

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HONORIO CANTERE Y PESTILOS, ACCUSED-APPELLANT.

G.R. No. 127575. March 03, 1999

Ponente: BUENA, J.

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BUENA, J.:

Accused-appellant Honorio Cantere y Pestilos and one identified only as "John Doe" were charged with the crime of Murder in an Information filed on March 12, 1992 (and docketed as Crim. Case No. Q-92-29356) before Branch 99 of the Regional Trial Court, National Capital Judicial Region at Quezon City. The Information reads as follows:

"That on or about the 22[nd] day of December, 1991, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill, qualified by evident premeditation and treachery, taking advantage of superior strength, did, then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of ROBERTO NOGRA y RAMOTA, by then and there shooting him with a handgun, hitting him on his trunk, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said Roberto Nogra y Ramota, in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW."^[1]

Upon arraignment, accused-appellant duly assisted by counsel de officio pleaded not guilty to the offense charged in the information.^[2] Accused John Doe remained at large and unapprehended.

At the pre-trial conference, the parties stipulated on the following, to wit:

- The accused is the same person stated in the information;
- The accused had known the victim before the incident complained of took place; and
- The accused was apprehended without a warrant of arrest and investigated in connection with the incident complained of in the instant information.^[3]

There being no other facts proposed for further stipulation between the parties, the pre-trial conference was terminated and trial on the merits thereafter ensued.

The facts of the case are as follows:

It appears that at around 11:00 in the morning of December 22, 1991, Roberto Nogra was watching a basketball game at Sinagtala, Barangay Bahay Toro, Quezon City. Accused John Doe was later on identified as one Raquel Vergara together with accused-appellant Honorio Cantere arrived on board a motorcycle at the basketball court.

Accused Vergara was armed with a .45 caliber pistol. Without provocation he fired his gun in the air. The spectators and basketball players scampered away. At that time Nogra was answering the call of nature. His back

was thus turned towards the basketball court. Vergara stood behind Nogra and then shot the latter hitting him on the nape and on the left side of the chest. Roberto Nogra died on the spot.

Accused Vergara then left the scene on board the motorcycle being driven by accused-appellant Cantere.

The prosecution presented five (5) witnesses, to wit: Louie Arcega, Orlando Antonio, Eduardo Nogra, Dr. Dorio Gajardo, and Isabelita Nogra. The first three witnesses were present at the scene of the crime. Dr. Dario Gajardo is a medico-legal officer who attended to the deceased and confirmed the cause of death as well as the relative positions of the wounds of the victim. Isabelita Nogra, the mother of the victim, testified on the funeral expenses incurred by the family.

The defense denied the accusation and raised the defense of alibi. Aside from accused-appellant Honorio Cantere, four other witnesses were presented to corroborate his alibi, to wit: Amparo Padiernos, Rico Santillan, Milagros Cantere, and Maricel Cantere.

After the presentation of evidence, the trial court found the accused-appellant guilty beyond reasonable doubt, and promulgated its decision on June 26, 1996, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, this Court finds accused GUILTY beyond reasonable doubt of the crime of MURDER penalized under Article 248 of the Revised Penal Code, without any mitigating or aggravating circumstances, and hereby sentences said accused to suffer the penalty of imprisonment of reclusion perpetua and to pay the heirs of the said deceased victim damages in the amount of FIFTY THOUSAND PESOS (P50,000.00) [People vs. Jose Adriano y Vargas, G.R. No. 104578, September 6, 1993].

It is understood that accused shall be credited in full of his preventive imprisonment.

SO ORDERED."[4]

Accused Honorio Cantere comes to this Court on appeal praying that the decision of the trial court be reversed and set aside and that a new one be entered acquitting him of the charge on the ground of reasonable doubt.

The accused-appellant assigns the following error in his brief:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT HONORIO CANTERE FOR THE CRIME OF MURDER NOTWITHSTANDING THE REASONABLE DOUBT ON HIS IDENTITY AND PARTICIPATION THEREON.

The appeal is without merit.

Well-settled is the rule that the defense of alibi is worthless in the light of positive testimony placing the accused at the scene of the crime.[5]

The testimonies of the three eyewitnesses for the prosecution categorically point to accused Raquel Vergara as the one who shot Roberto Nogra and Positively identified accused-appellant Honorio Cantere as the driver of the getaway vehicle.

(a) Louie Arcega -- He testified that he saw a man wearing a sando fire a total of four (4) shots, two of which hit the victim[6] and thereafter left on a motorcycle driven by accused Cantere.[7]

"Q - What did the person who shot Boy Nogra do after hitting him?

"A - The man ran away, sir.

"Q - What else did he do?

"A - I noticed that he rode in (sic) a motorcycle, sir.

x x x x x x x x

"Q - Do you know who was at the wheel or who was driving the motorcycle ?

"A - It was driven by Mang Honorio, sir.

"Q - When you say Mang Honorio, are you referring to accused Honorio Cantere in this case?

"A - Yes, sir.

"Q - If accused Honorio Cantere is inside the courtroom, will you please point to him?

"A - Yes, sir, he is there. (witness pointing to a man wearing (a) brown t-shirt whom (sic) when asked gave his name as Honorio Cantere)."[8]

(b) Orlando Antonio -- He testified that Roberto Nogra was shot by an unidentified gunman wearing a white sando;[9] that the gunman was standing at the back of the victim;[10] that after shooting the victim the gunman ran away and rode in (sic) a motorcycle;[11] that it was Honorio Cantere, the accused-appellant who was driving the motorcycle;[12] that he has known the accused for at least eight (8) years;[13]

"Q - After shooting the victim, what did the gunman do?

"A - The gunman ran away and rode in (sic) a motorcycle the engine of which is running.

"Q - How far was this motorcycle to the victim?

"A - About ten (10) meters more or less away from the victim.

"Q - And who was driving the motorcycle? Who was at the wheel of the motorcycle?

"A - Honorio Cantere, sir.

"Q - If that Honorio Cantere is in the courtroom please point at (sic) him.

"A - Witness is pointing to a person wearing a white t-shirt and when asked he answered to the name of Honorio Cantere.[14]

x x x x x x x x

"Q - And what happened next as the assailant rode on the motorcycle then driven by accused Honorio Cantere?

"A - They left and they drove away, sir."[15]

(c) Eduardo Nogra -- He is a brother of the victim and was an eyewitness to the incident. He named the assailant as Raquel Vergara;[16] that the two accused arrived at the basketball court at the same time;[17] that he had known Cantere for a long time because the latter used to stay at Sinagtala;[18] that he knows Raquel Vergara, the gunman for about ten (10) years;[19] Among other things, he testified that accused-appellant Cantere had an altercation with the victim over the refusal of the latter to spare a certain Lotlot who is the sister-in-law of the accused from paying electrical extension expenses[20] and that he (Cantere) had even threatened that Sinagtala would suffer a brownout.[21]

"Q - After the assailant fired those shots, what did the assailant do next?

"A - He ran away and rode at (sic) a motorcycle, sir.

"Q - How far was this motorcycle to the place where your brother was shot?

"A - About 2 meters, sir.

"Q - And who was with the assailant if anybody was with him at that time?

"A - Honorio Cantere, sir.

"Q - And if this Honorio Cantere is in the courtroom, will you be able to point him?

"A - Yes Sir.

"Q - Will you please point on (sic) him?

"A - (Witness pointed to a person in a white collar, green & orange T-shirt, and when asked his name answered Honorio Cantere.)

"Q - What was Honorio Cantere doing at that time?

"A - He was just waiting while reading (sic) up the engine of the motorcycle, sir.

"Q - Do you recall if the 2, Cantere and Vergara arrived at the place at the same time?

"A - Yes, they arrived at the same time, sir.

"Q - From the time they arrived, who was driving the motorcycle?

"A - Honorio Cantere, sir.

"Q - And where was Vergara?

"A - He was at his back, sir.[22]

x x x x x x x x

"Q - And you stated that the assailant Vergara also rode on that motorcycle after he shot the victim, what happened next?

"A - Raquel Vergara road (sic) at the motorcycle and they sped away, sir.

"Q - Who was driving the motorcycle as they sped away?

"A - Honorio Cantere, sir."[23]

Accused-appellant denied any participation in the shooting incident and put up the defense of alibi. He alleged that he was at his residence at Ilang-Ilang St. in Barangay Amparo Capri, Novaliches, Quezon City the whole day of December 22, 1991. He also testified that he did not have any quarrel with the victim;[24] that he had never owned a motorcycle and he does not know how to drive one;[25] that he does not know Raquel Vergara;[26] that he knows of no reason why the family of the victim identified him as the assailant of the victim;[27] that he is a friend of the victim but they are not that close;[28] that the distance between Sinagtala, Barangay Bahay Toro and Barangay Amparo Capri is more or less fifty (50) kilometers.[29]

The following are the witnesses for the defense and their testimonies:

(a) Amparo Padiernos -- She is a neighbor of the accused-appellant. She testified that at about 11:00 o'clock in the morning of December 22, 1991 she saw Cantere pass by her house to go to the neighborhood bakery purportedly to buy bread;[30] that five minutes thereafter she saw him again when he passed by her house on his way home;[31] that Honorio Cantere does not own a motorcycle and that she had not seen him riding on one or driving one;[32] that she is not a close friend of Honorio Cantere and his family;[33] that she and the accused have been

neighbors for nine years;[34]

(b) Rico Santillan -- He testified that while attending a cockfight he witnessed the shooting incident; that he saw a motorcycle with two persons, one went down and the other remained on the motorcycle; that the man who went down fired a shot upwards;[35] that the victim Nogra ran away and the assailant gave chase;[36] that the unknown assailant was not able to catch Nogra so he fired his gun in the direction of the latter thereby hitting him;[37] that it was not accused Cantere who drove the motorcycle used by the unknown assailant to speed away from the scene of the crime;[38] that he has known Cantere for about four years;[39] that he did not tell his relatives in whose house he was living at the time what he witnessed on that morning of December 22, 1991;[40] that it was his friend Lotlot who is the sister-in-law of the accused who told him about Honorio Cantere being the one accused of the crime.[41]

(c) Milagros Cantere -- She is the wife of the accused-appellant. She testified that on December 22, 1991 her husband was resting in their house as he was then not feeling well;[42] that the only time her husband left the house was when he bought bread;[43] that her sister arrived at their house on that day between the hours of 11:00 to 12:00 o'clock in the morning looking for her husband (appellant Cantere);[44] that she and her husband do not own a motorcycle;[45] that her husband does not know how to drive a motorcycle;[46] that her family and the family of Boy Nogra do not have any ill-feeling towards each other[47] even after Boy Nogra died.[48]

(d) Maricel Cantere -- She is the daughter of the accused. She corroborated the testimony of her mother, Milagros Cantere as to the whereabouts of her father on December 22, 1991; that they do not own a motorcycle and that her father does not know how to drive one. She further testified that her auntie Lotlot came to their house asking if her father went out of the house because somebody was killed at Sinagtala, Barangay Bahay Toro[49] and that her father was a suspect in that killing.[50]

After a thorough evaluation and scrutiny of the evidence on record, we arrived at the conclusion that the guilt of the accused-appellant was established beyond reasonable doubt.

The alibi offered by the accused-appellant, does not deserve credence. To be believed, alibi must be supported by the most convincing evidence as it is an inherently weak though paradoxically volatile, if allowed to go unchecked, human argument that can be easily fabricated to suit the ends of those who seek its recourse.[51]

We find that the alibi resorted to by the appellant is worthless in the face of his being positively identified by the prosecution witnesses. These prosecution witnesses have not been found to have any reason or motive to falsely testify. Their testimonies, according to the trial judge who heard them, were clear, positive, straightforward and devoid of signs of artificiality, leaving no doubt in the mind of this Court as to their veracity.[52] In the light of the positive identification by the witnesses who have no motive to falsely testify, accused-appellant's alibi and denial are rendered worthless.

Furthermore, the court looks with caution upon the defense of alibi especially when it is corroborated mainly by relatives and friends of the accused for alibis are so easy to fabricate and concoct. This Court in the case of *People vs. Jerez*,[53] has had the occasion to rule that:

"Where an accused's alibi is established only by himself, his relatives and friends, his denial of culpability should be accorded the strictest scrutiny - they are necessarily suspect and cannot prevail over the testimonies of the more credible witnesses for the prosecution."

Also, for the defense of alibi to prosper, it does not suffice to prove the whereabouts of the accused at the time the crime was committed; he must prove, not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the locus delicti or within its immediate

vicinity.[54]

In the present case, the appellant testified that he was at home at the time of the incident. His home in Barangay Amparo Capri in Novaliches is about ten (10) kilometers from Sinagtala, Barangay Bahay Toro, the scene of the crime or an hour's drive away by public transport. We find that no physical impossibility exists for accused-appellant Honorio Cantere to have been at the scene of the crime at the time of its commission.

It is noteworthy to stress anew that positive identification was made by the prosecution's witnesses squarely placing accused-appellant at the scene of the crime as the driver of the motorcycle which borne the man who gunned down Roberto Nogra. These witnesses could not have been mistaken because they had known the accused-appellant for a number of years.

We affirm the trial court in ruling that conspiracy existed between Honorio Cantere and the gunman identified as one Raquel Vergara in the commission of the crime. This was shown when accused-appellant took the gunman to the basketball court at Sinagtala, Barangay Bahay Toro, waited until the latter had shot the victim and thereafter left with the gunman Vergara. Such concerted action indubitably established conspiracy in this case.

It is a well-settled rule that conspiracy need not be shown by direct proof of an agreement by the parties to commit the crime. The conduct of the malefactors before, during or after the commission of the crime is sufficient to prove their conspiracy. Once proved, the act of one becomes the act of all. All shall be answerable as co-principals regardless of the extent or degree of their participation.[55]

WHEREFORE, in view of the foregoing, the decision appealed from is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Puno, Mendoza, and Quisumbing, JJ., concur.

[1] Orig. Record, p. 1.

[2] Ibid., p. 26.

[3] Ibid., p.45.

[4] Ibid., p.285.

[5] People vs. Castillo, 273 SCRA 22.

[6] TSN dated August 4, 1992, p.4.

[7] Ibid., p.6.

[8] Ibid., p.6.

[9] TSN dated November 9, 1992, p.5.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid., p.6.

[14] Ibid., p.5.

- [15] Ibid., p. 6.15
- [16] TSN dated April 27, 1993, p.3.
- [17] Ibid., p. 4
- [18] Ibid., p. 7.
- [19] Ibid.
- [20] Ibid., p. 6.
- [21] Ibid., p. 7
- [22] Ibid., p.4.
- [23] Ibid., p. 5.
- [24] TSN dated April 12, 1995, p.7.
- [25] Ibid., p.6.
- [26] Ibid., p.6.
- [27] TSN dated April 12, 1995, p. 6 and April 26, 1995, p.3.
- [28] TSN dated April 12, 1995, p. 7.
- [29] Ibid., p.8.
- [30] TSN dated July 27, 1994, p. 3.
- [31] Ibid., p. 3.
- [32] Ibid., p. 4.
- [33] Ibid., p. 6.
- [34] Ibid., p. 5.
- [35] TSN dated January 31, 1995, p. 2..
- [36] Ibid., p. 3.
- [37] Ibid., p. 3.
- [38] Ibid., p. 4.
- [39] Ibid., p. 4.
- [40] Ibid., pp. 7-8.
- [41] Ibid., p.8.
- [42] TSN dated June 20, 1995 p. 2.
- [43] Ibid., p. 3.
- [44] Ibid., p. 3.
- [45] Ibid., p. 3.

[46] Ibid., p. 3.

[47] Ibid., p. 4.

[48] Ibid., p.4.

[49] TSN dated June 27, 1995, p.6.

[50] Ibid., p.7.

[51] People vs. Manzanares, 177 SCRA 427 (1989).

[52] Decision,, p. 283, Records.

[53] 285 SCRA 393 (1998).

[54] People vs. Ballesteros, 285 SCRA 438 (1998).

[55] People vs. Hayahay, 279 SCRA 567 (1997).

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