

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ROGELIO VILLANUEVA AND MAMERTO DURANA, ACCUSED. MAMERTO DURANA, ACCUSED-APPELLANT.

G.R. No. 114266. December 04, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

DIOSDADO MENIANO was hacked dead for which ROGELIO VILLANUEVA and MAMERTO DURANA were charged with murder. Villanueva however remained at large so that only Durana was tried. Thereafter Durana was sentenced to reclusion perpetua and ordered to indemnify the heirs of their victim in the amount of P50,000.00.[1]

On 12 November 1992, around ten-thirty in the evening, at Barangay Tagpuro, Tacloban City, Diosdado Meniano and his wife Gloria were awakened by a loud voice from outside their house challenging Diosdado to a fight. Gloria Meniano readily recognized the voice as that of accused Mamerto Durana.[2] The challenge was hurled a number of times by Durana. It was not heeded initially by Diosdado until after Durana threatened to go up the house if the former would not go down. Diosdado decided finally to go down but not without arming himself with a short bolo. Gloria remained inside the house. She peeped through the bamboo slats which served as external walls of their house.[3] Since the moon was bright she was able to see Durana clearly as the intruder.[4] She also saw the accused Rogelio Villanueva hiding near the San Francisco plants.[5] As soon as Diosdado went out of his house he was immediately hacked by Villanueva.[6] Despite the hacking, Durana continued challenging Diosdado to a fight. He even taunted the victim, "You cannot bear a wound." [7] Villanueva and Durana then ran away.

Elenita Meniano, sister-in-law and neighbor of Diosdado, also witnessed the hacking incident. She testified that on 12 November 1992 she and her husband were awakened by the shouts of Mamerto Durana challenging Diosdado to a fight;[8] that they watched the incident through the window and saw Diosdado hacked by Villanueva after the former went down from his house; that after Diosdado was slain, she saw Durana brandishing a bolo near the crime scene.[9]

The body of Diosdado Meniano was examined by Dr. Angel A. Cordero, Medico-Legal Officer, Camp Kangleion, Palo, Leyte, who ascribed the cause of death to "shock and hemorrhage due to hacking wounds of the right basal portion of the skull, lacerating the spinal column." [10]

The defense is alibi. Mamerto Durana claims that in the evening of 12 November 1992 he was in the store of a certain Rogelio Baganio some 30 meters from the house of the deceased to buy cigarettes[11] and to fetch his children who were watching television in the store. Baganio's store was about half a kilometer away from his residence.

The defense of appellant was not sustained by the trial court.

In this appeal appellant contends that the court a quo erred (a) in failing to consider the fact that he was not a party

respondent during the preliminary investigation of the case and (b) in giving credence to the testimony of Gloria Meniano.[12]

Accused-appellant argues that the instant case was filed in court for murder only against the other accused, Rogelio Villanueva, on the basis of the resolution of the prosecutor in I.S. No. 92-1524; that he was not made a respondent in the investigation; that despite the sworn statements of witnesses Gloria Meniano and Elenita Meniano who pointed to him as co-conspirator, he was not included in the charge for murder because, according to the police, he would be used as a witness against the accused Villanueva.

The argument is without merit. It is settled that the absence of a preliminary investigation does not impair the validity of the information or otherwise render the same defective; neither does it affect the jurisdiction of the court over the case, nor does it constitute a ground for quashing the information.[13] If no preliminary investigation has been held, or if it is flawed, the trial court may, on motion of the accused, order an investigation or reinvestigation and hold the proceedings on the criminal case in abeyance.[14] In this case, accused-appellant failed to invoke such right to preliminary investigation before or at the time he entered his plea at arraignment.[15] He can no longer invoke that right at this late stage of the proceedings.

Appellant likewise cites what he believes are inconsistencies in the testimony of prosecution witness Gloria Meniano which cast serious doubt on its truthfulness: (a) her statement that when her husband was hacked appellant and his co-accused were still there[16] although she later testified that the other accused was able to run away when her husband was felled after the attack,[17] and, (b) that during the investigation Gloria informed the police authorities that her husband went out of the house because appellant asked her for a stick of cigarette but in court she swore that appellant challenged her husband to a fight.[18]

It is the policy of the Court, founded on reason and experience, to sustain the factual findings of the trial court in criminal cases on the rational assumption that it is in a better position to assess the evidence before it; consequently, findings of the trial court are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which if considered would have affected the result of the case. It is the trial court and not any court on appeal that can best ascertain the credibility of witnesses.

Discrepancies on minor matters do not impair the essential integrity of the evidence for the prosecution as a whole nor reflect on the honesty of the witness.[19] The alleged inconsistencies on the testimony of Gloria Meniano dwell on minor and trivial matters which only serve to strengthen than weaken her credibility. The most honest witness may sometimes commit mistakes but such honest lapses do not necessarily impair his credibility especially when minor details are involved. Human memory may be temporarily paralyzed by a startling event especially if the same involves a person close to the witness.

Contrary to the allegations of the accused-appellant, there was no such inconsistency in the testimony of Gloria Meniano concerning the former's participation in the killing of her husband. To the questions of the trial court, the witness clearly testified as to the existence of conspiracy between appellant and his co-accused. Thus-

Court:

Q.

I will ask some clarificatory questions. The police would have not known the incident if you did not give information to the police, right?

A.

Yes, sir.

Q.

Now, here you said that Mamerto Durana was asking from your husband a stick of cigarette. Did you say this to the police?

A.

I did not say that to the police.

Q.

Then how could the police state it here if not given that information by you?

A.

I was still confused at that time because of the death of my husband.

Q.

Now, here in this excerpt of the blotter the person you identified to the police who hacked your husband was not Rogelio Villanueva but Mamerto Durana and apparently this is the information you gave to the police?

A.

No, sir, that is not what I told to (sic) the police.

Q.

What did you tell to (sic) the police?

A.

I told the policemen that it was Rogelio Villanueva who hacked my husband.

Q.

Why did you not tell the police that the accused here Mamerto Durana was asking for a stick of cigarette from your husband that is the reason why your husband went out of the house?

A.

Maybe I was still confused at that time, I do not know.

Q.

But even if you were confused the fact that the dead man here is your husband you cannot be confused which one killed your husband and what preceded?

A.

I would not be confused on the person who killed my husband.

Q.

The court feels that the situation is like this, that either you are telling the truth or this complaint was only based on suspicion that it was the two accused who conspired to kill your husband or maybe you did not see the actual killing?

A.

It is not only my suspicion because I saw that it was Rogelio Villanueva who hacked my husband.

Q.

So it is clear now that what you told the police was that Mamerto Durana challenged your husband to a fight and not that Mamerto Durana was asking for a stick of cigarette from your husband?

A.

Yes sir.[20]

Gloria Meniano's testimony in court jibes with the sworn statement she executed on 16 November 1992 before the police authorities.[21] This statement as well as her testimony clearly points to the appellant as the person who challenged and drew Diosdado Meniano out of his house so that the latter could be hacked without warning by his co-accused. The inconsistency alleged by accused-appellant referred merely to a police investigation report stating that Meniano allegedly told the police authorities that appellant asked for a cigarette stick from the deceased prompting the latter to go out of his house. This cannot prevail over the positive identification in court by the witnesses for the prosecution that appellant was one of two culprits criminally responsible for the death of Diosdado Meniano.

We hold that the trial court correctly found the existence of conspiracy between the two accused in killing the deceased with the employment of treachery. Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests.[22] In the instant case, it was clearly shown that while appellant purposely challenged the deceased to go out of his house, his co-accused secretly hid among the plants outside of the house to await Diosdado and when the latter finally appeared, the former suddenly and without warning pounced upon the victim and hacked him to death. Indeed Villanueva and Durana gave their victim no chance to defend himself nor even to repel the assault on him considering the unexpected attack on his person to ensure the accomplishment of their objective without risk to themselves. Conspiracy between appellant and his co-accused having been established, the guilt or culpability of one is imputable to both of them in equal degree[23] although accused Rogelio Villanueva still has to be apprehended and then tried before he can be declared guilty as the evidence may warrant.

The penalty for murder under Art. 248 of the Revised Penal Code is reclusion temporal in its maximum period to death. There being no mitigating or aggravating circumstances that attended the commission of the offense, the trial court therefore correctly imposed the penalty of reclusion perpetua upon accused Mamerto Durana.

WHEREFORE, the decision finding accused-appellant MAMERTO DURANA guilty of murder and imposing upon him a prison term of reclusion perpetua, as well as ordering him to indemnify the heirs of Diosdado Meniano in the amount of P50,000.00 is AFFIRMED, with costs against accused-appellant.

SO ORDERED.

Padilla (Chairman), Vitug and Hermosisima, Jr., JJ., concur.
Kapunan, J., on leave.

[1] Decision penned by Judge Pedro S. Espina, RTC-Br. 7, Tacloban City.

[2] TSN, 17 June 1993, p. 9.

[3] Id., p. 6.

- [4] Id, p. 5.
- [5] Id., p. 6.
- [6] Ibid.
- [7] Id., p. 3.
- [8] TSN, 17 June 1993, p. 23.
- [9] Id., p. 25.
- [10] Exh. "A", Records, p. 16.
- [11] TSN, 20 September 1993, p. 7.
- [12] Rollo, p. 52.
- [13] Sanchez v. Demetriou, G. R. Nos. 111771-77, 9 November 1993.
- [14] Go v. Court of Appeals, G.R. No. 101837, 11 February 1992, 206 SCRA 138.
- [15] Ibid.
- [16] TSN, 17 June 1993, p. 11.
- [17] Id., p.14.
- [18] Id., p.16.
- [19] People v. Alvero Jr., G.R. No. 72319, 30 June 1993, 224 SCRA 16.
- [20] TSN, 17 June 1993, p. 18.
- [21] See Records, p. 3.
- [22] People v. Cadevida, G.R. No. 94528, 1 March 1993, 219 SCRA 218.
- [23] People v. Villagrancia, G.R. No. 94471, 1 March 1993, 219 SCRA 212.

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