

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEVY MONIEVA, ACCUSED-APPELLANT.

G.R. No. 123912. June 08, 2000

Ponente: BUENA, J.

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BUENA, J.:

Accused-appellant Levy Monieva appeals the decision of the Regional Trial Court at Masbate, Masbate, Branch 47 in Criminal Case No. 6348 entitled "People of the Philippines versus Levy Monieva" convicting him of murder and sentencing him to reclusion perpetua.

On May 20, 1991, an information was filed against Levy Monieva charging him of murder committed as follows:

"That on or about February 10, 1991 in the afternoon thereof, at Sitio Iraya, Barangay Cagay, Municipality of Masbate, Province of Masbate, Philippines and within the jurisdiction of this court, the said accused with intent to kill, evident premeditation, treachery and abuse of superior strength did then and there willfully, unlawfully and feloniously stab and hack several times one Leonardo Dumalag, hitting the latter on the different parts of his body thereby inflicting wounds which directly caused his instantaneous death.

"CONTRARY TO LAW."[1]

On July 17, 1991, the trial court issued an order referring the accused to the Masbate Provincial Health Office, Masbate, Masbate for mental examination and postponing indefinitely the pre-trial and arraignment of the case until the results of the said examination shall have become available for the consideration of the court.[2]

Considering however the refusal of the Masbate Provincial Health Office to conduct a mental examination on the accused there being no physician in that office competent enough to conduct the requested mental examination, the court a quo issued another order on October 1, 1991, referring the accused to the Rodriguez Memorial Mental Hospital, Cadlan, Pili, Camarines Sur for mental examination.[3]

A letter dated April 23, 1993 was sent to the court a quo by Chona C. Belmonte, MD, of the Department of Health Regional Health Office No. 5, Don Susano J. Rodriguez Memorial Mental Hospital, Cadlan, Pili, Camarines Sur. Some portions of her letter are quoted below:

"Dear Sir:

"Preliminary examination was conducted on the subject LEVY MONIEVA on April 23, 1993 as per request of your honorable court dated October 1, 1991.

"As you can see it took the provincial jail almost 2 years to bring the accused here for examination.

"At present, there are no observable psychotic signs and symptoms noted on him. However, we are still conducting psychological testing to further evaluate him. At this point, the patient doesn't need any form of treatment."[4]

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Upon arraignment, accused Levy Monieva, assisted by counsel, pleaded not guilty to the crime charged. The Regional Trial Court thereafter proceeded with the trial.

Elvie Mabuti, one of the witnesses for the prosecution, testified that on February 10, 1991 at about 5:30 o'clock in the afternoon while she and her husband Rani Mabuti were inside their house located at Iraya Cagay, Mobo, Masbate, Masbate she saw accused Levy Monieva hack the victim Leonardo Dumalag. She also heard Leonardo Dumalag crying for help while he was running away. The incident happened about 5 meters away from their house. Upon seeing the incident, she and her husband together with their two children jumped from their house and fled to the bushes where they stayed the whole night. At about 10:00 o'clock the following morning, they returned home and found the headless body of the victim. The head was recovered two days later on the land tilled by accused Monieva.

Pacita Dumalag, the wife of the victim, testified that on February 10, 1991 at about 7:30 o'clock in the evening she was informed by Barangay Tanod Amador Dalanon and Abner Brioso that her husband was killed by Levy Monieva near the house of their tenant Rani Mabuti at Cagay, Masbate, Masbate. They then went to the place of incident and found the lifeless body of her husband.

She also stated that on February 11, 1991, the police arrested Levy Monieva near his house at Cagay, Masbate, Masbate. The bolo used in killing her husband was recovered from the accused. For the burial of her husband, she spent Eighteen Thousand Pesos (P18,000.00).

Dr. Artemio Capellan, the Municipal Health Officer of Masbate, Masbate testified that he conducted a post mortem examination on the body of victim Leonardo Dumalag on February 12, 1991. Based on his examination, the victim sustained four (4) stab wounds, one of which was the most fatal because the head of the victim was almost cut off. The instrument used to kill the victim was a short bladed instrument and it was possible that a bolo was used.

The defense presented only one witness, the accused Levy Monieva. He denied the allegations that he killed Leonardo Dumalag. He testified that at the time of the incident he was being attended to by a quack doctor named Fedir Villanueva in his house located at Cagay, Masbate, Masbate as he had a fever and his body was aching. He only learned about the death of Leonardo Dumalag from Barangay Tanod Abner Brioso and Amador Dalanon when he was investigated by the two. On February 11, 1991, he was arrested by the police authorities.

On July 10, 1995, a decision was rendered by the trial court convicting the accused and imposing the following penalty:

"WHEREFORE, this court finds accused Levy Monieva guilty beyond reasonable doubt of the crime charged and hereby sentences him to reclusion perpetua; orders him to indemnify the heirs of the victim the sum of P50,000.00 without subsidiary imprisonment in case of insolvency; and to pay the cost.

"IT IS SO ORDERED."[5]

Hence, this appeal where accused-appellant assigns the following errors allegedly committed by the trial court:

I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE OTHERWISE UNCORROBORATED, INCREDIBLE AND FABRICATED TESTIMONY OF PROSECUTION WITNESS ELVIE MABUTI

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT LEVY MONIEVA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DEFINED AND PENALIZED UNDER

ARTICLE 248 OF THE REVISED PENAL CODE, DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE QUALIFYING AGGRAVATING CIRCUMSTANCE CHARGED IN THE INFORMATION.

The appeal is meritorious in the sense that the penalty should be lowered.

In his brief accused-appellant contends that Elvie Mabuti is an unreliable witness because her testimony is contrary to human experience, incredible, fabricated and wholly concocted. He points to the following incongruities in the said witness' testimony and rationalizes why he considers them to be such.

a) Elvie Mabuti and her family left their house and fled to the bushes that are in an open field and that is where they stayed the whole night. - It is highly incredible and unbelievable that they would leave their house to hide in an open field where they could have easily been caught and attacked.

b) Upon their return the following day, February 11, 1991, at about 10:00 o'clock in the morning Elvie Mabuti found the body of the victim near their house. - This does not jibe with the testimony of the victim's wife, Pacita Dumalag, that upon learning of the death of her husband Leonardo on February 10, 1991 at around 7:30 o'clock in the evening she immediately went to the place of the incident where she found his lifeless body;

c) Elvie Mabuti testified that the victim was beheaded and that the head was recovered two days later. - This is false because the post mortem report of Dr. Artemio Capellan stated that the head of the victim was almost cut off but not severed.

We find the testimony of Elvie Mabuti credible. She testified in a categorical, straightforward manner - manifestations that a witness is telling the truth.

Appellant finds it incredible that Elvie Mabuti and her family opted to flee from their house instead of just staying put.

Elvie Mabuti explains why: "(They) jumped and escaped because (her) husband was afraid." [6]

At first blush it confounds the mind why Rani Mabuti, the husband of Elvie, opted to flee the sanctuary of their abode. Was it cowardice or fear for his family's safety that prompted him to do so? Whatever the reason for their hasty departure was, we deem it inconsequential for the fact remains that they fled when they saw their neighbor Levy Monieva hacking Leonardo Dumalag.

As admitted by Monieva himself except for the Mabuti family he had no other neighbor. [7] Considering then that the Mabutis were witness to a crime taking place and perhaps propelled by the belief that they could be killed next Rani Mabuti made the decision to flee.

Given the same set of circumstances another person might have had the same or an entirely different reaction. It is not fair to gauge the action of Elvie Mabuti and her family with that of another for it is difficult to ascertain what a person's reactions would be when a startling or frightening situation suddenly looms before him.

It has been held in the case of *People vs. Luzorata*, [8]

"(d)ifferent people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience."

As to the alleged inconsistency between the testimony of Elvie Mabuti and the victim's wife Pacita Dumalag we find that the time when the body was found is immaterial to appellant's guilt. Where the inconsistency is not an essential element of murder, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to, that is, the fact of killing. [9]

It has been held that inconsistencies and discrepancies in the testimony referring to minor details and not upon the

basic aspect of the crime do not impair the witnesses' credibility. These inconsistencies even tend to strengthen, rather than weaken, the credibility of witnesses as they negate any suspicion of a rehearsed testimony.[10]

But even if it were proven that that part of Elvie Mabuti's testimony was false, this will not cause her entire testimony to be rejected, for

"Even where a witness is found to have deliberately falsified the truth in some particulars, and it was not shown that there was such intended prevarication by complainant in this case, it is not required that the entire testimony be rejected, since such portions thereof deemed worthy of belief may be credited. It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts.[11]

Finally, appellant was positively and categorically identified by Elvie Mabuti as the person who hacked Leonardo Dumalag. More than anything, this carries a great weight in the determination of whether an accused is guilty or not. Some portions of the testimony of the said witness follow:

"COURT

"Q On February 10, 1991 at about 5:30 in the afternoon what happened to Leonardo Dumalag?

"A He was killed.

"ATTY. VILLAMOR

"Q By whom?

"A Levy Monieva.

"Q If this Levy Monieva is in Court, can you identify him?

"A Yes, sir.

"Q Please point to Levy Monieva.

"A (Witness pointed to a man who, when asked of his name, identified himself as Levy Monieva.

"Q Now how did Levy Monieva kill Leonardo Dumalag on February 10, 1991?

"A He hacked him.

"Q How many times did Levy Monieva hack Leonardo Dumalag?

"A Many times.

"Q Where?

"A Parts of his body.

"Q Where particularly in Cagay did Levy Monieva hack Leonardo Dumalag?

"A Near our house.

"Q How many meters away from your house?

"A About five meters.[12]

Appellant denies having committed the crime and interposes the defense of alibi. He contends that he could not have killed the victim because he was sick at the time.

It has invariably been held that for an alibi to prosper, it must be sufficiently convincing as to preclude any doubt as to the physical impossibility of the accused-appellant's being present at the locus criminis or its immediate vicinity at the time of the incident.[13]

Appellant Levy Monieva admits that he was being attended by a quack doctor in his house at Cagay, Masbate, Masbate at the time of the incident. The crime occurred a few meters away from the house of his nearest neighbor Rani Mabuti. Monieva was not so far away that he could not have been physically present at the place of the crime, or its immediate vicinity at the time of its commission.

Between the positive identification made by Elvie Mabuti and the denial of the appellant, we are more inclined to give weight to the former's testimony. Moreover, there was no showing that Elvie Mabuti was motivated by any ill-will when she testified against the appellant. We have no reason to believe that she would knowingly put a person behind bars if he was not the one who killed the victim.

Positive identification, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[14]

Anent the second assigned error we hold that the trial court erred in convicting the appellant of murder. It was not sufficiently proven that the killing was qualified by the aggravating circumstances of abuse of superior strength, evident premeditation, and treachery.

We are at a complete loss as to what the sequence of events was from the time Levy Monieva and Leonardo Dumlalag met to the time the victim lay dead. The record does not disclose this information. What the eyewitness, i.e., Elvie Mabuti saw (appellant chasing and hacking the victim) and heard (the crying of the victim for help) was almost the tail end of the altercation between the appellant and the victim. We do not know what the means of defense available to the offended party was, if there was any, and whether he made use of it from the inception of the altercation.

Abuse of superior strength means to purposely use excessive force out of proportion to the means available to the person attacked to defend himself.[15] (Emphasis Ours) Before abuse of superior strength may be appreciated, it must be clearly shown that there was deliberate intent on the part of the malefactor to take advantage thereof.[16]

The prosecution is of the opinion that since the appellant was armed with a bolo and was chasing the unarmed victim who was trying to flee, this shows that the latter was powerless to offer resistance thereby admitting his inferiority and the superiority of his assailant.

This is mere conjecture on the part of the prosecution. It was not at all apparent that the appellant consciously adopted that particular means, i.e., the use of a bolo, to harm another.

The prosecution failed to prove the qualifying circumstance of treachery. Treachery is present when the attack comes without warning, is sudden and unexpected and the unsuspecting victim is not in a position to parry the assault.[17] In the case of *People vs. Pena*[18] it was held that treachery cannot be presumed; it must be proved by clear and convincing evidence, or as conclusively as the killing itself.

The mere fact that the victim was running away from the appellant who was wielding a bolo shows that the victim was aware of the danger to himself, thus negating the suddenness of the attack for which reason treachery cannot be appreciated in this case.

Neither was evident premeditation proven for there was no showing as to how and when the plan to kill was hatched, or what time had elapsed before it was carried out.[19] Evident premeditation must be clearly proven,

established beyond reasonable doubt, and must be based on external acts which are evident, not merely suspected, and which indicate deliberate planning.[20]

From the above, we hold that there was an absence of qualifying circumstances to justify the conviction of the accused for murder.

IN VIEW WHEREOF, the conviction of appellant Levy Monieva is AFFIRMED, with the modification that he is declared guilty beyond reasonable doubt of the crime of Homicide and not Murder. Thus, appellant is sentenced to suffer the indeterminate penalty of eight (8) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. The monetary award of P50,000.00 as indemnity for the death of the victim is also AFFIRMED. Costs against the appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] Orig. Record, p. 1.

[2] Ibid., p. 25.

[3] Ibid., p. 44.

[4] Ibid., p. 71.

[5] Rollo, p. 46.

[6] T.S.N. dated October 29, 1993, p. 3.

[7] T.S.N. dated February 11, 1994, p. 12.

[8] 286 SCRA 487 [1998].

[9] People vs. Pandiano, 232 SCRA 619 [1994].

[10] People vs. Lising, 285 SCRA 595[1998].

[11] People vs. Empleo, 226 SCRA 454, 467 [1993].

[12] T.S.N. dated October 29, 1993, p. 2.

[13] People vs. Maguad, 287 SCRA 535 [1998].

[14] People vs. Enriquez, 292 SCRA 656 [1998]; Bautista vs. Court of Appeals, 288 SCRA 171 [1998].

[15] People vs. Asto, 277 SCRA 697, 711 [1997].

[16] People vs. Canete, 287 SCRA 490 [1998].

[17] People vs. Pallarco, 288 SCRA 151[1998].

[18] 291 SCRA 606 [1998].

[19] People vs. Sambulan, 289 SCRA 500 [1998].

[20] People vs. Pena, 291 SCRA 606 [1998].

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