

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MONTGOMERY VIDAD Y ORTEGA, ACCUSED-APPELLANT.

G.R. No. 124032. July 20, 1999

Ponente: ROMERO, J.

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ROMERO, J.:

Before us is an appeal from a decision rendered by the Regional Trial Court of Zamboanga City, Branch 16, finding accused-appellant Montgomery Vidad y Ortega alias Ongie guilty beyond reasonable doubt of crime of murder. Ironically, the principal witness instead of herein accused-appellant, exhibits the sole motive for the commission of the crime.

Nomer Mandi alias Pering was stabbed and killed in the evening of September 28, 1995. Postmortem examination conducted by Dr. Rodolfo M. Valmoria, Chief of Medico-Legal Officer of the Philippine National Police p.P.s. Laboratory Service Regional Unit 9, Zamboanga City showed that the victim suffered the following injuries:

- Lacerated wound, right forehead, 5.4 cm in its longest length. Further ocular examination revealed linear fracture of bone underneath.
- Stabbed wounds, right supramammary region, 2.3 cm in length, non penetrating
- Stabbed wounds, right supramammary region, close to the anterior midline 2 cm in length, penetrating right lung
- Stabbed wounds, left suprascapular region and right infrascapular region, measuring 2 cm x 1.5 respectively, non-penetrating
- Stabbed wound, right suprascapular region, measuring 1.5 cm in length, non-penetrating
- Stabbed wound, right scapular region, measuring 1.8 cm, fracturing scapular bone, penetrating
- Abrasion, right knee joint, just anterior.[1]

Rolando de la Torres alias Borlong, a passenger jeepney driver, testified that at around 10:00 o'clock p.m. to 10:45 o'clock p. m. of September 28, 1995, he was in his house in Falcatan Street, Tetuan, Zamboanga City drinking beer with Espiridion Bobilles alias Jungjung, herein accused-appellant, Montgomery Vidad alias Ongie, and an unidentified companion of the latter. At around 10:45 o'clock p.m., he decided to go to the nearby shop of a welder named Roger Vicente to have the antenna of his radio welded. At about the same time, accused-appellant and his companion decided to go home leaving Bobilles behind.

Rolando de la Torres found Vicente watching television in a house near his welding shop. Vicente, however, told him that the antenna could not be welded. As de la Torres turned to leave, the deceased, Nomer Mandi alias Pering, who was also watching television nearby, followed him outside. It appears that the deceased had a previous misunderstanding with de la Torres whom he suspected to be involved in the disappearance of a car stereo. While the two were having a heated discussion on a dimly-lit road outside, Bobilles arrived and pacified

them. Vicente, who witnessed the argument from a distance also approached the two. When he saw that the two men were already talking in a subdued manner with each other, he left and went home. At this point, accused-appellant Montgomery Vidad y Ortega alias Ongie, allegedly arrived and placed his arm on the shoulder of the deceased. He asked the deceased if he was angry with de la Torres and forthwith stabbed him twice on the chest. As the deceased tried to flee, accused-appellant locked him in an embrace and stabbed him several times at the back. De la Torres, in an effort to help the deceased, kicked the accused-appellant, after which the latter ran towards a bridge.[2] The deceased was later taken to a hospital but all efforts to revive him were futile.

This story was corroborated by Bobilles who said that he was present when de la Torres and the deceased began arguing. He then approached the two men in order to pacify them. When the two shook hands, he turned his back on them to answer a call of nature. Suddenly, he heard the deceased utter the word "Agay." When he glanced back, he saw the accused-appellant stab the deceased from behind and then run away when de la Torres kicked him.[3]

The prosecution also presented Roger Vicente who testified that he was in the house of a neighbor, Medie Divino, at Falcatan Street, Tetuan, Zamboanga City watching television with the deceased on the night of September 28, 1995. Divino's house was a mere five meters away from Vicente's welding shop. While they were watching television, de la Torres approached Vicente to have an antenna welded. Since the antenna was made of aluminum and could not be welded, Vicente advised de la Torres to buy some necolyte. As de la Torres turned to leave, the deceased who was watching television nearby, followed him outside. The two men began to have a heated discussion, attracting the attention of Vicente and Divino who promptly stepped out of the house in time to see Bobilles approach the two men who were arguing. As Vicente and Divino hovered nearby, de la Torres and the deceased began to settle their differences. Vicente observed that Bobilles and de la Torres were wary of Divino who was of a larger build. Seeing that the problem was settled, Vicente and Divino proceeded to return to the latter's house to resume watching television. While on the way back, Vicente noticed two persons in a dark corner of the road, one of them wearing camouflage pants. Soon after, they heard a sound. As they rushed outside to investigate, they met the deceased staggering towards them exclaiming that he was pounced upon. Seeing that he was about to collapse, a companion of Vicente caught the deceased who was then trembling and supporting his wounded head.[4]

Herein accused-appellant, however, presents a different version of the story. He alleges that on September 28, 1995, as he was in his house at Natividad Street, Tetuan, Zamboanga City, watching television from 7:00 o'clock p.m. to 8:00 o'clock p.m., de la Torres and Bobilles arrived. He knew the two men because he had just been hired as a substitute jeepney conductor of Bobilles who was de la Torres' regular conductor. Prior to the incident, accused-appellant had been working for de la Torres for less than a month. On the night in question, de la Torres and Bobilles invited him for a drink at the former's house which is about ten minutes away by jeep from accused-appellant's home. Also present in the house were the brother-in-law and the wife of de la Torres. At around 10:45 o'clock p.m., accused-appellant wanted to go home but the two men asked him to accompany them to the house of a certain Joel (later identified as Roger Vicente). Upon reaching the house, he was instructed by de la Torres to wait outside with Bobilles. De la Torres stayed inside the house for ten minutes and upon emerging therefrom, he was followed by the deceased who looked quite angry. Joel also followed the two men. Upon seeing Joel, Bobilles also approached the group. Accused-appellant was about fourteen (14) meters away from the group and could not hear what they were talking about although he could observe what was going on. When Joel left, Bobilles hit the deceased on the upper right forehead with a stone measuring around 4-1/2 inches in diameter. Accused-appellant being a stranger to the place, decided not to interfere and went home. The next day, he went to a nearby store to buy a cigarette when he was approached by someone who invited him to the police station.[5] At the police station, he was immediately detained and later charged with the murder of Nomer Mandy y Palaganas.

The trial court gave credence to the testimony of de la Torres and rendered a decision finding herein accused-appellant guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads as follows:

"WHEREFORE, the court finds accused MONTGOMERY VIDAD Y ORTEGA alias Ongie GUILTY BEYOND REASONABLE DOUBT of the crime of MURDER, as principal, for the treacherous killing of NOMER MANDY y PALAGANAS, and in the absence of any mitigating or aggravating circumstance, sentences said accused to suffer the penalty of RECLUSION PERPETUA with the accessory penalties provided by law; to pay the heirs of the victim in the amount of P50,000 as indemnity for his death; P32,000 as actual damages and to pay the costs.

The accused shall be credited with the full period of his detention in the service of his sentence.

SO ORDERED."

It is a well-established principle that the findings of the trial court with respect to the credibility of the witnesses, are accorded great weight and respect, since it had the opportunity to observe the demeanor of the witnesses as they testified before the trial court unless they have been overlooked or misunderstood by the latter which, if considered, would materially affect the result of the case.[6]

In convicting the accused-appellant, the trial court placed much reliance on the testimony of the prosecution's star witness Rolando de la Torres who allegedly saw the entire stabbing incident. De la Torres testified that accused-appellant suddenly appeared, asked the deceased whether he was angry with De la Torres and then stabbed him twice on the chest until the deceased fell.[7] De la Torres' testimony, however, suffers from inconsistencies which barely satisfy the test of credibility to sustain conviction. First, if, as the witness claims, he and the deceased were already talking amicably when the accused-appellant suddenly appeared, how could the latter have known that the two men had a previous argument before he arrived? Even if we were to presume that accused-appellant had in fact witnessed the argument from a distance, it is rather strange that accused-appellant would commit a crime in the name of friendship considering that he had known de la Torres for only a few weeks. Second, while de la Torres positively identified accused-appellant as the lone perpetrator of the crime, the victim himself made a declaration shortly before he expired that he was ganged up.[8] To be sure, such declaration of the victim does not rule out the possibility that accused-appellant was one of the perpetrators of the crime. Nevertheless, we find it odd that the principal witness, who was virtually beside the deceased during the incident, failed to see, and in fact, never mentioned during trial, that there was more than one person involved in the murder of the deceased.

The trial court, however, persisted in giving credence to the testimony of de la Torres primarily because it was corroborated by the testimonies of the other witnesses, namely, Espiridion Bobilles and Roger Vicente. It stated that the lone uncorroborated testimony of the accused-appellant merely denying the commission of the crime charged cannot prevail over the positive testimonies of the witnesses for the prosecution.

The testimony of the other witnesses for the prosecution, however, hardly corroborate the testimony of de la Torres that the accused-appellant was indeed the one who stabbed the deceased. While Bobilles testified during the trial that he saw the accused-appellant stab the deceased, he never made mention of this in his affidavit dated September 29, 1995. Bobilles, who never bothered to explain his presence at the scene of the crime, simply said in his affidavit,

"Borlong and Pering shoke (sic) their hands as a gesture that they were able to settle their differences, then I turned my back with the intention to go home. However, I heard Pering uttered in this wise," Agay" then Pering fell to the ground x x x I just stood still and the rest of the group scampered to different directions.[9]

This is materially different from his statement in court that after the deceased and de la Torres shook hands, he turned his back to answer a call of nature only to later hear the word "agay" and to see accused-appellant stab the deceased.[10] When asked why this was never mentioned in his affidavit, Bobilles insisted that the police officers left out some facts which he related to them in their haste to take his statement.[11] Strangely, in the same affidavit, the supposedly impatient police officers found time to ask Bobilles whether he had anything more to add or alter in the prepared statement, to which Bobilles replied "No more, sir." [12] Bobilles also admitted that when his affidavit was read and translated to him by a lawyer, presumably prosecutor Radegundo O. Trinidad before whom it was executed, he did not bother to complain about some facts which were not included in the statement anymore because "This is my time to tell here in court." [13] It is surprising that such material information as the identity of the assailant should be omitted by the police officers who prepared the affidavit, as well as the prosecutor before whom the affidavit was sworn to, considering that they were the same persons who took the affidavit of the star witness Rogelio de la Torres who positively identified accused-appellant as the one who stabbed the deceased.

As regards Roger Vicente, he did not actually see the stabbing incident, let alone the person who stabbed the deceased. He merely testified that as he stepped out of the house to follow de la Torres and the deceased who were arguing at a nearby road, he noticed two people in a dark corner. One of them wore camouflage pants similar to the one that the accused-appellant wore during the trial. On his part, accused-appellant never denied but has, in fact, categorically admitted his presence at the scene of the crime.

Contrary to the trial court's observation, accused-appellant's testimony is more credible than those of the witnesses for the prosecution. His testimony that Bobilles hit the deceased with a piece of stone on the forehead is corroborated by the Medico Legal Necropsy Report which noted that there was a lacerated wound on the right forehead that could have possibly been caused by a blunt instrument.[14] So also was the testimony of the prosecution's witness, Roger Vicente, that the deceased was holding his bloodied head as he ran for safety before he collapsed. Notably, neither of the alleged eyewitnesses ever mentioned anything that could have explained the cause of the wound on the forehead of the deceased.

Finally, it has not escaped this Court's notice that it was never established whether accused-appellant and the deceased were acquaintances. Nor was any motive on the part of accused-appellant to commit the crime presented by the prosecution. In the case of *U.S. v. Carlos*, [15] this court had occasion to state: "It is true that it is not indispensable to conviction for murder that the particular motive for taking the life of a human being shall be established at the trial, and that in general when the commission of a crime is clearly proven, conviction may and should follow even where the reason for its commission is unknown; but in many criminal cases, one of the most important aids in completing the proof of the commission of the crime by the accused is the introduction of evidence disclosing the motive which tempted the mind to indulge in the criminal act." There was no showing that accused-appellant had an axe to grind against the deceased. On the other hand, it was de la Torres, the principal witness for the prosecution, who had an altercation with the deceased on the night in question - a fact which should have cautioned the trial court to carefully weigh his testimony.

With the veracity of the principal witness' testimony in doubt with no other corroborative evidence to support it, accused-appellant's guilt has not been established beyond reasonable doubt. Enshrined in the Bill of Rights is the right of the accused to be presumed innocent until the contrary is proved, and to overcome the presumption, nothing less than proof beyond reasonable doubt must be established by the prosecution.[16]

WHEREFORE, the decision of the Regional Trial Court of Zamboanga City, Branch 16 convicting accused-appellant Montgomery Vidad y Ortega of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua is REVERSED and accused-appellant, hereby ACQUITTED.

SO ORDERED.

Vitug, Panganiban, Purisima, and Gonzaga-Reyes JJ., concur.

[1] Exhs. C and D.

[2] TSN, December 1, 1995, pp. 3-12.

[3] TSN, December 8, 1995, p.5.

[4] TSN, December 5, 1995, pp.3-17.

[5] TSN, December 6, 1995, pp. 5-16.

[6] *People v. San Juan*, 270 SCRA 693 (1997); *People v. Quinao*, 269 SCRA 495 (1997); *People v. Letigio*, 268 SCRA 227 (1997).

[7] TSN, December 1, 1995, pp. 7-8.

[8] TSN, December 5, 1995, p. 10.

[9] Exhs. 1, 1-A.

[10] TSN, December 8, 1995, p. 5.

[11] TSN, December 8, 1995, p. 9.

[12] Exh. 1-A.

[13] TSN, December 8, 1995, p. 12.

[14] Exhs. C and D.

[15] 15 Phil. 47 (1910); see also *People v. Esmundo*, 27 Phil 554 (1914).

[16] *People v. Mejia*, 275 SCRA 127 (1997).¹⁶

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