

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL APOLONIA, ACCUSED-APPELLANT.

G.R. No. 111707. August 04, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

Rafael Apolonia appeals from a decision of the Regional Trial Court of Nasugbu, Batangas, finding him guilty of murder.

The information filed against Apolonia and one John Doe read as follows:

“That on or about the 17th day of September 1990, at about 3:00 o’clock in the afternoon, at Sitio Bayabasan, Barangay Aga, Municipality of Nasugbu, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a long firearm, together with one John Doe, whose identity and whereabouts are still unknown, conspiring and confederating together, acting in common accord and mutually helping each other, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearm, one Pepito Alonzo y Ramos, suddenly and without warning, thereby inflicting upon the latter gunshot wounds on his body, which caused his instantaneous death.

Contrary to law.”[1]

The John Doe has remained unidentified and at large to date.

At arraignment, Apolonia entered a plea of not guilty.

After trial, the trial court found Apolonia guilty of murder beyond reasonable doubt and sentenced him to reclusion perpetua and to indemnify the heirs of Pepito Alonzo in the amount of P80,000.00, by way of actual, moral and exemplary damages.

The evidence submitted by the prosecution tended to establish the following as the relevant facts.

Prosecution witness Aquilino Alonzo testified that on 17 September 1990, at about 3:00 p.m., he was in his house in Sitio Bayabasan, Barangay Aga, Nasugbu, Batangas. Appellant Apolonia and an unidentified companion dropped by Apolonia, then carrying a long firearm, asked Aquilino Alonzo where his brother Pepito Alonzo was. Aquilino recalled that Apolonia appeared to be angry, for his voice was loud and “mabalasik” [ferocious]. When Aquilino failed to tell them where they could find Pepito, the two (2) left forthwith. Concerned that something evil might befall his brother, Aquilino decided to follow the two (2) men. Following the two (2) men along a footpath, Aquilino heard a gunshot. He hid himself behind a mango tree and from there, he saw appellant Apolonia about eight (8) meters away, fire his gun at a direction where Aquilino would shortly thereafter find the dead body of Pepito Alonzo. At the time of the shooting, the victim was near his assailants but Aquilino could not see who the victim was since the two (2) men stood between Aquilino and the victim, obscuring the line of sight of Aquilino. After the shooting, Apolonia and his companion departed in haste from the scene. Aquilino then

walked over to the spot where the shooting had just taken place only to see Pepito Alonzo lifeless, lying on the ground, face up.

Aquilino Alonzo then went to the Barangay Chairman to seek the latter's help and from there, proceeded to the Nasugbu Police Station to report the slaying he had just witnessed.[2] After a complaint had been filed with the trial court, a warrant of arrest was issued; but appellant and his unidentified companion could not be found. More than a year later, on 5 October 1991, acting on an informer's tip, the police arrested appellant Apolonia in Tagaytay City where he was supposed to meet his daughter who had just arrived from Singapore.[3]

Pedro C. Digno, a member of the Philippine National Police, testified that on 17 September 1990, Aquilino Alonzo reported the shooting to him. He immediately proceeded to the scene of the killing with another officer, SPO1 Nemesio Barcelon. There he saw the lifeless body of Pepito Alonzo. A search of the vicinity of the shooting yielded two (2) empty shells of .30 caliber rifle (Garand) bullets and one (1) live round of ammunition of the same caliber; these were brought to the police station.

Dra. Rose Lucas Montemar, the Municipal Health Officer of Nasugbu, Batangas, examined the body of Pepito Alonzo on 17 September 1990 and issued a Death Certificate. In her autopsy report, Dra. Montemar described the injury sustained by Pepito Alonzo on the right back side of his head as a "mutilated wound," "warat," or "sabog" with Pepito's brains spilling out from the wound. The wound had been caused by a gunshot but from the appearance of the wound which was very large, she testified, she could not determine the entry and exit points of the bullet. Further, she could not state with assurance whether the wound had been caused by only one or by more than one bullets. Lastly, although the exact distance of the assailant from the victim could not be determined, she deduced that, from the size of the wound, Pepito Alonzo had been shot at close range.[4]

For his part, Apolonia controverted the prosecution's version of the events of that fateful day.

Apolonia testified that on 17 September 1990, from 7:00 in the morning until 5:00 in the afternoon, he was with Ernesto Tampis, then preoccupied with farming in Barangay Medina, Magallanes, Cavite and that he did not leave Barangay Medina that day. After 5:00 p.m., he went home with Tampis. He had been in the employ of Ernesto Tampis, then a Barangay Captain, as a farm-hand since 1989 and had lived in Tampis' house in Medina ever since. Appellant claims that since he started working in Medina, he had come back to Sitio Bayabasan to visit his family only twice, since his wife frequently went to Medina to secure money from Apolonia with which to purchase provisions for their family.[5] On 5 October 1991, Apolonia asked leave from Ernesto Tampis to go to Tagaytay City to meet his daughter who was arriving from Singapore. There appellant was apprehended by the police and brought to the Nasugbu Police Headquarters. Only then did he learn that he was charged with the murder of Pepito Alonzo.[6] The testimony of Apolonia was corroborated by defense-witness Ernesto Tampis in court.

In the present appeal, Apolonia raises the following issues:

I.

The lower court seriously erred in giving full faith and credit to the lone testimony of Aquilino Alonzo; and

II.

The lower court gravely erred in finding the accused guilty beyond reasonable doubt of the crime charged despite lack of strong and convincing evidence.

In respect of the first issue, appellant Apolonia contends that the testimony of Aquilino Alonzo was replete with

contradictions. When Aquilino was asked by defense counsel if he had seen Apolonia on the morning of 17 September 1990, he first answered in the affirmative, but later testified that he could not tell if he saw Apolonia in the morning or in the afternoon because he (Aquilino) had no watch and it was cloudy that day.[7] Under these circumstances, Apolonia adds, Aquilino Alonzo could not have known what time Apolonia and his companion came to the latter's hut.

Examination of the transcript shows that Aquilino Alonzo became somewhat confused during cross-examination. The confusion was, however, explained with the help of the trial judge's clarificatory questions.[8]

We consider that if there was an inconsistency in this respect in the testimony of Aquilino Alonzo, it was a minor inconsistency which in fact enhances Aquilino's credibility as it indicates that his responses were unrehearsed.[9] This is specially true where, as in the instant case, the witness was not shown to have any motive to lie and falsely to charge Apolonia, his wife's uncle, in a fabricated charge of murder. The records do not show any previous ill-feeling or grudge or hatred on the part of Aquilino Alonzo against appellant Apolonia. To the contrary, during cross-examination, Aquilino testified that his relationship with Apolonia had been a harmonious one, that they had had no misunderstanding; that in fact they used to take their meals together and that Aquilino had considered Apolonia as a "barkada." [10]

The trial court accepted as straightforward and worthy of credence the testimony of Aquilino Alonzo and there is nothing in the record to indicate error on the part of the trial court in doing so. We find no compelling reason to depart from the firmly settled rule that, in respect of the appraisal of credibility of witnesses, the findings of the trial judge are to be accorded great weight and are not to be disturbed, unless the judge had obviously overlooked facts of substance and value which, if taken into account, would affect the result of the case.[11]

In respect of the second issue, Apolonia avers that the lone testimony of Aquilino Alonzo was inadequate to establish his (Apolonia's) guilt beyond reasonable doubt since Aquilino had not actually seen Apolonia shoot Pepito Alonzo to death.

Appellant Apolonia's argument does not persuade. It is not indispensably necessary that an eye-witness saw the accused in the very act of shooting Pepito Alonzo.[12] In the present case, Aquilino Alonzo did not in fact see Apolonia aim his rifle at Pepito Alonzo and pull the trigger. As earlier noted, Apolonia and his still unidentified companion stood between Aquilino Alonzo to their rear, on the one hand, and the victim Pepito Alonzo in the front, upon the other hand. The evidence against appellant Apolonia is consequently circumstantial in nature. The well-settled doctrine is that the conviction of an accused may be based on circumstantial evidence provided that:

- (a) there is more than one (1) circumstance proven;
- (b) the facts or circumstances from which the inferences are derived are established; and
- (c) that the combination of all the circumstances is such as to produce the conviction that the accused was guilty beyond reasonable doubt.[13]

In the case at bar, the circumstantial evidence adduced by the prosecution satisfied the quantum of proof and the requisites of conviction upon the basis of circumstantial evidence. The following circumstances very clearly point to Apolonia as the doer of the crime committed:

- (1) On the day Pepito Alonzo was killed, appellant Apolonia and a companion went to the house of Aquilino Alonzo looking for Pepito;
- (2) Appellant Apolonia was then armed with a long firearm;
- (3) Appellant Apolonia appeared angry;

- (4) While following appellant Apolonia and his companion, Aquilino Alonzo heard a gunshot;
- (5) Aquilino Alonzo hid and from his hiding place, he saw Apolonia fire his gun at someone;
- (6) Aquilino Alonzo saw appellant Apolonia and his companion flee from the scene of the crime;
- (7) Aquilino proceeded to the spot where appellant Apolonia had aimed and fired his gun and there found the dead body of his brother Pepito Alonzo;
- (8) A search of the scene of the shooting by the police yielded two (2) empty .30 caliber rifle shells and one (1) live .30 caliber rifle bullet; and
- (9) The autopsy report showed that the cause of death of Pepito Alonzo was a large and gaping gunshot wound at the back of his head.

Appellant Apolonia next argues that his alibi had been incorrectly disregarded by the trial court. He insists that he could not have been at Sitio Bayabasan, Barangay Aga, Nasugbu, Batangas, on 17 September 1990, because he was then in Barangay Medina, Magallanes, Cavite. Apolonia's defense of alibi had been corroborated, as noted earlier, by Ernesto Tampus who happens to be a cousin of Apolonia's wife.[14] Apolonia adds that there is only one (1) passenger jeepney which takes passengers from Barangay Medina to the National Highway and vice-verse; this jeepney would leave Barangay Medina at 9:00 o'clock in the morning and return at 5:00 o'clock in the afternoon.

Once more, the Court is not convinced. Apolonia had during trial testified that the distance between Sitio Bayabasan in Nasugbu, Batangas and Barangay Medina in Magallanes, Cavite is twenty (20) kilometers and that one could proceed from one place to the other by foot.[15]

In order to prosper, alibi must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity, at the time of its commission.[16] In *People v. Torres*,[17] this Court noted that the defense of alibi is weak if it is established mainly by appellant himself or by his relatives.[18] We consider that this is so in the instant case.

The trial court found that the slaying of Pepito Alonzo was attended by treachery. It is clear from the testimony of Dra. Rose Montemar that the gunshot wound sustained by Pepito Alonzo was located at the right back portion of the head and that the deceased had no other injuries apart from his gaping mutilated head wound. Thus, it is evident that the victim was shot from behind, with his back towards his killer. Moreover, appellant Apolonia does not pretend that Pepito Alonzo was armed. It has many times been held that treachery exists when a defenseless victim was shot or stabbed from behind and that this shows that the appellant had employed means of attack which offered no risk to himself from any defensive or retaliatory act which the victim might have taken.[19]

The Court, however, is not convinced that evident premeditation had been shown in the case at bar. Evident premeditation cannot be appreciated where, as in the instant case, no evidence had been presented to show the nature or the time of appellant's planning and preparation to slay his victim or when the plan was first conceived.[20]

There being no aggravating or mitigating circumstances, the penalty for murder (reclusion temporal in its maximum period to death) should be imposed on appellant in its medium period, that is, reclusion perpetua.

In respect of the damages awarded by the trial court, the record shows no indication of what evidence was offered to and accepted by the court as to the nature of the injuries and the amount of such damages.

WHEREFORE, in view of the foregoing, the trial court's decision in Criminal Case No. 634 is hereby

AFFIRMED, with the following modification that appellant Rafael Apolonia is hereby ORDERED to pay the heirs of Pepito Alonzo an indemnity for death in the amount of P50,000.00, in lieu of “actual, moral and exemplary damages.” Costs against appellant.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Information, rollo pp. 7-8.

[2] TSN, testimony of Aquilino Alonzo, 12 August 1992, pp. 4-60.

[3] RTC Decision, pp. 3-4.

[4] TSN, testimony of Dra. Rose Montemar, 22 September 1992, pp. 3-8.

[5] RTC Decision, 3 August 1993, pp. 6-7; Rollo, pp. 21--22.

[6] Appellant’s Brief, p. 6.

[7] Appellant’s Brief, p. 9.

[8] This is part of Aquilino Alonzo’s testimony during cross-examination:

Q: On that morning of September 17, 1990, have you ever seen this Rafael in your Barangay?

A: Yes, sir.

Q: Where did you see Rafael in the morning of September 17, 1990?

A: He went to our hut, sir.

Q: What time more or less, was that morning of September 17, 1990 when he went to your hut?

A: I cannot remember anymore, sir.

Q: Was that in the morning or in the afternoon when accused and his companion went?

A: I cannot remember whether it was in the morning or afternoon because I have no watch and the weather was not fine on that date, sir.

Q: Was it before lunch time or after lunch time?

A: I cannot remember anymore because I myself was not able to take my lunch sir.

COURT: Proceed.

Atty. Cortez:

Q: So you do not know the time when Rafael and his unidentified companion arrived at your hut, is that what you mean?

Prosecutor Marajas:

Your honor, I think the question will be quite vague on account of the fact that based on the prior question propounded by the defense counsel it seems to be that Rafael Apolonia went to that place [twice], your honor.

Atty. Cortez:

Your honor, that is what the witness states, your honor. This is a murder case.

COURT:

And besides he is being asked that before the accused and his companion went to his house, did he see the accused, that is the question.

A: On September 17, 1990 he went to our hut, sir.

COURT: (to witness)

Are you referring to that incident when he went to your hut already carrying the firearm?

A: Yes, sir.

COURT:

Let's stay that way.

(TSN, Testimony of Aquilino Alonzo, supra, pp.16-17).

[9] People vs. Armada, Jr., 225 SCRA 644 (1993); People vs. Salamat, 225 SCRA 499 (1993); People vs. Dulay, 217 SCRA 103 (1993); People vs. Francisco, 213 SCRA 746 (1992); People vs. Diaz, 212 SCRA 147 (1992).

[10] TSN, testimony of Aquilino Apolonia, 19 August 1992, p. 15.

[11] People vs. Orehuella, et al., G.R. Nos. 108780-81, 29 April 1994; People vs. Verchez, et al., G.R. Nos. 82729-32, 15 June 1994; People vs. Armada, supra; People vs. Lizada, 225 SCRA 708 (1993); People vs. Tidong, 225 SCRA 324 (1993).

[12] People vs. De La Pena, G.R. No. 104839, 29 April 1994,

[13] Section 5, Rule 133 of the Rules of Court; People vs. Ruelan, G.R. No. 106152, 19 April 1994; People vs. Ilaoa et al., G.R. No. 94308, 16 June 1994, People vs. Alvero, Jr. 224 SCRA 16 (1993); People vs. Liwag, 225 SCRA 46 (1993).

[14] TSN, Testimony of Rafael Apolonio, 22 April 1993, p.7).

[15] TSN, Testimony of Rafael Apolonia, 23 March 1993, p. 25.

[16] People vs. Oracoy, 224 SCRA 759 (1993); People vs. Mejorada, 224 SCRA 837 (1993); People vs. Dominguez, 217 SCRA 170 (1993); People vs. Flores, 217 SCRA 613 (1993); People vs. Cabuang, 217 SCRA 675 (1993).

[17] G.R. No. 105389, 28 April 1994.

[18] People vs. Solis, 195 SCRA 465 (1991), People vs. Berringuel, 192 SCRA 561 (1990).

[19] People vs. Villalobos, 209 SCRA 304; People vs. Asil, 141 SCRA 286 (1986); see generally, People vs. Melgar, 157 SCRA 718 (1988).

[20] People vs. Salvador, 224 SCRA 819 (1993); People vs. Besana, supra; People vs. Wenceslao, 212 SCRA 560 (1992) People vs. Mallari, 212 SCRA 777 (1992); People vs. Florida, 214 SCRA 227 (1992).

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