebe Arrobang. Nonetheless, the mere fact that the accused-appellant “did not actually stab the victim x x x does not negate the appellant’s being part of a conspiracy to kill the latter.”[20]We reiterate that “(i)n a conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the death of the victim.”[21]

In this case, accused-appellant Azugue’s active cooperation in “face to face” holding and immobilizing the arms of the victim who while in this helpless position was then stabbed fatally from the back with a knife by the other conspirator Morito Salvador clearly and unmistakably showed both appellant Azugue and Salvador acted together with one purpose and design, to kill the victim. Hence, the appellant is liable, by legislative and judicial fiat, as if

he himself dealt the fatal blow.

Treachery

Jurisprudence teaches us that to appreciate treachery “two (2) conditions must be present, to wit: (1) the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted.”[22] These conditions are amply present in the instant case. Azugue and Salvador’s previously discussed cooperative actions, where one immobilized the victim Arrobang while the other did the stabbing, coupled with their swift surprise attack on the victim, left the latter with no opportunity to put up a defense against such an unexpected, vicious and fatal assault on his person. In fact, the victim Arrobang “was defenseless during the attack as his hands were restrained by the accused-appellant to facilitate the stabbing x x x.”[23] Therefore, the trial court correctly appreciated treachery which qualified the killing to murder.

WHEREFORE, appeal is hereby DISMISSED. The trial court’s Decision convicting appellant Buenafe Azugue y Amador of murder and imposing on him the penalty of reclusion perpetua and the payment to the victim’s heirs of civil indemnity in the amount of P50,000.00 is hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 9-18.

[2] Judge David A. Alfeche, Jr. presiding.

[3] Original Record, pp. 24-25; rollo, pp. 2-3.

[4] Ibid., p. 58.

[5] Decision, pp. 3-4; rollo, pp. 11-12.

[6] Ibid., pp. 4-5; rollo, pp. 12-13.

[7] Ibid., pp. 9-10; rollo, pp. 17-18.

[8] Appellant’s Brief, p. 1; rollo, p. 41.

[9] Ibid.

[10] TSN, October 19, 1992, pp. 6-9.

[11] Ibid., pp. 10-11.

[12] People vs. Layno, G.R. No. 110833, p. 16, November 21, 1996; citing People vs. Pasiliao, 215 SCRA 163, October 26, 1992.

[13] People vs. Obzunar, G.R. No. 92153, p. 11, December 16, 1996; quoting People vs. Alimon, G.R. No. 87758, p. 12, June 28, 1996; citing People vs. Vallena, 244 SCRA 685, June 1, 1995, and People vs. Tismo, 204 SCRA 535, December 4, 1991.

[14] Decision, pp. 5, 12; rollo, pp. 13, 15.

[15] Appellant’s Brief, pp. 4-5; rollo, pp. 44-45.

[16] Ibid., p. 5; rollo, p. 45.

[17] *People vs. Layno*, supra; citing *People vs. Pasiliao*, supra, *People vs. Manzano*, 248 SCRA 239, September 15, 1995, *People vs. Esquilona*, 248 SCRA 139, September 8, 1995, and *People vs. Pacapac*, 248 SCRA 77, September 7, 1995. See also *People vs. Mendoza*, 254 SCRA 61, 75, February 23, 1996.

[18] TSN, November 23, 1992, pp. 8-9.

[19] Appellee's Brief, pp. 11-12; rollo, p. 55.

[20] *People vs. Dinglasan*, G.R. No. 101312, January 28, 1997, pp. 21-22.

[21] *Ibid.*; citing *People vs. Francisco*, 249 SCRA 526, October 25, 1995.

[22] *People vs. Crisostomo*, 222 SCRA 93, 100, May 17, 1993.

[23] *People vs. Dinglasan*, supra, p. 23.

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