

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NONOY BACLAYO (DECEASED), LUCITO ALVAREZ ALIAS “BOY”, DANILO MILLARE ALIAS “DANNY” (ACQUITTED), BENJAMIN PADILLA ALIAS “BENJIE...

G.R. No. 113786. May 29, 1995

Ponente: MELO, J.

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MELO, J.:

Nonoy Baclayo, Lucito Alvarez alias "Boy", Danilo Millare alias "Danny", Benjamin Padilla alias "Benjie" and a certain alias "King" were charged with murder in an Amended Information reading as follows:

That on or about September 5, 1989, in the Municipality of Tagum, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, accused Lucito Alvarez, Danilo Millare and Benjamin Padilla, conspiring, confederating and mutually helping with Nonoy Baclayo and a certain alias "King", who are all at large, with treachery, cruelty and taking advantage of superior strength, with intent to kill, armed with high powered firearms, did then and there willfully, unlawfully and feloniously attack, assault and shoot one P/Sgt. Rolando Suello, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

The commission of the offense was, likewise, attended by the following aggravating circumstances of contempt to or with insult to the public authorities, and disregard of the respect due to the offended party on account of his rank.

(p. 5, Rollo.)

Nonoy Baclayo died before the Information was actually filed, while Lucito Alvarez, Benjamin Padilla, and Danilo Millare entered a plea of "not guilty". However, during the trial, upon motion of the prosecution, the trial court dismissed the case against Danilo Millare for insufficiency of evidence.

After trial, the trial court rendered a decision on July 29, 1991, disposing:

WHEREFORE, finding both Lucito Alvarez and Benjamin Padilla guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code with the attendant aggravating circumstance of advantage taken by both accused of their superior strength and the additional aggravating circumstance that the crime was committed in contempt of or with insult to public authorities in the case of Benjamin Padilla which was not offset by any mitigating circumstance, both accused are hereby sentenced to serve the prison term of Reclusion Perpetua (instead of Death because of the constitutional ban) and to suffer the accessory penalties provided for by law.

For the civil liability, they are further condemned, jointly and severally, to indemnify the heirs of the victim, Rolando Suello, the following:

- P190,000.00 representing the loss of the victim's expected income;

- P100,000.00 as moral damages; and
- P50,000.00 as actual damages; and to pay the costs.

(p. 24, Rollo.)

From said decision, Benjamin Padilla and Lucito Alvarez have interposed the present appeal upon the following assignment of errors:

- The trial court erred in holding accused Lucito Alvarez to be in conspiracy with Baclayo despite absence of clear and convincing proof that he acted in concert with the latter.
- The trial court erred in holding Benjamin Padilla to be in conspiracy with Baclayo despite the physical absence at the scene of the crime.
- The trial court erred in convicting the accused, Lucito Alvarez and Benjamin Padilla, despite failure of the prosecution to prove their guilt beyond reasonable doubt.

(pp. 37-38, Rollo.)

The facts of the case, as briefly summarized by the Office of the Solicitor General and as borne out by the evidence, are as follows:

About 4:00 in the afternoon of September 5, 1989, P/Sgt. Rolando Suello, the victim, went to the interior part of Roxas St., Tagum, Davao, otherwise known as Misa District of the Municipality. Along the way, P/Sgt. Suello met Patricio Jacobe, Jr. with whom he had a conversation concerning police matters. While conversing, appellants Lucito Alvarez and Nonoy Baclayo, former members of the 64th Infantry Battalion, Philippine Army passed them by. After a while, Alvarez and Baclayo returned and approached them. Baclayo asked Suello if he was a policeman. For unknown reasons, an altercation ensued between them. Thereafter, appellant Padilla, apparently coming from behind, disarmed Suello by grabbing his service pistol. After rendering him defenseless, Baclayo shot Suello at his stomach, using an armalite rifle, causing him to turn on his side. Appellant Alvarez took his turn by shooting Suello on his head eventually causing his instantaneous death (TSN, July 11, 1990, pp. 39-43; Exh. "G").

(pp. 75-76, Rollo.)

Accused-appellant Alvarez disparages the testimony of prosecution witnesses Zorayda Sapilen and Patricio Jacobe, Jr., as unworthy of belief, contending that their declarations consist only of general statements of his presence at the scene of the crime and are deficient in details concerning the specific act done by him.

The evidence does not support accused-appellant's contention. Prosecution witness Zorayda Sapilen positively and categorically testified that accused-appellant Alvarez shot the victim, Sgt. Suello, in the head.

Q.

Then what happened when he was already on the road lying?

A.

He was again shot.

Q.

This time, who shot him?

A.

Alvarez did.

Q.

What weapon did Alvarez use in shooting Roland Suello?

A.

It was a long firearm.

Q.

Where was the long firearm directed?

A.

On the upper part of his body.

Q.

What particular upper part of his body?

A.

I think it was on the head.

(pp. 11-12, tsn, July 11, 1990)

Likewise, prosecution witness Patricio Jacobo, Jr., positively and categorically testified that accused-appellant Alvarez shot Sgt. Suello, to wit:

Q.

And then what happened to him afterwards?

A.

He was again shot on the head with M14.

Q.

Who shot him with the use of an M14?

A.

Alvarez.

Q.

How many persons shot P/Sgt. Suello?

A.

Two (2).

Q.

Who was the first one who shot Sgt. Suello?

A.

Baclayo.

Q.

The second person who shot Sgt. Suello?

A.

Alvarez.

Q.

If Alvarez is present in court, please point at him.

INTERPRETER:

Witness pointed to the person who identified himself awhile ago as Lucito Alvarez.

(p. 42, tsn, July 11, 1990)

The foregoing unhedging statements of the prosecution witnesses clearly established the fact that the victim was shot by accused-appellant Alvarez. Zorayda Sapilen could not have mistaken the identity of Alvarez for she had known Alvarez for almost one year before the incident (p. 10, tsn, July 11, 1990). Likewise, witness Jacobo could not have committed a mistake in identifying the accused for he had known them at least five (5) months before the killing of Sgt. Suello (p. 43, tsn., July 11, 1990). Moreover, it is a fundamental and settled rule that the findings of fact of trial courts are accorded great weight and respect by appellate courts and should not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts of weight and significance, which if taken into consideration would have altered the result of the case (*Donato vs. Court of Appeals*, 217 SCRA 196 [1993]; *People vs. de la Cruz*, 217 SCRA 283 [1993]). A search of the record fails to uncover any such facts of weight and significance. The findings of facts of the trial court must perforce be accepted.

The defense of alibi set up by accused-appellant Padilla that he was at the mountainous area of Mt. Diwalwal, Davao at the time of the commission of the crime must be rejected. Time-honored is the rule that alibi cannot prevail over the positive testimony of witnesses (*People vs. Dominguez*, 217 SCRA 170 [1993]; *People vs. Amador*, 226 SCRA 241 [1993]). Accused-appellant Padilla was positively identified by prosecution witnesses Zorayda Sapilen and Patricio Jacobo as one of the perpetrators of the killing of Sgt. Suello. Both prosecution witnesses testified on the participation of accused-appellant Padilla in the commission of the crime; both testified that immediately before the shooting of Sgt. Suello by Baclayo and Alvarez, Padilla disarmed Sgt. Suello by grabbing the latter's gun which was tucked at his waist (pp. 13-14, tsn., July 11, 1990). Padilla's act of disarming St. Suello was obviously intended to render Sgt. Suello defenseless to ensure the execution of the crime without risk to themselves from any defense Sgt. Suello.

WHEREFORE, the decision appealed from is hereby AFFIRMED, except for the deletion of the award for moral damages due to lack of evidentiary support. The awards for unearned income and civil indemnity remain.
SO ORDERED.

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

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