

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HUGA TANILON Y CARINAL, ACCUSED-APPELLANT.

G.R. No. 125319. July 27, 1998

Ponente: PUNO, J.

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PUNO, J.:

Huga Tanilon y Carinal and Simeon Yap y Montecino were charged with the crime of murder under an Information which reads:

"The undersigned 2nd Asst. Prov'l. Prosecutor hereby accuses HUGA TANILON y CARINAL and SIMEON YAP y MONTECINO of the crime of Murder, committed as follows:

"That sometime in the evening of September 25, 1994, at Matuog, Tayasan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with evident premeditation, with treachery, and with intent to kill, conspiring and confederating with and mutually helping each other, with accused Huga C. Tanilon as principal by inducement, having paid the P 1,000 reward for the killing to the other accused, Simeon M. Yap, who, as principal by direct participation, did then and there willfully, unlawfully, and feloniously ATTACK, STAB, and KILL one Andrew Caldera, inflicting fatal stab wounds on the vital parts of the latter's body, who died instantaneously as a result thereof, to the damage and prejudice of the heirs of the said Andrew Caldera.

'An Act defined and penalized by Art. 248 of the Revised Penal Code."

Both accused pleaded not guilty when arraigned and were tried. On February 28, 1996, the trial court convicted them in a Decision,[1] the dispositive portion of which states:

"WHEREFORE, premises considered, the Court finds Huga Tanilon y Carinal and Simeon Yap y Montecino guilty beyond reasonable doubt as principal and accomplice, respectively, of Murder penalized under Art. 248 of the Revised Penal Code, as amended by R.A. 7659. Accordingly, accused Huga Tanilon y Carinal is hereby sentenced to the (sic) penalty of reclusion perpetua, together with all the accessory penalties provided by law. Accused Simeon Yap y Montecino is hereby sentenced, after applying the indeterminate sentence law, to suffer an indeterminate prison term ranging from 8 years and 1 day of prision mayor as minimum to 14 years, 8 months and 1 day of reclusion temporal as maximum, together with all the accessory penalties provided for by law. Both defendants are jointly and severally ordered to pay to the lawful heirs of the deceased victim Andrew Caldera the following:

- (a) P 1,440,000.00 representing loss of income;
- (b) P 50,000.00 as death indemnity; and
- (c) P 30,000.00 for moral damages.

"The jailer is hereby ordered to make the proper reduction of the period during which the said two defendants were under preventive custody by reason of this case in accordance with law.

"SO ORDERED."[2]

Seeking a reversal of the decision, accused-appellant Huga C. Tanilon interposes the present appeal. She assigns the following errors to the Decision of the trial court, viz:

I

The trial court erred in giving credence to the uncorroborated and contradictory testimony of prosecution witness Simeon Yap.

II

The trial court erred in finding the accused Tanilon guilty beyond reasonable doubt of the crime of murder.

The evidence for the prosecution shows that the accused Tanilon had a grudge against the victim, Andrew Caldera. Nancy Caldera, the wife of the victim, testified that Tanilon and the victim were not in good terms because on June 12, 1992, the victim called Tanilon "x x x a prostitute, a nymphomaniac, a whore and a fucker" and threatened "x x x I will kill you; you will not reach morning alive, and if you will not come down, I will set fire to (sic) your house. x x x I will cut your clitoris with a long bolo." [3] Tanilon filed two (2) criminal cases against the victim, one for Grave Oral Defamation [4] and another for Grave Threats. [5] Both cases were pending in the MCTC of Tayasan, Negros Oriental, at the time of the incident.

Simeon Yap, a co-accused of Tanilon, was called by the prosecution as a hostile witness with his consent. Yap's wife is a cousin of accused Tanilon. [6] Yap testified that at about 6 o' clock in the morning of September 25, 1994, at Guindahogan, Suquib, Tayasan, Negros Oriental, accused Tanilon saw him in the house of his brother-in-law and told him to go to her store. He arrived at the store at about 7 o' clock in the morning. There, he was invited to drink by Dioscoro Dupio, Bonifacio Alejo and Nordebelio Calijan. The accused Tanilon supplied them five (5) bottles of beer and four (4) bottles of Anejo Rum 65. Thereupon, she proposed to give each one of them P 1,000.00 to kill Caldera so she would have no more cases against him. She then handed to each one of Dupio, Alejo and Calijan P 1,000.00 in ten (10) P 100.00 bills. When he was about to leave the store, he was called by the accused Tanilon who handed to him P 50.00 with the instruction to use the money to drink with Caldera. He proceeded to the town proper to look for Caldera. [7]

At the Tayasan Market, he met Romeo Villegas and had a drinking spree with him until 11 o' clock in the morning. Afterwards, they proceeded to the store of Elvis Bahandi where they consumed two (2) more bottles of Anejo Rum 65. He told Villegas that he was looking for Caldera as he had instruction from accused Tanilon to kill him. When they parted ways, he went to the house of his elder sister, Loling Villegas, in Palaslan, Tayasan, where he took his lunch. [8]

At about 5 o' clock in afternoon of the same day, he went to Barangay Matuog, Tayasan, which is more or less two (2) kilometers from Palaslan. He arrived in the place at past 6 o' clock in the evening. He saw Caldera smoking alone at the store of a certain Lodina Anjao. Caldera requested him to buy some drinks. He bought one (1) flat bottle of Anejo Rum. After drinking one-half of its content, they left the store and walked together on their way home. On the road, they consumed the remaining half of the rum. They used the empty bottle as kerosene lamp, with Caldera carrying it. [9]

At about 7 o' clock in the evening and after hiking more than half of a kilometer with Caldera walking ahead of him, Dupio, Alejo and Calijan appeared on the road. At a distance of more or less one (1) fathom or about six (6) feet, he saw Dupio stab Caldera with a file. Caldera was hit at the base of the right side of his neck. Alejo was the next to stab Caldera with a stainless knife, hitting him at the left shoulder. Caldera fell to the ground face up. Calijan then forcefully stepped on the chest of Caldera five (5) times. Dupio threatened him with death if he

would not assist in carrying the body of Caldera. Fearing for his life, he helped the three in carrying Caldera's lifeless body to the river located at about seventeen (17) fathoms or one hundred two (102) feet away from the place of the incident. They dumped the body of Caldera at the river so the flood would carry it away. They then parted ways. He went home.[10]

In the early morning of September 26, 1994, the accused Tanilon came to his house and gave him P 1,000.00 for fetching Caldera. At about 7 o' clock in the morning of the same day, he passed by the store of accused Tanilon where Dupio and Calijan were drinking rum with accused Tanilon. He joined the group and took two (2) shots of rum.[11]

Yap's testimony was corroborated by Teresa Ollana, his sister, and Romeo Villegas. Villegas testified that when he asked Yap why he was looking for Caldera, he (Yap) told him that he was paid by accused Tanilon and made the gesture with his hand cutting across his neck. He understood the gesture to mean that Yap would kill Caldera. He further declared that Yap visited him on October 2, 1994, and requested him not to tell anybody that he was hired by accused Tanilon to kill Caldera.[12]

Ollana similarly testified that Yap went to her house on October 10, 1994, and confided to her that he killed Caldera upon the order of accused Tanilon who paid him P1,000.00. Yap then told her to go to Tayasan and execute an affidavit about his revelation. He also instructed her to inform the authorities that he would be the one to reveal the names of his companions.[13]

Dr. Rolando Herrera, Municipal Health Officer of Bindoy, Negros Oriental, conducted the post-mortem examination on the victim. He submitted a Post-mortem Report dated September 27, 1994 with the following findings:

"GENERAL APPEARANCE OF THE VICTIM WHEN SEEN:

- Lying position with both upper extremities flexed
- Multiple hematoma over the chest
- Left lower leg slightly flexed

"POSTMORTEM FINDINGS:

1. Stab wound at the right side of the neck, five (5) cm. wide, penetrating and traversing the chest cavity, directed towards the left chest and causing injury to the heart with a measurement of five (5) inches deep.
2. Stab wound at the middle third of the left shoulder, five (5) cm. wide and two (2) inches deep, penetrating the muscle.

No other injuries seen upon further examination.

"CAUSE OF DEATH:

Cardio-respiratory arrest due to severe internal hemorrhage."[14]

He testified that stab wound number 1 was the fatal wound and the weapon used was a sharp three-bladed instrument like a file. He likewise opined that another weapon, a shorter one, was possibly used. He declared that the hematoma could have been caused by the contact of the chest with any hard object except a boxing blow.[15]

Nancy Caldera, the victim's wife, testified that she pitied her husband whose death saddened her. She asked for P 300,000.00 as compensation for her depression. She said that her husband, who was forty (40) years old at the time of his death, had a daily income of P 300.00 from farming and fishing. She spent P 6,000.00 for the funeral of her husband.[16]

Accused Tanilon did not take the witness stand. She relied mainly on her testimony in the preliminary investigation conducted on December 20, 1994, and counter-affidavit dated October 17, 1994 [Exhibit "11"] denying any participation in the murder of Caldera.

As aforestated, the trial court convicted the accused Tanilon.

In this appeal, appellant Tanilon assails the credibility of Yap. Her efforts cannot succeed.

First. As we have so frequently ruled, the trial judge who sees and hears witnesses testify has exceptional opportunities to form a correct conclusion as to the degree of credit which should be accorded their testimonies; and where, as in the instant case, the judge has exercised due care and discretion in making his findings and has not overlooked anything which would justify us in questioning the soundness of his conclusions, this court will not disturb his findings and conclusions.[17]

Second. In affirming appellant's conviction, we note that appellant had strong motive to have Caldera killed. They had near violent quarrels which resulted in criminal suits. During the preliminary investigation of the case at bar, appellant herself admitted that Caldera continued to threaten her even during the pendency of these two (2) criminal cases she filed against him.[18]

Third. The alleged inconsistencies and contradictions in the testimony of accused Yap cannot completely erode his credibility. Appellant pounds on the following inconsistencies: (a) Yap's testimony that he was merely one (1) fathom away from Caldera when the latter was stabbed by Dupio and Alejo is contradicted by his statement in the preliminary investigation that he was fifty (50) meters away; (b) Yap's testimony to the effect that he had known appellant for four (4) years prior to the incident contradicts his statement in the preliminary investigation that he came to know appellant only on September 25, 1994; and (c) Yap's testimony that appellant gave his three (3) companions P 1,000.00 each on September 25, 1994 while he was given the same amount only on September 26, 1994 contradicts his affidavit dated November 11, 1994 stating that he and his three (3) companions were given P 1,000.00 each by appellant on September 26, 1994. Appellant further points out that Yap's testimony was not corroborated by Dr. Rolando Herrera.[19]

Yap sufficiently explained the discrepancy between his testimony and his statement in the preliminary investigation regarding the distance from which he observed the killing of the victim, viz:

"Q-

Mr. Yap, on page 9 of the Preliminary Investigation conducted by the MCTC of Tayasan, Negros Oriental, which is now page 89 of the records of this case, you testified among other things, and I quote,

'Q -

What were Bonifacio Alejo and Nordevillo Calijan doing at that time?

'A -

'When we reached after the chapter he was immediately stabbed by Coroy and followed up by Bonifacio hitting at the left and when Andrew Caldera fell down he was stepped on by Nordy Calijan (sic).

"And you repeated this kind of testimony on page 12 of the preliminary investigation which is now page 92 of the records of this case, and now marked as Exhibit "4-K" for the prosecution and Exhibit "M-11" for the defense, and I quote:

'Q -

And you are very sure of that - that you saw Dioscoro Dupio and Bonifacio Alejo stab Andrew Caldera?

'A -

Yes.

'Q -

At a distance of 50 meters?

'A -

Yes, I saw.

'Q -

At a distance of 50 meters, you are very sure of this?

'A -

Yes.

'Q -

Even if it is (sic) dark?

'A -

Yes.

'Q -

So that the distance of Andrew Caldera and the persons who killed Andrew Caldera like Dioscoro Dupio and Bonifacio Alejo and Nordevillo Calijan, you were at a distance of 50 meters from them?

'A -

I saw.

'Q -

You are very sure of that it was 50 meters?

'A -

I am sure.

'Q -

And that distance is that distance from where you were setting (sic) to the goal?

'A -

Yes.

"Q

Mr. Yap, do you remember having testified to that effect?

"A

Yes.

"Q

And all these answers are true, Mr. Yap?

"A

During that time, I got rattled that is why I answered that I was fifty (50) meters away." [20]

The second inconsistency, referring to whether Yap knew the appellant prior to the incident, even if true, does not justify disbelieving Yap's entire testimony. [21] The rule has always been that the testimony of a witness must be considered in its entirety and not by its truncated portions or isolated passages. [22] Anent Yap's inconsistency regarding the date of payment of the P 1,000.00 price, suffice it to say that contradictions between the contents of an affiant's affidavit and his testimony on the witness stand do not always militate against the witness' credibility because we have long taken judicial notice that affidavits, which are usually taken ex parte, are often incomplete and inaccurate. [23] To be sure, a sworn statement taken ex parte is generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross examination. [24] Moreover, the alleged inconsistency is insignificant. Whether Yap and his companions received the money before or after the incident, the important circumstance common to both the affidavit and the testimony in court is that the appellant ordered the killing of the victim for a price.

We reject appellant's claim that Yap's testimony that two (2) weapons were used in stabbing the victim was contradicted by Dr. Herrera who opined that only one (1) weapon was used. A more accurate reading of Dr. Herrera's testimony will show that he gave the opinion that it was possible that two weapons were used in slaying the victim, viz:

"x x x

"PROSECUTOR SALMIN:

"Q I will again read the typewritten words and you indicate where is that finding in the blank form. Again, finding No. 1 is stab wound at the right side of the neck, five (5) cm wide, penetrating and traversing the chest cavity, directed towards the left chest and causing injury to the heart with a measurement of nine (9) inches deep.

"x x x

"Q

So because of the depth of such a wound which is nine (9) inches, would you say Doctor that the weapon used could be measured more than nine inches?

"A

It is possible and the weapon might be having (sic) a three (3) cornered weapon.

"COURT:

"Q

Three (3) cornered weapon like what?

"A

Like a file

"PROSECUTOR SALMIN:

"Q

When you say three (3) cornered weapon doctor, you are implying what we call in the dialect a 'tres cantos'?

"A

Possible.

"COURT:

"Q

Three pointed instrument?

"A

Three sided instrument.

"Q

You mean three (3) sided not three (3) pointed?

"A

Three (3) sided.

"x x x

"Q

And the entrance of the wound is five (5) cm. Does that indicate also the width of the weapon used?

"A

Possible, sir.

"Q

So, what would have been the possible weapon used in the perpetration of that kind of wound aside from its being three (3) sided, three (3) cornered weapon.

"A

"Three sided weapon.

"Q

It is a sharp three sided weapon, Doctor?

"A

Yes.

"Q

Compatible with an icepick, a file - as what you said?

"A

It is a sort of an instrument like a file.

"x x x

"Q

Now, in your finding No. 2, as I read, kindly indicate that also on the anatomical chart Doctor, is (sic) a stab wound at the middle third of the left shoulder?

"x x x

"Q

The same finding Doctor is to the effect that the entrance of five (5) cm wide and the deepness is of two (2) inches penetrating the muscle.

"x x x

"Q

And what kind of weapon must have been used in inflicting such a wound?

"A

The same weapon.

"Q

The same weapon or the same type of weapon?

"A

The same type of weapon.

"Q

In other words, it is also a three sided or three cornered sharp and pointed instrument?

"A

Yes, sir.

"Q

Again, compatible with a file or an icepick, Doctor?

"A

Yes, sir.

"Q

Considering that the entrance is five (5) cm wide, could it be that the same weapon was used in inflicting such kind of wound?

"A

Yes, sir.

"Q

Considering that the deepness is only two (2) inches, could it also be possible that another weapon, a shorter one, was being (sic) used?

"ATTY. ERAMES:

"We object to the question. The question asks for possibilities, Your Honor, please. Besides, Your Honor, please, the deepness of a certain injury would depend on the pressure applied by the assailant on the victim.

"COURT

Read the question. (Done) Answer.

"A

I cannot determine exactly whether another weapon was used.

"COURT:

You are only asked about the possibility, not exact determination.

"A

It is also possible.

"x x x"[25]

Fourth. Yap's testimony was fully corroborated by the unquestioned and unquestionable testimony of two (2) competent witnesses, Romeo Villegas and Teresa Ollana.[26] There is no reason to withhold full faith and credit to the testimony of these prosecution witnesses especially after appellant failed to prove any improper motive on their part for testifying against her.[27]

We conclude that the conviction of accused-appellant is fully sustained by competent evidence on record and there can be no reasonable doubt as to her guilt.

IN VIEW WHEREOF, the appealed decision is AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Regalado, (Chairman), Melo, Mendoza, and Martinez, JJ., concur.

[1] Penned by Judge Eleuterio E. Chiu.

[2] Decision, pp. 12-13; Rollo, pp. 104-105.

[3] TSN, Nancy Caldera, July 19, 1995, pp. 12-18; see Exhibits "J" and "K".

[4] Criminal Case No. 1807 (Exhibit "J").

[5] Criminal Case No. 1874 (Exhibit "K").

[6] TSN, Nancy Caldera, July 19, 1995, p. 6 and 12; TSN, Simeon Yap, August 11, 1995, p. 7.

[7] TSN, Simeon Yap, August 11, 1995, pp. 7-12, 14; TSN, Simeon Yap, August 18, 1995, pp. 7-13.

[8] TSN, Simeon Yap, August 11, 1995, pp. 14-16; TSN, Simeon Yap, August 18, 1995, pp. 14-16.

[9] TSN, Simeon Yap, August 11, 1995, pp. 16-21.

[10] TSN, Simeon Yap, August 11, 1995, pp. 21-28.

[11] TSN, Simeon Yap, August 11, 1995, pp. 28-29.

[12] TSN, Romeo Villegas, July 20, 1995, pp. 6-7, 9-10.

- [13] TSN, Teresa Ollana, August 9, 1995, pp. 32-33.
- [14] Exhibit "D", Folder of Exhibits, p. 13.
- [15] TSN, Dr. Rolando Herrera, August 9, 1995, pp. 4-13.
- [16] TSN, Nancy Caldera, July 19, 1995, pp. 10-11, 24.
- [17] People of the Philippines v. Victoriano Pontilar, Jr., G. R. No. 104865, July 11, 1997; People of the Philippines v. Diarangan Dansal, G. R. No. 105002, July 17, 1997.
- [18] Resolution, p. 7; Records, p. 153.
- [19] Rollo, pp. 84-88.
- [20] TSN, Simeon Yap, August 30, 1995, pp. 5-6.
- [21] People v. Pacapac, 248 SCRA 77 (1995).
- [22] People v. Calegan, 233 SCRA 537 (1994).
- [23] People of the Philippines v. Dione Palomar, Hermie Cerialles and Jose Cerialles, G. R. No. 108183-85, August 21, 1997; People v. Calegan, 233 SCRA 537 (1994).
- [24] People v. Lazaro, 249 SCRA 234 (1995).
- [25] TSN, Dr. Rolando Herrera, August 9, 1995, pp. 7-11.
- [26] People v. Alcantara, 254 SCRA 384 (1996).
- [27] Id.; People of the Philippines v. Rolly Alvarado y Llaner, G. R. No. 117402, July 21, 1997; People of the Philippines v. David Salvatierra, G. R. No. 104663, July 24, 1997.

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