

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FLORENTINO MESA Y IGNACIO, ACCUSED-APPELLANT.

G.R. No. 120072. July 28, 1997

Ponente: PADILLA, J.

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PADILLA, J.:

On 16 December 1991, Manuel Cambronero, a crew member of the F/B Canel, drowned at the sea somewhere off the coast of San Andres, Quezon Province. The prosecution claimed he was murdered. The defense maintained it was an accident. Two (2) eyewitnesses, Jojit Almoneda and Floro Tercio, positively identified the assailant as herein accused-appellant, Florentino Mesa. Tried and later convicted of murder by the Regional Trial Court of Lucena City.[1] Florentino Mesa has appealed to this Court with the same disavowal – he did not stab Cambronero on the night of 16 December 1991, instead, Cambronero accidentally fell overboard from the FB Canel and drowned in the tempestuous sea.

The information filed by city prosecutor Romeo A. Dato reads:

“The undersigned, City Prosecutor of the City of Lucena, accuses Florentino Mesa of the crime of Murder, defined and punished under Article 248 (,) of the Revised Penal Code, committed as follows:

That on or about the 16th day of December, 1991, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of his Honorable Court, the said accused, armed with a knife locally known as (29), with intent to kill, with evident premeditation and treachery, did then and there wil(l)fully, unlawfully and feloniously stab one Manuel Cambronero with said weapon, thereby inflicting upon the latter stab wound(s) which caused his death.

Contrary to law.

Lucena City, April 14, 1992.”[2]

Upon arraignment, accused appellant pleaded not guilty and underwent trial. The prosecution presented four (4) witnesses. The defense rested on the sole testimony of the accused-appellant. On 18 July 1994, the court a quo rendered judgment, the dispositive part of which reads as follows:

“WHEREFORE, in view of the foregoing, this Court finds the accused Florentino Mesa guilty as principal beyond reasonable doubt of the crime of murder, qualified (by) treachery, and there being no modifying circumstances attendant, hereby sentences him to suffer the penalty of RECLUSION PERPETUA, and to indemnify the heirs of the deceased, Manuel Cambronero, the amount of Fifty Thousand Pesos (P50,000.00) as death indemnity, and the sum of Forty Two Thousand Pesos (P42,000.00) for loss of earning capacity for the remaining years of life of the deceased, without [however,] subsidiary imprisonment in case of insolvency.”[3]

The facts of the case are as follows:

Accused-appellant, Manuel Cambronero, Jojit Almoneda and Floro Tercio were all employees of Llamas Fishing Corporation (Llamas) which owned a fleet of fishing vessels in Quezon province. Cambronero and Almoneda

were detailed as overseers or encargado of a supply boat named F/B Canel (Canel) which was piloted by Tercio. Accused-appellant, in turn, was a mechanic assigned to a fishing vessels named F/B Emma 8 (Emma).

On 16 December 1991, at around 5 p.m., Almoneda, Cambronero and Tercio, together with five other employees of Llamas, loaded crude oil and ice into the Canel at Barangay Dalahican in Lucena City and set sail to meet the Emma at sea. At around 9:45 p.m. the Canel reached the Emma which was then anchored somewhere off the coast of San Andres, Quezon. Tercio steered the Canel's prow alongside the stern of the Emma. Thereafter, the Canel's crew unloaded its cargo of banyeras and ice to the Emma while Cambronero supervised the transfer of fuel from the Canel into the empty fuel drums aboard the Emma.

Prosecution witness Jojit Almoneda testified that while he was pumping out the fuel from the Canel to the Emma, Cambronero went to untangle some ropes on the Canel's deck. While Cambronero was stooping down, accused-appellant suddenly appeared from no where, and without any warning, approached Cambronero from behind, grabbed him at the back, and stabbed him twice with a *veinte nueve*. Cambronero lost his balance and fell overboard. Almoneda saw him clung to a lifeboat but soon lost grip as he struggled against the waves. Accused-appellants, still holding his fan knife, stood guard at the Canel's prow as Cambronero slowly disappeared into the water. Accused-appellant then walked away and went inside the bridge of the Canel then later transferred to the Emma.[4]

From the vantage point of the Canel's Bridge, Tercio witnessed the same incident narrated by Jojit Almoneda.[5] Like Almoneda, he was too shocked and frightened to react as accused appellant stood guard on the Canel's prow, brandishing the *veinte nueve* he had used to stab Cambronero. Tercio recounted that accused-appellant later went inside the F/B Canel's Bridge and said, "*huwag kayong matakot, isa lang ang kailangan ko,*"[6] then hurriedly left the Canel and returned to the Emma.

There were no fishing nets aboard the Canel at that time. When the Emma's crew heard what had happened to Cambronero, they lighted the area where Cambronero fell and cast their nets, hoping that Cambronero might still be alive. The Canel then disengage from the Emma to supply fuel to two (2) other Llamas' fishing boats while the Emma lifted anchor and continued searching for Cambronero's body. The Emma reported the incident by radio to Llamas which immediately dispatched an order to its other fishing boats in the area to join the Emma in the search for Cambronero. Llamas fishing boats combed the sea for nine days[7] but failed to recover any trace of Cambronero's body.

The defense denied any foul play in the disappearance of Cambronero. According to accused-appellant, Cambronero accidentally slipped, fell overboard the Canel, and was drowned by the big waves. His version was as follows:

He (accused-appellant) was in charge of receiving the fuel to be delivered by the Canel to the Emma. Earlier that evening, he receive radio instructions from Llamas to expect (5) drums of fuel oil. However, the fuel delivered by the Canel amounted to only four and a half (4-1/2) drums, short of half a drum. Cambronero then asked him to sign a receipt for five (5) drums but he refused. Cambronero was insistent but he stood his ground. His obstinate refusal angered Cambronero who suddenly grabbed a shovel and swung it at him. Cambronero missed. As he retreated he was able to grab a shovel to defend himself. For some unexplained reason, Cambronero retreated backwards and in the process, Cambronero accidentally slipped and lost his balance.[8] Cambronero fell overboard and accused-appellant reacted in the following manner:[9]

Q: What happened to Manuel Cambronero when he fell to the sea .

A: I did not know anymore, sir.

Q: Now, when Manuel Cambronero fell to the sea and you were still aboard your boat, what did you do?

A: Nothing, sir.

Q: What do you mean by your answer nothing?

A: I did not see them approach[ed] him, sir.

Q: The crew of the Canel did not make any search immediately after Cambronero fell to the sea?

A: The Canel went away from F/B Emma, sir.

Q: And what did the crew of the F/B Emma do after Manuel Cambronero fell to the sea?

A: We lifted anchor and looked for him, sir.

Q: So the crew of the F/B Emma looked for Manuel Cambronero after you lifted the anchor?

ATTY. ABCEDE:

No , it was not he who searched, it was the others your honor.

ATTY. AMBAS:

Q: And the crew of the F/B Emma immediately rather did not find Manuel Cambronero?

A: I do not know, sir.” (emphasis supplied)

Accused-appellant maintained that Jaime Malubay, a crew member of the Canel, also witnessed Cambronero’s accidental fall into the sea but both he and Malubay were helpless in rescuing Cambronero who had already drifted far away from the Canel because of strong winds and rough waves. Accused-appellant reported the incident to the captain of the Emma and resume work in the Emma’s engine room while the other crew members searched for Cambronero.[10]

Accused-appellant further claimed that he continued to work aboard the Emma up to 24 December 1991 after which he left Lucena and went to General Santos City, South Cotabato to visit his ailing mother. He told his wife to inform Llamas about his trip. He stayed in South Cotabato for about six months and came back to Manila on 22 July 1992. On 16 August 1992, he was served a warrant of arrest by the policemen from Mauban, Quezon in his house in Mandaluyong and brought to Mauban.[11]

The trial court rejected accused-appellant’s testimony and called it “an aftersought, a pure concoction,” viz:

“On the other hand, the lone testimony of the accused as his own defense suffers from inherent improbability and appears to be an aftersought, a pure concoction. Besides, his theory of what happened between him and the victim Cambronero, is too hackneyed and trivial, a cause to have resulted to have a violent quarrel that nobody appears got hurt, yet it ended in horrifying loss of life for a man who is used to the sea caused by a minor slip overboard which the accused did nothing to try to help in his rescue. Then, what adds to the improbability of his lone and lonely claim is the bitter fact no one came at his side to corroborate and attest to the truth of what he declared, and even his own wife did not come forward to testify on matter he has insisted to have happened after he went ashore for his long and suspicious Christmas vacation on the pretext of visiting his ailing mother, somewhere out in the far south of the Philippine archipelago- at General Santos, Cotabato, fittingly to be considered, and aptly so, a criminal flight to avoid arrest and prosecution for what he had committed.”[12]

xxx xxx xxx

It is hard to believe that the accused by just holding a shovel, Manuel Combronero would step backwards and feel scared, for which reason he fell down into the water below the prow of the boat. Ordinary human experience and promptings would not stir to anger a man just for refusal of another to sign a simple receipt for receiving such amount of fuel; unless of course there is running fueled and bad blood between them, which none exists in this case. If it were true as he pretended the incident to have occurred, the other crew of both F/B Emma 8 and F/B Canel could have intervened in the dispute to calm them down, could have heard loud and

verbal exchange of words and could have reported the cause to the manager or owner of the fishing corporation for this shortage of delivery of fuel if not checked could seriously affect the business of the employer. There was no fact on that direction that has been brought out to the court, at least to corroborate the accused, on how the incident arose and went on aboard on December 16, 1991. The Court, therefore, is not prepared to accept this kind of pretension advance by the accused, for this assertion reveals, it is pure fabrication and cannot stand against the positive testimonies of prosecution witnesses, Jojit Almoneda and Floro Tercio whose declarations are trustworthy and believable, there being no reason shown they would lie and tell untruth to get rid of the person of the accused Florentino Mesa who admitted Almonedda and Tercio are still his friends.”[13]

Otherwise stated, the trial court held that accused-appellant’s uncorroborated denial failed to discredit the testimonies of Almoneda and Tercio which positively identified him as Cambronero’s assailant.

In his brief, accused appellant assigns two (2) errors on the part of the trial court:

I.

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION AND (IN) ULTIMATELY FINDING THAT A CRIME WAS COMMITTED.

II.

ASSUMING THAT A CRIME WAS COMMITTED, THE LOWER COURT ERRED IN FINDING THAT THE VICTIM’S DEATH WAS ATTENDED WITH TREACHERY.

Accused-appellants argues that the testimonies of Almoneda and Tercio should be rejected for being “incredible” and “exactly identical down to the smallest details”;^[14] that they were not eyewitnesses to the stabbing of Cambronero but merely coached and rehearsed by the prosecution to support its theory that Cambronero was a victim of foul play.

“x x x The two (Almoneda and Tercio) witnessed the incident at the exact time that appellant came from behind Cambronero and stabbed the latter. It is too much of a coincidence for them to have seen the alleged stabbing at exactly the same point in time. Said testimonies are all too conveniently stress the fact that Cambronero was stooping down and untying a rope when appellant allegedly came from behind him, in an attempt to create a scenario of treachery. If indeed Tercio and Almoneda both saw the alleged stabbing at the same exact point in time, the both must have been staring at Cambronero all the time while the latter was allegedly stooping down and untying a rope. If that were so, then both must have been just sitting idle and doing nothing while, of course, is hard to believe. Being crew members, Almoneda and Tercio would have been busy performing their assigned tasks, especially Tercio, who, being the pilot, could have been attending to his duties inside the pilot house. Besides, if both really witnessed the stabbing which not either one utter or shout a word of warning to Canbronero. Their testimonies are improbable and go against ordinary human experience.”^[15]

Accused-appellant further asserts the following inconsistencies and contradictions: that it was impossible for Tercio to have witnessed the alleged stabbing incident because Tercio was inside the Canel’s Bridges; that Almoneda did not categorically state whether he was on board the Emma or the Canel which cast a doubt whether he was really an eyewitness; the finding that Llamas did not require any receipt for the fuel delivered by its supply boats was contrary to common business practice; that incredibly, neither Almoneda nor Tercio nor the rest of the crew of Canel and Emma even attempted to rescue Cambronero in the water just after he was allegedly stabbed by accused-appellant and fell into the sea.

Accused-appellant, therefore, prays for his acquittal. He maintains that his testimony was “more credible as it was

sincere and truthful; one that cannot be easily fabricated”. The truth, according to accused- appellants, is that he and Cambronero had a minor altercation because he refused to sign a receipt to cover up Cambronero’s short-delivery of fuel to the Emma. Cambronero’s fall was accidental. The sea was rough that night which caused the boats to be unstable. That’s explains why Cambronero slipped and fell overboard. Nature is unpredictable and even experienced seamen can drown at sea.

In refutation, the Solicitor-general argues that the issue of credibility of witnesses has been resolved by the trial court in favor of the prosecution. This means that the trial court, in the exercise of its jurisdiction, had painstakingly applied the relevant rules of evidence, logic, and plain common sense to determine whether or not accused-appellant’s guilt had been proven beyond reasonable doubt.

After a careful study of the records of the case, the Court rules to affirm the conviction of herein accused-appellant.

The testimonies of the two (2) prosecution eyewitnesses, Tercio and Almoneda, were not “inherently improbable and not outright incredible,” as argued by accused-appellant. The evidence has established that both witnesses were not far from the scene of the crime. Almoneda was pumping fuel to the Emma while Tercio was inside the Canel’s bridge just a few meters away. Although the waves were rough, the weather was clear that night. The bright fishing lights from both the Canel and Emma illuminated the area. As the Emma rested alongside the Canel, the rest of the crew of both boats were presumed to be doing their assigned task.

Against this factual backdrop, it cannot be argued that it was inherently improbable for any crew member of the Canel or the Emma to have witnessed the incident. Those vessels are not luxury liners but ordinary fishing boats. Hence, it is not incredible that a stabbing incident, like the one perpetrated by accused-appellant, would catch the attention of any crew member working in the same area.

Accused-appellant has not presented evidence that might suggest or prove improper or ulterior motive on the part of Tercio and Almoneda to implicate him in the death of Cambronero. Yet, he maintains that there was “perfect dovetailing” in the testimonies of the two (2) eyewitnesses. The Solicitor general has ably refuted this argument which we quote below:

“x x x A careful scrutiny of the record reveals that neither Almoneda nor Tercio presented a flawless corroboration or point by point reiteration of the other’s testimony as to cast doubt on their integrity and credibility. For instance, while both Almoneda and Tercio admitted being in shock with what they witnessed, only Almoneda testified having taken some steps to rescue Cambronero. Thus, Tercio’s testimony does not reflect the fact that Almoneda shouted for help and reported the crime to the ship captain. On the other hand, while Almoneda and Tercio both recounted seeing the appellant go inside the steering room, only Tercio testified about the appellant’s declaration that ‘he needs only one’ (tsn, March 11, 1993, p. 16).

It is interesting to note how the appellant could assert that the eyewitnesses exactly parroted each other’s testimony and at the next breath allege material inconsistencies therein which detract from their credibility. In any case, the record would attest to the non-existence of any serious inconsistencies between the testimony of Almoneda and Tercio, and even within their own testimony.. What the appellant pointed out to be so, such as the eyewitnesses’ statement on whether the appellant participated in the fuel delivery, are on minor matters which do not affect the substance, veracity, or weight of the testimony. Such inconsistencies even serve to strengthen the credibility of the prosecution witnesses because they erase any suspicion of rehearsed testimony.”[16]

It was accused-appellant himself who had woven a tale riddled with inconsistencies and improbabilities. He could have presented testimony from Llamas Corporation to prove that he was under strict orders to issue a delivery receipt to Cambronero. In the same vein, he could have presented Jaime Malubay to corroborate his defense that

Cambronero accidentally fell overboard. Moreover, not even his wife or anyone from Llamas came to his defense to corroborate his testimony that he went to South Cotabato because of an ailing mother.

Cambronero fell overboard and accused-appellant, by his own admission, was the closest person who could rendered immediate aid to a person whose life may have been in danger. Incredibly, accused-appellant neither lifted a finger nor even shouted for help to call the attention of his fellow crew members. All he did, according to him, was to report the "incident" to the captain, and resume his work in the Emma's engine room.

A man untying a rope was approached by another man from behind and was stabbed twice at the back, the thrust of which caused him to fall overboard and drown at sea. The defense insists there was no treachery in the case at the bar because "Almoneda and Tercio, assuming their testimonies to be true, only saw the incident at the point that appellant stabbed Cambronero. There was no testimony whatsoever as to the events immediately prior to the stabbing, that is, at that point where the alleged aggression started. It is quite possible that Cambronero was stooping down but only by accident and as probable result of their altercation." [17]

These arguments do not persuade.

There is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. [18]

An attack from behind which is sudden and unexpected establishes a prima facie presumption that the killing was attended by treachery. Jurisprudence, however, has required that alevosia must be proved clearly as the elements of the crime or crimes it is alleged to qualify. [19] Thus, there must be conclusive evidence that the person attacked had absolutely no opportunity to defend himself much less retaliate and that means of execution was deliberately and consciously adopted by the accused. [20]

In the case at bar, Tercio and Almoneda clearly saw accused-appellant with his fan knife already drawn when he approached Cambronero from behind. Accused-appellant stabbed Cambronero twice at the back, an attack which was sudden, deliberate and cunning. Under these circumstances, Cambronero never had the chance to defend himself. [21] The blows were presumably fatal as Cambronero fell and disappeared quickly into the sea. Cold-blooded murder, by any other name, cannot betray its inherent mark of treachery.

WHEREFORE, premises considered, the decision of the Regional Trial Court of Lucena City, Branch 35, in Criminal Case No. 92-266 sentencing herein accused-appellant to suffer the penalty of Reclusion Perpetua and to indemnify their heirs of Manuel Cambronero the amount of P50,000.00 as death indemnity and P42,000.00 for loss of earning capacity without subsidiary imprisonment in case of insolvency is hereby AFFIRMED.

SO ORDERED

Bellosillo, and Vitug, JJ., concur.

Kapunan, and Hermosisima, Jr., JJ., on leave.

[1] Presided by Judge Florentino E. Tierra.

[2] Rollo, p.3.

[3] Rollo, p.36.

[4] TSN, 11 November 1992 pp. 7-24.

[5] TSN, 11 March 1993, pp. 10-15.

- [6] TSN, 11 March 1993, pp. 15-16.
- [7] From 16-25 December 1991.
- [8] TSN, 14 September 1993, pp. 16-23.
- [9] TSN, 21 October 1993, p. 12.
- [10] TSN, 21 September 1993, pp. 20-25.
- [11] TSN, 14 September 1993 pp. 26-33.
- [12] RTC Decision. p. 16; Rollo, p.31.
- [13] RTC Decision, pp. 18-19; Rollo. pp. 33-34.
- [14] Rollo, p.20.
- [15] Rollo, pp. 73-74.
- [16] Rollo, pp. 129-131.
- [17] Rollo, pp.80-81.
- [18] Art. 14 [16], Revised Penal Code.
- [19] People vs. Barros, 245 SCRA 312; People vs. Esquilona, 248 SCRA 139.
- [20] People vs. Ledesma, 246 SCRA 769.
- [21] See Serrano vs. CA. 247 SCRA 203.

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