

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VENANCIO NIÑO, ACCUSED-APPELLANT.

G.R. No. 121629. May 19, 1998

Ponente: VITUG, J.

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VITUG, J.:

Venancio Niño, after having been convicted beyond reasonable doubt of the crime of Murder by the Regional Trial Court, Branch 1, of Tagbilaran City in Criminal Case No. 8588, comes up on appeal. Venancio was indicted on 26 August 1993 for Murder, allegedly committed in the following manner; viz:

"That on or about the 4th day of July, 1993, in the [M]unicipality of Inabanga, [P]rovince of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, together with his still unidentified companion, conspiring, confederating together and mutually helping each other, armed with a bladed instrument, with intent to kill and without any justifiable cause, with treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab several times one Policarpio Celmar who was unaware and unarmed and without being given a chance to defend himself, thereby inflicting fatal injuries on the different parts of his body resulting to his immediate death." [1]

Shortly after an arraignment, where the accused entered a plea of not guilty, trial on the merits ensued.

Culled from the testimony given by the state witnesses, namely, PO3 Herminigildo S. Abella (PO3 Abella), Alejandra Celmar (Alejandra) and SPO2 Patricio C. Winner (SPO2 Winner), is a brief narration of the incident according to the prosecution.

The spouses Policarpio and Alejandra Celmar (Celmar spouses) were engaged in the business of selling dried fish for their livelihood. At around eight o' clock in the evening of 04 July 1993, while aboard their pumpboat moored at the riverbank near Napo in Inabanga, Bohol, the Celmar spouses were approached by the accused and a companion (whose identity was never established) offering to barter their banana fruits for dried fish. The spouses agreed. After a few moments, the accused and his companion returned and asked Policarpio for a match with which to light a torch made from dried coconut leaves. Then, without warning, the accused pounced upon Policarpio, strangling him with a rope and hitting him several times with a bolo. His companion, after extinguishing the torch, gave Policarpio another blow. The accused turned to Alejandra and demanded that she hand over her money to him. Terrified, Alejandra jumped into the water and swam away to seek help. She met SPO2 Winner, her nephew, who assisted her in bringing her husband's lifeless body to their house in Sto. Niño. The following day, a team of policemen led by PO3 Abella went to the scene of the crime. The people around the place informed the police officers that the culprit was a certain "Venancio" whom they then described. The team, accompanied by SPO2 Winner, repaired to the house of the accused and invited him to the police station for questioning. The accused was there identified by Alejandra as being her husband's assailant.

The defense presented the accused and two other witnesses.

The accused proffered the jaded apologia of alibi. He testified that he was at home at the time the incident had

taken place. The following day, although he was invited by the team of PO3 Abella to their headquarters for questioning, he was, however, released the same day. On 29 July 1993, he was arrested anew, and since detained, without the benefit of a warrant of arrest. His witnesses, Lazaro Celis (Celis) and Fabian Divinagracia, both testified having been at the scene of the crime and attested to the fact that Alejandra had then professed that she was unable to recognize the assailant. Celis said that when asked immediately after the incident, Alejandra merely described the assailant to be taller than he (Celis).[2]

Convinced of the case presented by the prosecution and unmoved by the stance taken by the accused, the court a quo convicted the latter of Murder and sentenced him to suffer -

"x x x Reclusion Perpetua, with the accessories of the law and to pay the cost. "The accused Venancio Niño is further ordered to indemnify the surviving spouse of the deceased victim Alejandra Saco Celmar in the amount of P50,000.00 representing the indemnity, P50,000.00 representing moral and exemplary damages and P20,000.00 representing funeral expenses. In all instances without subsidiary imprisonment in case of insolvency.

"It appearing that the accused Venancio Niño has undergone preventive imprisonment he is entitled to the full time of his preventive imprisonment to be deducted from his term of sentence if he has executed a waiver otherwise he will only be entitled to 4/5 of the time of his imprisonment to be deducted from his term of sentence if he has not executed a waiver."[3]

In the instant appeal, accused ascribes to the court a quo alleged errors; viz:

"I

"THE COURT A QUO GRAVELY ERRED IN THE APPRECIATION OF THE TESTIMONIAL EVIDENCES BOTH FOR THE PROSECUTION AND THE DEFENSE; (AND)

"II

"THE COURT A QUO COMMITTED GRAVE ERROR IN THE APPRECIATION OF THE EVIDENCES FOR THE DEFENSE REGARDING THE IDENTITY OF THE ACCUSED, RESULTING TO GRAVE ABUSE OF DISCRETION."[4]

The pivotal issue foisted in this appeal is whether or not the accused has been properly identified to be the real assailant. The Court, indeed, has serious doubts.

It is axiomatic that the prosecution bears not only the onus to show distinctly that a crime has been committed but, just as importantly, to likewise establish beyond reasonable doubt the identity of the person or persons who should be held responsible therefor.[5] The latter, i.e., the identification of the accused to be the perpetrator of the crime, is truly not conceded to be an easy task. It has thus once been observed that -

"x x x There are few more difficult subjects with which the administration of justice has to deal. The carelessness or superficiality of observers, the rarity of powers of graphic description, and the different force with which peculiarities of form or color or expression strike different persons, make recognition or identification one of the least reliable of facts testified to even by actual witnesses who have seen the parties in question."[6]

It cannot be gainsaid that evidence to be believed must not only proceed from the mouth of a trustworthy witness but must likewise be credible in itself. While there is no hard and fast rule to determine the truthfulness of one's testimony, that which conforms, however, to the quotidian knowledge, observation and experience of man is often deemed to be reliable.

The Court assayed the records of this case. Alejandra testified that the accused and his cohort had bartered bananas for dried fish and then came back to ask for a match to light a torch. It would appear to be quite unnatural for them, then contemplating a dastardly act, to intentionally render themselves visible and easily recognizable by their victims. The typical reaction would be to undertake their evil designs without any danger to themselves and to cover, rather than to let anyone see, their misdeeds. Then, too, she kept mum on the identity of the perpetrator during the initial investigation of the crime and unexplainably failed to say why she did remain silent if, truly, she then knew who the real culprit was. The assertion by SPO2 Winner that Alejandra had told him of the assailant's identity when they met could hardly be countenanced. There were several occasions when he could have divulged that information, notably to Celis and the Chief of Police, but he did not.[7] His excuse in not telling Celis, i.e., he feared the possibility of the accused fleeing would be too feeble to be of value. The only reasonable inference that could be drawn therefrom was that he, too, was at a loss on the identity of the culprit.

But, even more perplexing than the nagging doubt on the veracity of Alejandra's above testimony, was the manner in which Alejandra had identified the accused. On the basis of an information gathered from the townfolks (neither from Alejandra nor SPO2 Winner) that the suspect in the killing of Policarpio was a certain "Venancio," PO3 Abella's team repaired to the house of SPO2 Winner to ask him to lead them to Venancio. The accused was thereupon invited to the police station for questioning. After the interrogation, PO3 Abella summoned Alejandra to the police headquarters. PO3 Abella gave the following account in his testimony; viz:

"Q.

Why did you go to the house of this Patricio Winner[?]

"A.

I went to the house of this Patricio Winner in order to guide me to the house of a certain Venancio.

"Q.

And did this SPO2 Patricio Winner guide to the house of a certain Venancio?

"A.

Yes, sir.

"xxx

xxx

xxx.

"Q.

What happen[ed] when you saw him[?] What did you do?

"A.

When I went to Venancio's house he was dressing chicken and I told him that he was one of the suspects of the killing incident that is why I requested him to accompany with (sic) us in order for him to shed light on the investigation.

"XXX

XXX

XXX.

"Q.

After he completely denied his commission of the offense of murder what did you do?

"A.

I contacted the wife of the victim.

"Q.

What is the name of the wife of the victim if you remember?

"A.

Alejandra Celmar.

"Q

You are referring to Alejandra Saco Celmar who is listed as one of the witnesses in this case?

"A.

Yes, sir.

"Q.

And when Alejandra Saco Celmar went to your Police Station what did you ask her to do?

"A.

I told Alejandra Celmar that if he is not the culprit you do not need to tell a lie because it is not good to tell a lie.

"Q.

And what did Alejandra Saco Celmar do after you adviced (sic) her that way?

A.

"She pinpointed the suspect that he is the very person suspected." [8]

The accused was not placed in a police line-up contrary to standard stationhouse verification procedures employed to test the memory of the witness.

An underhand mode of identification somehow undermines the reliability of an accurate identification of an accused, once so described by this Court as being "pointedly suggestive, generated confidence where there was none, activated visual imagination, and, all told, subverted their reliability as eyewitnesses. This unusual, coarse and highly singular method of identification, which revolts against the accepted principles of scientific crime detection, alienates the esteem of every just man, and commands neither our respect nor acceptance." [9]

Verily, while it is not shown that Alejandra has been impelled by any ill-motive to testify against the accused, such circumstance, however, does not guaranty that she could not have made an honest mistake. [10].

The oft-cited truism that alibi is one of the weakest defenses has never been intended to dispel it altogether. To be sure, there is an equally acceptable doctrine which posits that there are instances when it just happens to be the plain and simple truth. [11] Parenthetically, alibi gains considerable strength in the face of unreliable identification of an accused to be the perpetrator of the crime. [12]

Regrettably, here once again is another saga in the mounting heap of unsolved crime stories kept in a soon to be forgotten attic.

WHEREFORE, premises considered, the judgment appealed from is REVERSED and SET ASIDE, and accused-appellant VENANCIO NIÑO is ACQUITTED of Murder charged in Criminal Case No. 8588 of the Regional Trial Court, Branch 1, of Tagbilaran City, and hereby ORDERED to be forthwith released unless his further detention can be justified by any other lawful cause.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Panganiban, and Quisumbing, JJ., concur.

[1] Rollo, p. 4.

[2] Celis is 5'4" in height while the accused, in his estimate, is only about 4'8."

[3] Rollo, p. 15.

[4] Rollo, p. 51.

[5] *People vs. Robles*, 92 SCRA 107, 114 [1979]; *People vs. Abellanosa*, 264 SCRA 722, 735 [1996]; *People vs. Manambit*, 271 SCRA 344.

[6] *People vs. Beltran*, 61 SCRA 246, 250.

[7] TSN, 15 November 1994, pp. 6 and 8.

[8] TSN, 01 June 1994, pp. 3-5.

[9] *People vs. Cruz*, 32 SCRA 181, 186 [1970].

[10] People vs. Robles, *idem.*, p. 117.

[11] People vs. Maongco, 230 SCRA 562, 575 [1994].

[12] People vs. Argawanon, 215 SCRA 652, 667 [1992].

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