

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO MARCOS @ JUNIOR, ACCUSED-APPELLANT.

G.R. No. 115006. March 18, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Santiago, Isabela (Branch 21), finding accused-appellant guilty of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the complainant the amount of P55,000.00 as damages (P30,000.00 as indemnity for death and P25,000.00 for funeral expenses).

The information against accused-appellant alleged:

That on or about the 30[th] day of March, 1988, in the municipality of Ramon, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused together with John Does whose real identities are still to be determined, conspiring, confederating together and helping one another, with treachery and use of superior strength, did then and there wilfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly and without giving him a chance to defend himself, assault, attack and stab with a sharp pointed instrument one Vicente Reyes inflicting upon him a stab wound on the mid-epigastic region, inside, upward, reaching the right portion of the heart which directly caused his death due to internal hemorrhage.[2]

The crime took place in the early evening of March 30, 1988 in the public Market at Barangay Oscariz in Ramon, Isabela.

The prosecution presented as an eyewitness Petronilo Jacinto, a farmer and long-time resident (31 years) of the barangay. He testified that the deceased Vicente "Boyot" Reyes was his close friend (barkada) and that on the said evening he and the deceased had some drinks with other friends (Rodring Nabong, Mario Mansayac, Mael Vinoya) in his house. According to Petronilo Jacinto, he left the group for a while to buy some ice at Mely's Canteen[3] at the public market, about 20 meters from his house. Unknown to him, the deceased followed him. While he was at Mely's Canteen, he heard a commotion and the sound of breaking glass inside Geronima Barbero's restaurant and so went there and saw the deceased. He was seated alone at a table having beer. At another table were five men who were likewise drinking beer. In a while, an acquaintance, a certain Mamer, came by and they greeted each other. When he looked again inside the restaurant, he saw accused-appellant and two others holding the deceased as the latter was being stabbed. Petronilo said that he saw accused-appellant holding the deceased by the right hand for about 20 seconds. It is not clear from Jacinto's testimony how many persons stabbed Vicente Reyes. In his sworn statement (Exh. B),[4] he stated that only one of the five stabbed the deceased. Jacinto said he wanted to help the deceased, but there were five assailants. When the latter fled, Jacinto called Mely Bulatao and others to take the deceased to the hospital. The deceased was taken to the hospital by his sister Wilma. Jacinto then called his friends and they all went after the assailants but lost them near the irrigation canal. Jacinto said he had not seen accused-appellant and the latter's companions before and that the next time he

saw accused-appellant again was two years later at the hearing of the case in Ilagan.[5]

Another witness for the prosecution was Geronima Barbero at whose restaurant the stabbing took place. She testified that at about six in the evening of March 30, 1988, while she was in her restaurant serving beer to four men, the deceased Vicente Reyes arrived. He wanted to buy three bottles of Beer Grande, but Barbero did not give him the beer because he had only P10.00. According to Barbero, the deceased thought the men drinking beer were making fun of him, possibly because of his embarrassment at not being given beer, and so he complained to her. But, Barbero said, she assured him that "they are not saying anything [against you]." One of the four was accused-appellant. She came to know him because earlier she heard accused-appellant asking his bilas (brother-in-law) Pedro San Pedro to join them drinking. Barbero personally knew Pedro San Pedro and she was later told by Pedro San Pedro and other people that accused-appellant's name is Gregorio Marcos, alias Junior. But Barbero did not actually see the stabbing. Mely Bulatao had come to invite her to a party, and she told Bulatao to wait for her. Barbero went over to Mely Bulatao's store, three meters from her restaurant. Two minutes after she had left her eatery, she said she saw people rushing out of her place and the deceased Vicente Reyes clutching his stomach, seriously wounded. Barbero said she ran to look for help. People hanging around the market responded. On April 6, 1988, Barbero executed a sworn statement (Exh. C)[6] regarding the incident where she identified accused-appellant as among the group of men in her eatery at the time of the incident.[7]

The autopsy report (Exh. E)[8] on accused-appellant stated:

Autopsy Report

Name - Vicente Ablan Reyes

Age - 28

Address - Oscariz, Ramon, Isabela

C/S - Single

Occupation - Fisherman

Physical Appearance:

about 50 kilos, 5'3" height, cold body w/ slight rigor mortis

External Examination:

Head - no pertinent findings

Neck - no pertinent findings

Upper extremities - no pertinent findings

Chest - no pertinent findings

Abdomen - Penetrating wound on the med epigastric region about 2 inches in the medline right penetrating upward medially to the left

lower extremities - no pertinent findings

External examination

- Note - Head, neck, upper & lower extremities (no incision was made)

- Thoracic abdominal incision was made (y shape incision) showed plenty of black blood clot intra thoracic

cavity and black blood fluid more on the lower portion, right lower lung to be punctured (black color w/ cloated blood [illegible])

- Heart - punctured wound in the right ventricle w/ no blood in the right auricle & ventricle, small amount of blood in both left auricle and ventricle.

- Diaphragm - was lacerated on right med portion about 2 inches long

- Abdominal cavity - shows little amount of blood clout & blood fluid in the epigastic region (none with med & hypogastric region)

Cause of Death - Internal hemorrhage (intra thoracic) due to stab wound penetrating the right ventricle.

[Sgd.]

BENITO S. ACOSTA

Resident Physician

Southern Isabela District Hospital

Santiago, Isabela

Medical Officer

His death certificate (Exh. D)[9] stated he died because of "internal bleeding" caused by "stabbing wound."

The deceased's sister Remedios Lorenzo testified that the deceased was unmarried and had been living with her since he was six years old when their parents died. On that fateful day, March 30, 1988, a child came to their house to inform her about her brother's death. She learned that her cousin, Wilma Aspirin, had taken Vicente Reyes to the hospital in Santiago, Isabela. She spent P25,000.00 for his funeral, but the receipts for the same were burned when a fire occurred at her house.[10]

On the other hand, accused-appellant interposed the defense of alibi. He testified that, at the time of the commission of the crime, he was in Barangay San Marcos, at the house of Fortunato Domingo; that he had been there since nine in the morning preparing food for the people attending a wake for the child of Domingo. They started serving dinner at five in the afternoon when the people returned from the cemetery in Oscariz. It takes three hours by walking and one hour by tricycle from the house of Fortunato Domingo in Barangay San Marcos to the cemetery in Barangay Oscariz. He denied he saw Pedro San Pedro on March 30, 1988.[11]

To corroborate accused-appellant's claim, the defense presented Alfredo Domingo. Domingo testified that those who attended the interment finished eating dinner at the house of his cousin Fortunato Domingo at seven in the evening. He and accused-appellant went home together at eight. Their houses are only four meters apart; they have been neighbors since 1984.[12]

On September 22, 1992, the trial court rendered its decision, finding accused-appellant guilty of murder. The trial court rejected accused-appellant's defense of alibi which it held could not overthrow "the positive identification [of accused-appellant] made by Geronima Barbero and Petronilo Jacinto." It found the killing attended by abuse of superior strength but ruled out treachery because in its view the killing was made in the heat of the moment, after an altercation, and it was not apparent that the method of attack was chosen by the assailants without risk to themselves. The dispositive portion of the trial court's decision reads:

WHEREFORE, in the light of the foregoing considerations the Court finds the accused Gregorio Marcos GUILTY beyond reasonable doubt of the crime of murder and hereby sentences him to a penalty of reclusion perpetua. The accused is also ordered to pay to the complainant Remedios Lorenzo the total amount of Fifty Five Thousand Pesos (P55,000.00) as damages.[13]

Hence, this appeal. Accused-appellant contends:

THE LOWER COURT ERRED IN NOT FINDING THE EVIDENCE OF THE PROSECUTION INSUFFICIENT TO PROVE THE GUILT OF THE APPELLANT BEYOND REASONABLE DOUBT.[14]

As already stated, the trial court rejected the defense of alibi of accused-appellant on the ground that he had been positively identified by Petronilo Jacinto and Geronima Barbero.

To be sure, Barbero did not see accused-appellant and his group assault the deceased. She could not, therefore, have "positively identified" accused-appellant as the assailant. Indeed, she only said that accused-appellant and four others took some beer in her restaurant; that the deceased Vicente Reyes must have been embarrassed when Barbero did not give him beer because his money was not enough and took offense at the actions of accused-appellant's group whom he thought was making fun of him; that she later saw Vicente Reyes clutching his stomach obviously in pain and seriously wounded. But she did not see who in the group actually attacked the deceased because she said she had stepped out of her restaurant to go over to Mely Bulatao's canteen. Her testimony alone is insufficient to prove that accused-appellant and his companions conspired to kill the deceased.

This leaves only Petronilo Jacinto's testimony on the question of identification of accused-appellant. However, although Jacinto claimed he saw accused-appellant holding Vicente Reyes while the latter was being stabbed by the others, his testimony is at odds with the testimony of Geronima Barbero.

(1) Petronilo Jacinto testified that he had been at Mely Bulatao's store for ten minutes when he heard the commotion at Geronima Barbero's restaurant.[15] But Geronima Barbero said she also went to Mely Bulatao's store about the same time Jacinto said he was there, i.e., before trouble at her restaurant broke out, yet did not see Petronilo Jacinto, whom she knew as the latter was her barriomate, there.[16]

(2) Petronilo Jacinto testified that he saw the deceased inside Geronima Barbero's restaurant having beer,[17] but Geronima Barbero said she did not give the deceased beer because his money was not enough.[18]

(3) Petronilo Jacinto said there were five in the group of accused-appellant, including the latter,[19] while Geronima Barbero said there were only four men.[20]

(4) Petronilo Jacinto testified that he saw Geronima Barbero inside the restaurant at the time the incident happened.[21] However, as already noted, Geronima Barbero testified that she had already stepped out of her restaurant to go to Mely Bulatao's store[22] when the incident happened. She could not, therefore, have been seen by Jacinto inside her restaurant when the incident happened.

These discrepancies between the testimonies of prosecution witnesses cannot be casually dismissed as they make it possible for the Court to determine what exactly are the facts as there is no way to determine who is telling the truth and who is not.[23]

Not only is Petronilo Jacinto's testimony at odds with that of Geronima Barbero, it is also in itself inconsistent.

First, he claims that Vicente Reyes was his buddy,[24] but it appears that the deceased was actually his cousin. The deceased had a sister, Remedios Lorenzo. According to Lorenzo, the deceased was taken to the hospital by their cousin Wilma.[25] As Wilma is the sister of Petronilo Jacinto,[26] the latter is also a cousin of the deceased. Apparently, Petronilo Jacinto was trying to conceal his relationship with the deceased. When asked in court how he came to know the deceased, instead of saying they were cousins, he said they were close friends.

Second, Jacinto said the deceased was in his party at his house but the latter followed him when he left to buy ice and he did not know this until he saw the deceased having beer alone at the restaurant.[27] If the deceased was in Jacinto's house where there was drinking, why did the deceased have to go to the restaurant to have beer? Apparently realizing the improbability of his testimony, Jacinto later said he saw the deceased having beer in the

restaurant and wanted to ask him over to his house, but before he could do this, trouble broke out in the restaurant.[28]

Third, he testified that he had gone to the restaurant precisely to see what was going on there when Mamer came by,[29] but later he claimed that it was while talking to Mamer that he heard the commotion and that was the reason he proceeded to the eatery.[30]

Fourth, Petronilo Jacinto said that he went near Geronima Barbero's restaurant because he sensed trouble, yet when asked why he did not tell Mamer, he replied it was because he did not think "something [bad] will happen." [31]

Fifth, Jacinto said that after hearing the commotion in the restaurant, he tried to find out what it was all about but found that the victim and the group of accused-appellant were "just conversing" and not quarrelling[32] and that the deceased did not say anything[33] or do anything[34] and in fact never thought that something bad would happen to him.

It is noteworthy that Petronilo Jacinto gave his sworn statement (Exh. B)[35] nearly two months after the incident, because he had to "think over what I will do." [36] What it was that made him hesitate to volunteer information which he knew about the killing he did not say. What this Court said in *People v. Cruz*[37] therefore applies to this case:

It took forty-two (42) days after the incident for Modesto Alipio to come out and give his sworn statement, Exhibit "B", to the Philippine Constabulary narrating therein what he saw on that occasion . . . [T]he long delay, which is not caused by threat, intimidation or coercion by herein appellant or anybody for that matter, in reporting the matter to the authorities - the mayor, barangay captain, police or the Philippine Constabulary, by one who himself was once an army man has rendered the evidence for the prosecution insufficient to establish appellant's guilty connection to the requisite of moral certainty. The claim that he was relying on other persons present to make the report is, to say the least, a lame excuse.

Vicente Reyes was Jacinto's buddy and, it appears, his cousin. His initial reluctance to get involved in the case cannot be reconciled with his assertion that he went to Geronima Barbero's restaurant because he heard a commotion there and he wanted to know what it was about and that when he saw the assailants flee he ran after them. Indeed, the suspicion cannot be helped that the belated appearance of Petronilo Jacinto as alleged eyewitness was intended to fill the gaps in Geronima Barbero's account. The conviction of accused-appellant cannot be based on the testimony of a single witness whose testimony is confusing, vacillating, and logical.[38]

The Solicitor General urges the Court to defer to the finding of the trial court on the ground that it has had the opportunity to observe the demeanor and general deportment of the witnesses. But evidence to be believed not only must proceed from the mouth of credible witnesses but must itself be credible. Here, the discrepancies and confusing portions just pointed out put in doubt the credibility of Petronilo Jacinto and his testimony.

Petronilo Jacinto's behavior stands in sharp contrast to Geronima Barbero's. Barbero reported the incident to the police immediately[39] and gave her sworn statement on April 6, 1988, seven days after the incident took place. In fact, it was through her initiative in asking Pedro San Pedro and other people[40] that she came to know the name of accused-appellant who was among those present at her restaurant when the stabbing took place. She came all the way from Bayombong, Nueva Vizcaya (where she now resides) to testify. There is no reason, therefore, for her to add or to detract from what she had testified. However, as noted earlier, her testimony is by itself insufficient to convict accused-appellant. It is possible that it was one or more of accused-appellant's companions who was guilty. Since conspiracy has not been shown to have existed, the mere presence of accused-appellant at the place cannot make him liable. In the absence of conspiracy, if the inculpatory facts and

circumstance are capable of two or more explanations, one of which is consistent with the innocence of the accused and other consistent with his guilt, then the evidence does not fulfill the test of moral certainty.[41]

The accused-appellant's guilt has not been proven beyond reasonable doubt and, therefore, the presumption of innocence must prevail. That alibi, which accused-appellant invokes, is the weakest defense, is irrelevant. For when the prosecution fails to discharge its burden, an accused need not even offer evidence in his behalf.

WHEREFORE, the decision of the Regional Trial Court of Santiago, Isabela (Branch 21), is REVERSED and accused-appellant Gregorio Marcos is ACQUITTED on the ground of reasonable doubt.

The Director of Prisons is hereby directed to forthwith cause the release of accused-appellant unless the latter is being lawfully held for another cause and to inform the Court accordingly within ten (10) days from notice.

SO ORDERED.

Bellosillo, (Chairman), Puno, and Buena, JJ., concur.
Quisumbing, J., on official leave.

[1] Per Judge Fe Albano Madrid; Rollo, pp. 14-20.

[2] Rollo, p. 6.

[3] Also referred to as Mely's Store in the TSNs of the testimonies of Petronilo Jacinto and Geronima Barbero.

[4] Records, p. 7.

[5] TSN, pp. 2-53, July 18, 1991.

[6] Records, p. 6.

[7] TSN, pp. 2-22, Aug. 5, 1991.

[8] Records, p. 3.

[9] Records, p. 4.

[10] TSN, pp. 2-9, July 16, 1991.

[11] TSN, pp. 3-18, Jan. 22, 1992.

[12] TSN, pp. 6-8, Dec. 13, 1991.

[13] Rollo, p. 20.

[14] Brief for Accused-Appellant, pp. 3-4; Id., pp. 52-53.

[15] TSN, p. 51, July 18, 1991.

[16] TSN, pp. 12, 14, 21, Aug. 5, 1991.

[17] TSN, p. 16, July 18, 1991.

[18] TSN, p. 8, Aug. 5, 1991.

[19] TSN, pp. 4, 6, 50, July 18, 1991.

[20] TSN, p. 7, Aug. 5, 1991.

[21] TSN, p. 28, July 18, 1991.

[22] TSN, p. 12, Aug. 5, 1991.

[23] *People v. Jubilog*, 263 SCRA 604 (1996).

[24] TSN, p. 7, July 18, 1991.

[25] TSN, p. 7, July 16, 1991.

[26] TSN, p. 46, July 18, 1991.

[27] *Id.*, pp. 11, 14, 16.

[28] Petronilo Jacinto testified:

Q. - So it was your instinct when you saw him you invite him in your house because he was alone in the restaurant. Is that correct?

A. - That is it but when I went to buy ice and then I was going to call him there was already a trouble, sir.

Id., p. 18.

[29] *Id.*, pp. 31, 32.

[30] TSN, p. 48, July 18, 1991.

[31] *Id.*, p. 33.

[32] *Id.*, p. 36.

[33] *Id.*, p. 24.

[34] *Id.*, p. 31.

[35] Records, p. 7.

[36] TSN, p. 46, July 18, 1991.

[37] 129 SCRA 156, 160-161 (1984).

[38] *People v. Viray*, 202 SCRA 320 (1991).

[39] TSN, p. 16, Aug. 5, 1991.

[40] *Id.*, p. 17.

[41] *People v. Remorosa*, 200 SCRA 350 (1991).

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