

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO REBOLTIADO ALIAS “RENE” AND JOSE MARARAC ALIAS “JOE”, ACCUSED-APPELLANTS.*G.R. No. 123915. September 12, 1997*

Ponente: MELO, J.

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Accused-appellants Renato Reboltiado and Jose Mararac jointly seek reversal of the trial court’s ruling but pray for different results for different reasons. The former contends that he only committed homicide and not murder, as found by the trial court; while the latter seeks total exoneration of the crime charged for the reason that his identity as alleged co-conspirator was not clearly and unquestionably established.

Initially, only accused-appellant Reboltiado was charged in the Information dated August 7, 1990, whereupon during arraignment, he entered a plea of not guilty. Subsequently, an Amended Information dated November 20, 1990, in which accused-appellant Mararac was included, was filed, charging:

That on or about the 4[th] day of July, 1990, in the municipality of Vigan, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and shoot with the use of illegally possessed firearm one Romeo Santamaria, thereby inflicting mortal wounds on his body, which wounds necessarily produced the death of said Romeo Santamaria.

Contrary to law.

(pp. 12, 15, 27, Rollo.)

Reboltiado reiterated his earlier plea, while Mararac entered a plea of not guilty (pp. 27-28, *Ibid.*). After trial, the Regional Trial Court of the First Judicial Region (Branch 25, Tagudin, Ilocos Sur) found accused-appellants guilty beyond reasonable doubt of the crime of murder and imposed upon them the penalty of reclusion perpetua (p. 41, *Ibid.*).

This much is undisputed. On July 4, 1990, at approximately 6 o’clock in the evening, accused-appellant Reboltiado, while riding on a motorcycle driven by another man, stopped in front of the store of the victim Romeo Santamaria along Del Pilar Street, Vigan, Ilocos Sur. Clutching a carbine M-1, he trained the firearm on the unsuspecting Santamaria who was then watching the card-playing Ricardo Castro, Joselito and Mauro Jabab, and Roger Rabago. Accused-appellant Reboltiado fired and hit Santamaria. In the ensuing panic, the players all entered the store but managed to pull the victim inside. A second shot was fired but fortunately, no one was hit. Accused-appellant Reboltiado, together with his companion, then fled (pp. 28-32, *Ibid.*).

Santamaria’s companions brought him to the Gabriela Silang General Hospital where Dr. Benjamin Tolentino performed emergency surgery. The slug entered the left side of the body of the victim and exited through the right

side, causing, in the process, massive bleeding and multiple lacerations on the victim's intestines. After twenty-four hours, Santamaria died, the cause of death being the gunshot wound, hypovolemic shock secondary to multiple injury to his intestines (pp. 31-34, *Ibid.*).

The Case Against Accused-Appellant Jose Mararac

Accused-appellant Mararac, in seeking acquittal, alleges that his identification as one of the perpetrators of the crime is unreliable, inconclusive, and does not meet the required positiveness sufficient to convict him. He calls the Court's attention to the sworn statements of two witnesses, Ricardo Castro and Mauro Jabab, given to the police on July 5, 1990, a day after the incident. Both Castro and Jabab said they did not recognize the driver of the motorcycle. Three other persons — Gil Arci and Arnel Amistadis on July 5, 1990, and June Fortuno on July 6, 1990 — also gave sworn statements to the same effect that they never recognized the driver of the motorcycle ridden by accused-appellant Renato Reboltiado. Again, Castro, during the preliminary investigation reiterated his statement that he did not see who the driver was because the driver was facing the other way. However, when asked a year later while testifying at the trial of the case, both Castro and Jabab made a complete turnaround and pointed to accused-appellant Mararac as the person driving the motorcycle used by accused-appellant Reboltiado on the day of the incident. Such conflicting statements were never explained. Furthermore, accused-appellant Reboltiado himself testified that it was not accused-appellant Mararac who drove for him but one Alvin Alviejo (Alvin Vallejo in the trial court's decision, pp. 35-36, *Rollo*). Thus, accused-appellant Mararac contends, because an accused in a criminal case is competent to testify for or against any of his co-accused (*People vs. David*, 236 SCRA 45 [1994]), the testimony of accused-appellant Reboltiado denying any participation of accused-appellant Mararac in the crime, bolstered by unexplained, contradicting statements of witnesses who supposedly saw Mararac as the driver, renders the conviction of Mararac untenable (pp. 7-12, *Accused-Appellant's Brief*; pp. 64-69, *Rollo*).

The People concede that the conviction of accused-appellant Mararac cannot stand considering the uncertainty in his identification as the driver-companion of accused-appellant Reboltiado. The Office of the Solicitor General thus joins accused-appellant Mararac in pointing out that the preliminary statements of witnesses Castro and Jabab not implicating accused-appellant Mararac, cast serious doubts on the veracity of their inculpatory testimony later made at the trial. It may be observed further that the prosecution never bothered to explain the discrepancy between witness Jabab's sworn statement and his testimony and why the sworn statement of witness Castro was not offered in evidence. Although the defense tried to present this sworn statement in evidence to show the inconsistency, the prosecution objected on the ground that due to Castro's intervening death, he can no longer be cross-examined regarding such matter (pp. 10-13, *Plaintiff-Appellee's Brief*). But even if we take Castro's testimony alone, still, the same leaves much to be desired on the matter of positive identification of the gunman's companion, the driver of the motorcycle, to wit:

Q: You said that these two persons who were riding on the motor vehicle were in fatigue?

A: Yes, sir.

Q: They were complete with caps?

A: It is not a military cap, it is an ordinary hat, sir.

Q: The two riders wearing hats?

A: The other one was not wearing hat, sir.

Q: Renato Reboltiado was not wearing hat and you are sure that the other was wearing hat?

A: Yes, sir.

Q: What color of the hat he was wearing?

A: There is somewhat yellow in color, sir.

Q: You mean it is not entirely yellow?

A: No, sir.

Q: What color was it then?

A: I was not able to know the front or infront of the hat. I only saw the back side of the head, sir.

(p. 4, tsn, October 11, 1990)

Then too, accused-appellant Reboltiado himself exculpated accused-appellant Mararac, thus:

ATTY. RAFANAN

Q: When you were already in your house, what did you do?

A: I borrowed a gun, sir.

Q: From whom?

A: From my friend, sir. My compadre.

Q: Who was that compadre of yours from whom you borrowed that gun?

A: Alvin Vallejo, sir.

Q: Do you know where is his house?

A: He is my neighbor, sir.

Q: And did he lend you a gun?

A: Yes, sir.

Q: What did you do then?

A: He brought the gun and I told my compadre to go with me, sir.

Q: And where did you go?

A: I returned to the place of Romeo Santamaria, sir.

Q: And were you able to return?

A: Yes, sir.

Q: What did you do upon returning to the place of Romeo Santamaria?

A: I shot Romeo Santamaria, sir.

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Q: According to prosecution witnesses, your companion was Jose Mararac, what can you say about that?

A: No, sir.

Q: Now, what was the participation of your companion, Alvin Vallejo?

A: He took his motorcycle and we rode on it, sir.

Q: Now, after shooting Romeo Santamaria, what did you do?

A: I went back to my house and we parted with Alvin Vallejo, sir.

Q: Now, after that, what did you do next?

A: I left our house and went to Manila, sir.

(pp. 7-9, tsn, February 7, 1995)

By virtue of what was described in *People vs. Berja, et. al.* (G.R. No. 119014, October 15, 1996) as corrective

appellate action, this Court may disregard and is in fact duty-bound to ignore findings of the trial court when errors due to gross misapprehension of facts are committed at the trial level, or certain material contrarieties are overlooked. Such is the case here, for eyewitness identification is not just a trivial matter but constitutes vital evidence, which in most cases, is determinative of the success or failure of the prosecution (*People vs. Teehankee, Jr.*, 249 SCRA 54, 94 [1995]). Neither can uncertainty be regarded as just a lapse of memory, for variance in the identity of the assailant is a glaring inconsistency on a material factor (*People vs. Pidia*, 249 SCRA 687, 701 [1995]). Thus, the inconsistency concerned herein cannot simply be brushed aside, for although the general rule is that contradictions between a witness's statements in an affidavit and his testimony do not necessarily discredit him, where the purported inconsistency concerns points of such importance the same cannot simply be ascribed to failure to remember, for which reason, the witness's credibility becomes suspect (*People vs. Alvarado*, 242 SCRA 464, 472 [1995]).

Even if we were to adhere to the rule that the testimony of a witness deserves more weight than his affidavit (*People vs. Guarin*, 259 SCRA 34 [1996]), the testimony of witness Castro earlier quoted is nonetheless still wanting in persuasiveness for verily, one cannot possibly identify a person with any measure of certainty if all that was seen was the back of the head, more so if the person was wearing a hat. In appreciating the testimony of a witness, not only must the witness be credible, but what is testified to by him must be believable in itself from common experience and powers of observation (*People vs. Pidia*, *supra*).

The Court thus holds that the identification of accused-appellant Jose Mararac as a participant in the commission of the felony charged, attended as it is by serious doubts and contradictions, has not been established by competent proof, for which he should be acquitted of the crime charged.

The Case Against Accused-Appellant Renato Reboltiado

Accused-appellant Reboltiado confessed to shooting Santamaria, but only, he says, in retaliation for the mauling he received from Castro, Mauro Jabab, Romeo Santamaria, and another person. Accused-appellant Reboltiado claims that Castro accused him of cheating at their card game, for which cause he was mauled, with Santamaria, the victim, being one of the attackers. After getting away, accused-appellant Reboltiado rushed home, borrowed a gun from his friend, Alvin Vallejo, and persuaded the latter to come with him. With Vallejo driving the motorcycle, accused-appellant Reboltiado went to the victim's house and shot him (pp. 3-10, *tsn*, February 7, 1995; pp. 6-7, Accused-Appellant's Brief; pp. 36, 63-64, *Rollo*).

Accused-appellant Reboltiado contends that inasmuch as the trial court discounted evident premeditation as attendant in the killing, then neither can treachery be appreciated because, as held in *People vs. Macaso* (64 SCRA 659 [1975]), the absence of evident premeditation, there being no time for accused to reflect on the consequences of his act, also means that accused did not have time to consciously or deliberately adopt the means of attack. Further cited is *People vs. Garillo & Fernandez*, (84 SCRA 537 [1978]), where it was held that there is no treachery if the attack was the result of an impulse of the moment resulting from a sequence of unexpected events. Lastly, accused-appellant Reboltiado argues that the provocation given by the victim in this case should have put him on guard against any retaliation by accused-appellant Reboltiado, relying on *People vs. Manlapaz et. al.*, (55 SCRA 598 [1974]), where it was held that provocation of the accused by the victim negates treachery.

These contentions are without merit. Treachery, or *alevosia*, exists when the offender commits any of the crimes against persons, 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 (Article 14, par. 16, Revised Penal Code). The cases cited by accused-appellant Reboltiado differ in their factual backgrounds with the instant case. In *People vs. Macaso* (*supra*), the accused, a policeman, during a heated

argument with the victim, suddenly pulled out his service firearm and shot the latter. In *People vs. Garillo & Fernandez* (supra), the assailant was in the middle of committing a robbery when he bumped into a table and dropped his gun. The gun went off, waking the victim who immediately stood up brandishing a bolo. It was then that the victim was shot. In both instances, it is clear that the attacks were spontaneous and unplanned. In the case at bar, nothing indicates planning and deliberation clearer than accused-appellant Reboltiado's confession that after being mauled, he went home with revenge in mind; that to eliminate any risk to himself should the objects of his vengeance be able to defend themselves, he borrowed a gun and persuaded a friend to drive him to the victim's house on board a motorcycle to facilitate surprise and a fast getaway. The attack, unmistakably, was treacherous.

Also to be rejected is the contention that the absence of evident premeditation necessarily means that there was no treachery. The trial court's ruling is clear that evident premeditation cannot be appreciated, not due to the spontaneity of the attack, but rather because there was no appreciable lapse of time between the resolution to commit the crime and its execution, within which accused-appellant Reboltiado could have reflected on the lawlessness of the course of action he was about to take and maybe yield to his conscience.

Finally, due to accused-appellant Reboltiado's failure to adduce any proof that he was indeed mauled by the victim, the contention that treachery cannot exist, there having been provocation from the victim, cannot be given consideration.

WHEREFORE, the appealed decision is hereby MODIFIED in that accused-appellant Jose Mararac is ACQUITTED of the crime charged and his immediate release is hereby ordered, unless he is being held on some other legal ground. As regards accused-appellant Renato Reboltiado, the appealed decision is AFFIRMED. No special pronouncement is made as to costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Francisco, and Panganiban, JJ., concur.

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