

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY ALO AND LEONARDO AN, ACCUSED JIMMY ALO, ACCUSED-APPELLANT.

G.R. No. 125533. December 27, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal from the decision[1] in Criminal Case No. 211-93, of the Regional Trial Court of Rosario, Batangas, Branch 87, finding accused-appellant Jimmy Alo guilty of murder and sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the heirs of the victim, Alfredo Cantos, the amount of P50,000.00 as indemnity for his death; P63,695.00 as actual damages; P133,264.00 as compensation for lost income computed at P3,602.00 per month; P10,000.00 as attorney's fees; and costs of suit.

Together with Leonardo An, appellant was charged with murder in an Information which reads as follows:

That on or about the 23rd day of October, 1992, at about 5:00 o'clock in the afternoon, at Barangay Tubahan, Municipality of Rosario, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolo, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery and evident premeditation, and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and hack with the said bolos one Alfredo Cantos y Arnar suddenly and without warning, thereby inflicting upon the latter hack wounds on the different parts of his body which directly caused his death.[2]

On June 9, 1993, Jimmy Alo pleaded not guilty when arraigned. His co-accused, Leonardo An, remains at-large.

During trial, the prosecution presented several witnesses, one of whom was the son of the victim, Christopher Cantos who was an eyewitness to the crime. His testimony was then corroborated by Marina Nolial. They both testified that sometime in the late afternoon of October 23, 1992, at around 4:00-5:00 P.M., while the victim was drinking with the two accused herein, he was suddenly hacked by Alo and An with bolos and left to die.[3]

Mrs. Pacita Cantos, wife of the victim, testified on the expenses resulting from her husband's death.[4]

Dra. Emelita G. Abacan, medico-legal officer, examined the body of Alfred Cantos. She testified that Alfredo Cantos died of massive hemorrhage caused by hacking wounds.[5]

The last witness for the prosecution was PNP Police Investigator Ruben Magpantay who testified that he was the one who investigated the case.[6]

For its part, the defense presented accused Jimmy Alo who denied that he killed Alfredo Cantos. He testified that it was only Leonardo An who attacked and killed Alfredo. He saw all these from the house of Marina Nolial where he was at that time.[7]

On December 19, 1995, the trial court rendered its decision finding the accused Jimmy Alo guilty as charged. The dispositive portion reads:

WHEREFORE, after a careful perusal of the evidence presented and the law applicable to the instant case, judgment is hereby rendered finding the accused JIMMY ALO, GUILTY beyond reasonable doubt of the crime of MURDER, and hereby sentences him, as follows:

- (1) To suffer the penalty of RECLUSION PERPETUA, the medium period of the penalty RECLUSION TEMPORAL in its maximum period to death;
- (2) To pay the heirs of Alfredo Cantos the amount of P50,000.00 as indemnity for his death;
- (3) To pay the heirs of Alfredo Cantos, the amount of P63,695.00 as actual damages;
- (4) To pay the heirs of Alfredo Cantos the amount of P133,264.00 corresponding to his lost earnings computed at P3,602.00 a month, from October 1992 up to November 1995;
- (5) To pay attorney's fees in the amount of P10,000.00; and
- (6) To pay the costs of this suit.

Pursuant to Article 29, Revised Penal Code, as amended, the accused shall be credited in the service of his sentence with the full time he has undergone preventive imprisonment.

The case against the other accused Leonardo An, who is presently at large, is hereby sent to archives subject to revival upon his re-arrest.

SO ORDERED.[8]

Aggrieved by the aforecited decision, the accused interposed this appeal, assigning the following errors to the trial court:

I

THE TRIAL COURT ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE INCONSISTENT IF NOT CONFLICTING TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN NOT GIVING PROBATIVE VALUE TO THE EVIDENCE ADDUCED BY THE DEFENSE.

III

THE TRIAL COURT ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT ACCUSED-APPELLANT'S GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.[9]

The errors raised by the appellant all boil down to a question of credibility of witnesses. He points out several contradictions and inconsistencies in the witnesses' testimonies, among them:

1)

The vacillating stance of Christopher Cantos regarding his exact position in relation to his father when the latter was hacked;

2)

The failure of Christopher Cantos to explain why he was already at the house of Marina Nolia at 5:00 p.m. when his class was dismissed an hour earlier;

3)

Christopher Cantos' inconsistent answers to the question of whether or not he and his father's usual route in going home was to pass by the house of Marina Nolial;

4)

Christopher Cantos' uncertainty with regards to the number of bottles of gin consumed by his father and the latter's companions (including the appellant herein) notwithstanding his statement that he saw them drinking gin;

5)

Inconsistency between the sworn statement of Christopher Cantos that he and his father were called upon by Max Como and Leonardo An as they passed by the house of Marina Nolial and his testimony during his cross-examination that he met Max Como along the road where he informed the latter that his father was hacked;

6)

The failure of Christopher Cantos to indicate in his sworn statement that his father had a drinking spree with the appellant and the latter's companions contrary to what he stated during his testimony in court;

7)

Inconsistency between the testimony of Marina Nolial that the victim and the assailants were in her house "telling stories", and the declaration of Christopher Cantos that his father and the accused were "drinking";

8)

Inconsistency between the testimony of Marina Nolial that while Jimmy Alo went inside her house to ask for drinking water, accused Leonardo An and victim Alfredo Cantos were "outside, and the statement of Christopher Cantos that both accused and his father were "inside the house of Marina Nolial;[10]

Aside from these, appellant also points out that the testimony of Marina Nolial should not be accorded any weight and credence because of her admission that she never saw the actual hacking incident. In addition, appellant wants this Court to consider his alleged voluntary surrender as certified by Chief Inspector Apolinar M. Atienza,[11] as a mitigating circumstance in the event that the findings of the trial court are affirmed.

The Office of the Solicitor General (OSG), for the State, points out that the contradictions and inconsistencies in the testimony of Christopher Cantos raised by appellant "refers to minor or inconsequential matters which do not militate against his credibility and moreover, are readily explicable/reconcilable." [12] The important thing, according to the OSG, was that it was sufficiently established, by no less than the appellant, that Christopher Cantos was present at the crime scene at the time his father was killed.[13]

On the averment that Marina Nolial did not see the actual hacking, the OSG opines that her testimony, coupled

with the finding that (1) there were only four persons at the place of the incident; (2) Nolial saw the victim lying on the floor and appellant holding a bolo; (3) the cause of death was massive hemorrhage due to hacking wounds, are all sufficient to support conviction, based on reasonable inference.[14]

We find that the trial court did not err in giving more weight and credence to the testimony of the prosecution witnesses. Although there were inconsistencies in the testimony of Christopher Cantos, the fact remains that he was present at the crime scene at the time his father was killed. Appellant even admitted this when he testified thus:

Q: And [at] what time did you go to the house of Marina Nolial?

A: Around 4:00 o'clock P.M. sir.

Q: At around 4:00 P.M., you were in front of the house of Marina Nolial?

A: Yes sir.

Q: And it was raining?

A: Yes sir.

Q: Can you see the person in front of the house of Marina Nolial at about 4:00 o'clock in the afternoon?

Atty. Resurreccion:

Misleading your honor, there was no statement of the witness that he was in front of the house.

Atty. Rosales:

I am on cross-examination.

Court:

Witness may answer.

A: Yes sir.

Q: Who were these persons if any that you saw?

A: Alfredo Cantos and Leonardo An, Sir.

Q: Who else?

A: Marina Nolial and one boy sir.

Q: Who is that bata?

A: My cousin, sir.[15]

Christopher Cantos was the cousin alluded to since Christopher Cantos' mother and appellant's mother are sisters. In light of this, the allegations of inconsistencies and contradictions become immaterial. The allegation of inconsistencies was meant to prove that Christopher Cantos was lying when he testified that he saw the appellant deliver the fatal blows against his father. Appellant's admission of Christopher's presence negates these assertions of inconsistencies in the latter's testimony.

Besides, appellant did not say why the witnesses would falsely accuse him. In the absence of any such showing, the testimonies of the prosecution witnesses are to be accorded full faith and credit. It would be most unnatural for a relative interested in vindicating the crime to accuse a relative who he was not certain was the real culprit.[16]

We note that at the time Christopher testified, he was only a twelve-year-old boy testifying in court for the first time. He was not expected to be errorless unless he had been well rehearsed. His inconsistencies only reflect spontaneity and become badges of truth rather than indicium of falsehood.[17]

As pointed out by the Office of the Solicitor General in its Brief:

Christopher Cantos' presence at the scene of the crime was duly established not only by his own testimony which was corroborated to by another witness Nolial (p. 2, TSN, November 9, 1995) but also by appellant who admitted that he saw Christopher Cantos when 'he came out seeking for help' (p. 10, TSN, August 22, 1995). It was likewise shown that the only persons present during the stabbing incident were Alfredo Cantos, Christopher Cantos, appellant and Leonardo An (p. 2, TSN, November 9, 1995). Thus established, it is of no consequence whether Christopher gave alleged contradictory testimony as to the time he left the school with his father; the brand of liquor (gin) or bottles consumed by his father and appellant; his relative position at the time his father was hacked by the appellant; or that the Nolial residence, the scene of the incident, is along the Cantos' usual route in going home. The alleged contradictions on these points, if there be any, refer to minor details and may not belie the established fact that Christopher was at the Nolial residence and saw how his father was killed by appellant.[18]

We now consider the testimony of Marina Nolial. Notwithstanding her admission that she did not see who actually killed Alfredo, Marina was presented to corroborate the testimony of Christopher. Marina said appellant

was in her house at the time of the killing, she saw the victim lying down, and she saw the appellant holding a bolo. Her testimony is sufficient corroboration of Christopher's own.

It is an established rule that when it comes to the issue of credibility of witnesses, the appellate courts generally will not overturn the findings of the trial courts. They are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, demeanor and behavior in court. In this case we find no basis to depart from the rule.

Finally, we note that appellant took flight soon after the killing. His flight to Mindoro is a circumstance from which an inference of guilt may be drawn.[19] His explanation that he went to Mindoro because he was fetched by his brother to assist in the harvesting of palay is unconvincing. Even if this were true, we still have to ask why he went to Mindoro not long after the killing but did not bother to report to the police what he knew of Alfredo's death. This circumstance lends weight to the prosecution's claim that appellant deliberately hid himself and went away to avoid capture and apprehension.

The trial court held that treachery qualified the killing into murder because the hacking was sudden and unexpected. Although mere suddenness of the attack does not automatically mean treachery,[20] in this instance the suddenness of attack and the surprise on the victim was clearly shown from the narration of the events before, during and after the commission of the crime by Christopher and Marina. The victim and the accused were together at the house of Marina at the time of the incident. The victim was sitting and right before the attack, he was swayed into a false sense of security and safety especially since he was among relatives and neighbors. 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.[21]

Appellant avers that the mitigating circumstance of voluntary surrender must be considered in his favor. For voluntary surrender to be a mitigating circumstance, the following must concur: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[22] For the circumstance of voluntary surrender, it is sufficient that it be spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense which will necessarily be incurred in searching for and capturing him.[23]

After the commission of the crime, appellant went to Mindoro and it was only after six months that he decided to surrender. His surrender could hardly be deemed spontaneous.

We now come to the propriety of the penalty imposed. The trial court sentenced appellant to reclusion perpetua, deemed as the medium period of the penalty of reclusion temporal in its maximum period to death. Reclusion perpetua is the proper penalty, there being no mitigating nor aggravating circumstances in this case.[24]

The trial court awarded P63,695.00 as actual damages.[25] However, only the amount of P20,544.00 was properly supported by receipts. Hence, the award of actual damages should be reduced from P63,695.00 to only P20,544.00.

With regard to the award for lost income of the deceased victim, the amount should be computed using the formula: "Life Expectancy x (gross annual income - living expenses)." Thus, following the formula, we compute $27 \times (P43,224.00 - P21,612.00) = P583,524.00$. [26] This amount of P583,524.00 - and not P133,264.00 only - is the proper award corresponding to lost income of the deceased.

WHEREFORE, the decision of the Regional Trial Court of Rosario, Batangas, Branch 87, in Criminal Case No. 211-93 is **AFFIRMED WITH MODIFICATION**. Appellant Jimmy Alo is declared guilty of murder and is

sentenced to reclusion perpetua; to pay the heirs of the victim actual damages in the amount of P20,544.00; and the sum of P583,524.00 for loss of income of the victim, as well as attorney's fees of P10,000.00 and costs.

SO ORDERED.

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

[1]Rollo, pp. 37-57.

[2]Id. at 18.

[3]TSN, September 27, 1994, pp. 4-13; TSN, October 25, 1994, pp. 7-13.

[4]TSN, August 31, 1994, pp.7-15.

[5]TSN, February 8, 1995, pp.10-11.

[6]TSN, March 30, 1995, p. 2; TSN, May 4, 1995, pp. 2-3.

[7]TSN, August 22, 1995, pp.3-17.

[8]Rollo, p. 57.

[9]Rollo, p. 72.

[10]Id. at 81-84.

[11]First Indorsement dated April 13, 1993.

[12]Rollo, p. 130.

[13]Ibid at 130-131.

[14]Id. at 132-133, citing *People vs. Elizaga*, 23 SCRA 449.

[15]TSN, August 22, 1995, p. 8.

[16]*People vs. Salvame*, 270 SCRA 766, 772 (1997).

[17]*People vs. Nang*, 289 SCRA 16, 30 (1998).

[18]Prepared and signed by Solicitor General Silvestre H. Bello III, Assistant Solicitor General Pio C. Guerrero and Solicitor Mauro A. Elinzano. Rollo, pp. 130-132.

[19]*People vs. Sabalones*, 294 SCRA 751, 798 (1998).

[20]*People vs. Magallanes*, 275 SCRA 222, 234 (1997).

[21]*People vs. Pallarco*, 288 SCRA 151, 169 (1998); *People vs. Aquino*, 284 SCRA 369, 376 (1998).

[22]*People vs. Sumalpong*, 284 SCRA 464, 468 (1998) .

[23]*People vs. Sambulan*, 289 SCRA 500, 517-518 (1998).

[24]*People vs. Aquino*, 284 SCRA 369, 377 (1998).

[25]Cf. *People vs. Guillermo*, 302 SCRA 257, 275 (1999).

[26]Life expectancy is computed as $\frac{2}{3}$ 80-age of victim at the time of death. In this case victim was established to be 40 years old, hence, life expectancy = $\frac{2}{3}$ (80-40) = 26.67 or 27; Gross annual income = monthly income x 12 = P 3,602.00 x 12 = P43,224.00; Living expenses = 50% of gross annual income = P21,612.00.

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