

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO1 ASPALAN MAING, ACCUSED-APPELLANT.

G.R. No. 122112. May 12, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant PO1 ASPALAN MAING was charged with murder for the death of Inspector Edmundo C. Angeles in an Information[1] which reads:

That, in the evening, on or about the 22nd day of December, 1992, in the municipality of Sirawai, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused armed with a handgun, and with intent to kill by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Inspector EDMUNDO C. ANGELES, PNP, thereby inflicting upon him gunshot wounds on the vital parts of his body which caused his instantaneous death; that as a result of the commission of the said crime the heirs of the herein victim suffered the following damages, viz:

a) Indemnity for victim's death P50,000.00

b) Loss of earning capacity 30,000.00

P80,000.00

CONTRARY TO LAW (Viol. of Art. 248, Revised Penal Code), with the qualifying circumstances of treachery and evident premeditation.

Upon arraignment, accused-appellant pleaded "not guilty" to the charge. Trial on the merits ensued.

Thereafter, the lower court found accused-appellant guilty as charged of the crime of murder and accordingly sentenced him to suffer the penalty of reclusion perpetua and to indemnify the heirs of his victim P50,000.00.[2]

In convicting accused-appellant, the lower court gave credence to the testimonial evidence presented by the prosecution. Emilia Angeles, widow of the deceased, testified on the expenses incurred during the wake. Dr. Henry Cawley, NBI Medico-Legal Officer, reported on the autopsy he conducted on the body of the deceased. According to his findings, the deceased suffered four fatal gunshot wounds. SPO1 Arturo delos Angeles, brother of the deceased, was presented to establish motive on the part of accused-appellant. He testified that accused-appellant harbored a grudge on the deceased because he was kicked and boxed by the latter for his alleged insubordination.

PO3 Jamlang Buddih was presented as the main prosecution eyewitness. According to him, on the night of December 22, 1992, he was in the house of a certain Boling Mohammad located near the seashore of Sirawai, Zamboanga del Norte waiting for the deceased as they were about to depart for Zamboanga City. When the deceased arrived, they proceeded to the beach. But before reaching their motorized vinta, the deceased decided to go back as he left something in his house. A short while later Buddih heard gunshots and saw the wounded

Angeles fall to the ground. Buddih also saw a figure of a man pointing a gun towards Angeles. Buddih was about three (3) meters away from Angeles.

Buddih immediately reported the incident and stated in the police blotter that Angeles was gunned down by an unidentified assailant. On January 8, 1993, Buddih executed an affidavit, this time pinpointing accused-appellant as the perpetrator of the crime. However, when placed on the witness stand, Buddih categorically denied having identified the assailant. He clarified that he only heard rumors among his townmates that it was accused-appellant who killed Angeles.

Accused-appellant denied all the accusations against him. He averred that at the time of the incident, he was inside the mosque praying. The mosque is located about five hundred (500) meters away from the scene of the incident. Imam Sali Jamad corroborated his alibi.

As stated above, the trial court found accused-appellant guilty as charged. Hence, this appeal, wherein accused-appellant submits the following:

I. THE COURT OF ORIGIN ERRED IN IDENTIFYING THE ACCUSED AS THE GUNMAN WHEN NO WITNESSES IN COURT IDENTIFIED THE GUNMAN.

II. THE COURT OF ORIGIN ERRED IN CLAIMING THAT ALIBI IS REALLY A WEAK DEFENSE WHEN THE HONORABLE SUPREME COURT HAD HELD IN VARIOUS CASES THAT THERE ARE EXCEPTIONS AMONG WHICH IS THE SITUATION OF THE ACCUSED AT THE TIME THE CHIEF OF POLICE WAS SHOT TO DEATH.

III. THE COURT OF ORIGIN ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF THE MUSLIM IMMAM ON THE WHEREABOUTS OF THE ACCUSED FROM 6:00 TO 8:00 P.M. OF DECEMBER 22, 1992.

IV. THE COURT OF ORIGIN HAS ERRED BY OVERLOOKING THAT THE GUN ISSUED TO THE ACCUSED HAS BEEN RETURNED WITH THE 15 ROUNDS AS HE HAS RECEIVED THE SAME AND THEREFORE THE GUN WAS NOT USED BY THE ACCUSED OR ANY PERSON.

V. THE COURT OF ORIGIN ERRED IN THE SUPPOSED DIARY OF THE DECEASED CHIEF OF POLICE WHICH WAS FOUND BY A BROTHER SEVERAL DAYS LATER AND AS FAR AS THE BROTHER'S TESTIMONIES THEREFROM IT IS TOTALLY HEARSAY AND NOT ADMISSIBLE.

VI. THE COURT OF ORIGIN ERRED IN ACCEPTING AND MAKING THE CONCLUSION ON THE FINDINGS OF DR. HENRY CAWLEY NBI MEDICAL OFFICER PARTICULARLY THAT THE MUZZLE DISTANCE WAS ONLY 12-18 INCHES TO THE BODY OF THE VICTIM.

VII. THE COURT OF ORIGIN ERRED IN GIVING CREDENCE TO THE AFFIDAVIT OF PO3 JAMLANG BUDDIH WHEN THERE IS INCONSISTENCY IN HIS AFFIDAVIT MARKED AS EXHIBIT B AND WITH SUBMARKING WHICH HAS BEEN RETRACTED ON THE WITNESS STAND.

VIII. THE COURT OF ORIGIN ERRED IN CONVICTING THE ACCUSED AS THERE WAS NO SUFFICIENT EVIDENCE OR NO PROOF BEYOND REASONABLE DOUBT.

These submissions are impressed with merit.

Basically, accused-appellant was convicted based on the testimony of PO3 Jamlang Buddih, the only alleged eyewitness to the crime. Significant note, however, should be taken of the fact that this eyewitness has flip-flopped on his testimonies several times over. Immediately after the killing, Buddih supposedly stated, as reflected in the police blotter, that Angeles was shot and killed by an unidentified gunman.[3] Several days after the incident, or on January 8, 1993 to be exact, Buddih executed an affidavit[4] pinpointing the accused-appellant

as the assailant. But when placed on the witness stand he clarified that he did not actually see the gunman. What he saw was only a figure of a man. He did not positively identify the gunman as accused-appellant. He only assumed it was accused-appellant from rumors among his townmates. Thus, when Buddih was placed on the witness stand on June 18, 1993, he testified in this wise -

Q. How many gunburst did you hear at that time?

A. Three times.

Q. Did you see the person who was responsible for the gunburst?

A. Yes, sir.

Q. Were you able to identify the person who shot Chief Angeles?

A. I cannot identify because it was dark.

Q. But you saw the figure of the man who shot Angeles?

A. Yes, I saw the figure of a man but I do not know the identity."[5]

During his cross-examination, Buddih was asked to explain the inconsistency between his affidavit, executed several days after the incident wherein he tagged accused-appellant as the gunman, and his declaration in open court during direct examination disclaiming the fact that he positively identified accused-appellant as the gunman. Thus -

Q. In your direct testimony, you candidly told us in open court that you could not identify the gunman who killed Police Inspector Edmundo Angeles? Is this correct?

A. Yes, sir.

Q. Now, in the affidavit which you have executed several days after the incident x x x wherein you said among others that the gunman who killed Chief Inspector Angeles was the accused in this case, PO1 Aspalan Maing. Will you tell us which of these conflicting statements is correct?

A. I cannot identify.

Q. How come that you mentioned the name of Aspalan Maing in your affidavit?

A. After the incident, several days after the incident, according to the people in our place they stated that it was Aspalan Maing who did that.

Q. For that reason, since you were told by the inhabitants of Sirawai and it was the rumor in Sirawai, you merely confirmed in your affidavit that it was Aspalan Maing who killed Chief Angeles?

A. Because I remembered he was once kicked by our Chief of Police and I was convinced that he was the one.

Q. These are your mere suspects and conjectors? (sic)

A. Yes, sir.

Q. But you realized and affirmed your statement before this Honorable Court that you could not identify the killer of Chief Angeles?

A. Yes, I affirmed that I could not identify the person or perpetrator.[6]

In short, Buddih failed to positively identify accused-appellant as the gunman. He only concluded it was accused-appellant as it was the rumor in town. When questioned further by the trial court, he affirmed his

testimony that he was not able to identify accused-appellant, thus -

Court:

Q. You have been appointed PNP at Sirawai in 1985 and this accused Aspalan Maing was appointed only in 1989?

A. Yes, sir.

Q. During that span of time, you are very familiar of the figure of Maing? (sic)

A. Yes, your honor.

Q. So, then, even there is no moonlight or there is no clear light, you could identify the figure of Aspalan Maing?

A. During the time I was not able to identify.

Q. But there was the same figure of Maing?

A. Dark figure.

Q. And you are certain that before the incident, this accused was present and was within the vicinity before the incident?

A. I have no knowledge.

Q. So, in effect, you are now denying or not admitted (sic) the affidavit you signed before the Fiscal Peter Eisma?

A. Yes, your Honor.

Q. This affidavit executed before is worthless because you are denying the taking of this affidavit, especially the answers on the facts of this sworn statement which was given thru questions and answers?

A. Yes, sir.

Q. You were not forced?

A. I was not forced, because of the rumors that he was the one who did. Considering that I am under him (Angeles), and I am with him during the incident, if I am the head, if I will be killed, I was able to say that. (sic)

Q. In effect these answers on this affidavit was voluntarily given, nobody putting the answers into your mouth. It was your own language, the answers that were given by you in this sworn statement before Fiscal Eisma?

A. Yes, sir.

Q. But only when you are called to the witness stand, you deny the veracity what you have answered to the questions propounded by Fiscal Eisma?

A. Yes, sir. I was able to state that because of our being under him.

Q. Is it not true considering that the accused herein is your co-policeman in Siraway, and what you have now declared categorically in Open Court is to help the accused?

A. I am stating the truth. That is the real truth your Honor.

COURT:

That's all.[7]

Despite his familiarity with accused-appellant's figure, he still failed to identify the assailant of Angeles. He only based his statement on what he heard from his townmates. In short, Buddih did not have first-hand knowledge of the identity of the assailant. Therefore, his testimony that accused-appellant was the perpetrator of the crime was purely hearsay and merits no evidentiary weight at all.[8]

Without any testimony positively identifying accused-appellant as the gunman nor any evidence directly linking him as the author of the crime, PO1 Aspalan Maing can not be convicted of the murder of Angeles. Accused-appellant enjoys the presumption of innocence, which can only be overcome by proof beyond reasonable doubt.[9] Mere suspicions or conjectures, however strong, can never become substitutes for this required quantum of proof.[10] This Court cannot affirm his conviction merely on unfounded conclusions or conjectures. To do so, this Court must be convinced that accused-appellant's conviction is based on competent evidence and his guilt proved beyond reasonable doubt.[11] This means a moral certainty that the accused is guilty.[12]

Indeed, accused-appellant's alibi may be the weakest of all defenses. Nonetheless, this weakness ought not to be used as proof of his guilt. The prosecution must rest on the strength of its evidence and not rely on the weakness of the defense.[13]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 11, Sindangan, Zamboanga del Norte, convicting accused-appellant of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of his victim P50,000.00, is REVERSED and SET ASIDE. For lack of evidence to establish his guilt beyond reasonable doubt, accused-appellant PO1 Aspalan Maing is ACQUITTED and ordered RELEASED from confinement unless held for some other legal grounds. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Records, p. 49.

[2] Decision penned by Judge Wilfredo G. Ochotorena.

[3] TSN, June 3, 1994, p. 3.

[4] Records, p. 5.

[5] TSN, June 18, 1993, p. 14; underscoring provided.

[6] Id., p. 19; underscoring provided.

[7] Id., pp. 20-21; underscoring provided.

[8] *People v. Franco*, G.R. No. 118607, March 4, 1997, 269 SCRA 211.

[9] *People v. Hilario*, 284 SCRA 344 (1998).

[10] *People v. Dela Rosa*, 284 SCRA 158 (1998).

[11] *Cosep v. People*, 290 SCRA 378 (1998).

[12] *People v. Gil*, 284 SCRA 563 (1998).

[13] *People v. Gomez*, G.R. No. 101817, March 26, 1997, 270 SCRA 432.

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