

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABUBAKAR ANG-NGUHO, ACCUSED-APPELLANT.

G.R. No. 129692. September 15, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated March 19, 1997, of the Regional Trial Court, Branch 2, of Isabela, Basilan, finding accused-appellant guilty of murder with the aggravating circumstances of treachery and band and sentencing him to death and to pay the heirs of the victim, Pianang Salih, the sum of P3,000.00, as actual damages, and the further sums of P250,000.00, as moral damages, and P500.00, as costs.

The information against accused-appellant Abubakar Ang-Nguho[2] and nine others alleged:

The undersigned, 2nd Assistant Provincial Prosecutor II of Basilan, accuses Nuruddin Muddalam alias “Not,” Hasim Muddalam, Pungo Mandul, Kusain Hajibain, Ummal Maneh, Hassanul Lamsinul, Abubakar Naggoho, Marid Hamsain, Oh Kusain and Lamsinul Hinting of the crime of Murder, committed as follows:

That on or about the 1st day of May, 1995, and within the jurisdiction of this Honorable Court, viz., at Amaloy Barangay, Municipality of Tipo-Tipo, Province of Basilan, Philippines, the above-named accused, armed with assorted high-powered firearms, conspiring and confederating together, aiding and assisting one with the other, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and shoot Pianang Salih with the said firearms, thereby inflicting gunshot wound penetrating the abdomen of the latter, which caused her death.

Contrary to law.[3]

Of the 10 accused, only accused-appellant was arrested. He pleaded not guilty.[4]

The victim, Pianang Salih, 45 years old, was a resident of Barangay Amaloy, Tipo-Tipo, Basilan. The certificate of death[5] stated that the cause of her death was “Cardio-pulmonary arrest due to Hypovolemic shock secondary to Gun shot wound penetrating the abdomen.”

Her brother, Hadji Muin Salih, was at her bedside when she died on May 1, 1995 at 12:05 p.m. (per her death certificate) at the Juan S. Alano Memorial Hospital. He testified[6] that at around 9:30 a.m. on said date, before she expired, Pianang Salih identified accused-appellant as her assailant. Hadji Muin Salih also testified that he spent P3,000.00 for his sister’s confinement in the hospital, while their relatives spent for her burial. Earlier, on May 18, 1995, Hadji Muin Salih gave a sworn statement[7] regarding what she had allegedly told him before she died.

Another witness for the prosecution was Sattar Sahi, also a resident of Amaloy, Tipo-Tipo, Basilan, who claimed he had seen the shooting. He said that the incident took place at 6:00 in the morning of May 1, 1995; that at that time Pianang Salih was at the artesian well taking a bath while he was on his way to the artesian well to draw water; that at a distance of about 20 meters, he saw seven armed men who fired indiscriminately at the houses in

the village, but, one of them, accused-appellant, aimed his firearm at Pianang Salih; that the armed men belonged to the “Lost Command”; that while accused-appellant fired at the victim several times, only one bullet actually hit her; that although Pianang Salih was hit on the left side, she managed to run towards her house before she fell; and that she was taken by her sister, Hadji Satra Salih, to the Juan S. Alano Memorial Hospital where she died.[8] Sattar Sahi earlier executed an affidavit[9] on May 18, 1995 giving an account of what he allegedly had witnessed.

Next to testify was SPO2 Alberto Polio,[10] who investigated the killing of Pianang Salih. In his report,[11] dated May 22, 1995, he stated that there was a prima facie case for murder against accused-appellant and Nuruddin “Not” Muddalam, Hasim Muddalam, Pungo Mandul, Kusain Hajibain, Ummal Maneh, Hassanul Lamsinul, Marid Hamsain, Oh Kusain, and Lamsinul Hinting, all of whom belonged to the Moro National Liberation Front (MNLF) “Lost Command” at Amaloy, Tipo-Tipo, Basilan Province.

Dr. Pilardo Perez, who was the attending physician of Pianang Salih when she was brought to the Juan S. Alano Memorial Hospital, testified that the victim was already unconscious when he attended to her.[12]

Accused-appellant testified solely in his behalf. He denied he was in Barangay Amaloy at the time of the shooting on May 1, 1995 because he was then in Lamitan with a certain Ombeng to watch a movie of Andrew E, and alleged that he only learned about the shooting when he went home to Dep-Dep. He said that the reason he was being implicated in the killing was because the residents of Dep-Dep had a standing feud with the residents of Amaloy. Accused-appellant admitted that he knew Nuruddin Muddalam, alias “Not,” the reputed leader of the “Lost Command,” but he said he was afraid of him and the latter’s companions because they were killers. He denied knowing the other accused Kusain Hajibain, Hassanul Lamsinul, Oh Kusain, Pungo Mandul, Ummal Maneh, Marid Hamsain, and Lamsinul Hinting. He said that he worked in Sabah, but that he had to go home to Dep-Dep when his parents died because there was no one to work on their four hectares of land in that place.

The RTC, relying mainly on the identification of Sattar Sahi and on the dying declaration of Pianang Salih given to her brother Hadji Muin Salih, found accused-appellant guilty of murder. The dispositive portion of its decision, dated March 19, 1997, reads:[13]

WHEREFORE, premises considered, this Court finds the accused, ABUBAKAR ANG-NGUHO, GUILTY beyond reasonable doubt as principal, for committing the crime of MURDER as defined and penalized under Art. 248 of the Revised Penal Code as amended by Republic Act No. 7659 wherein he treacherously shot and killed Pianang Salih with a garand rifle on the 1st day of May, 1995 at Barangay Amaloy, Tipo-Tipo, Basilan and taking into consideration the two (2) aggravating circumstances of treachery and the crime was committed by a band, without any mitigating circumstances to offset any one of them, hereby sentences said accused, ABUBAKAR ANG-NGUHO, to suffer the extreme penalty of DEATH.

And to pay the heirs of Pianang Salih the sum of P3,000.00 as actual damages and the sum of P250,000.00 as moral damages as well as the cost of this proceeding in the amount of P500.00.

The provincial Warden of the Province of Basilan is hereby directed to immediately transport the person of Abubakar Ang-Nguho to the National Penitentiary at Bilibid Muntinlupa, Rizal, where he shall be confined awaiting the review of [t]his decision by the Supreme Court.

The word immediately is mandatory in order to prevent the escape of this accused from detention where he can join his co-accused band who are still roaming around in the Municipality of Tipo-Tipo. And this is what happened to Jaham Dahas who has been sentenced by this Court to Reclusion Perpetua but before he could be transferred to the Bilibid Prison at Muntinlupa, Rizal, he, together with other inmates staged a jailbreak at the Provincial Jail, at Isabela, Basilan. And now he is out to commit another heinous crime.

IT IS SO ORDERED.

The decision of the trial court was supplemented by the following order, dated April 7, 1997:[14]

Considering that in the decision of this case, the Court have failed to issue an order with respect to the other accused who were at large, then the following is hereby ordered entered to become a part of the decision, to wit:

I. That with respect to his co-accused, namely: Nuruddin Muddalam alias “Not,” Hasim Muddalam, Pungo Mandul, Kusain Hajibain, Ummal Maneh, Hassanul Lamsinul, Marid Hamsain, Oh Kusain and Lamsinul Hinting, who are still at large, the case against them is hereby held pending, due to non-arrest.

But considering the uncertainty as to when they or any one of them shall be arrested, then the record of this case is hereby sent to the archives and the warrant for the arrest of all the afore-mentioned accused is hereby issued.

SO ORDERED.

Hence, this appeal. Accused-appellant contends:[15]

I

THE COURT A QUO ERRED GRAVELY IN GIVING MUCH CREDENCE TO THE EVIDENCE PRESENTED BY THE PROSECUTION TO THE DAMAGE AND PREJUDICE OF THE ACCUSED-APPELLANT.

II

THE LOWER COURT HAS ERRED SERIOUSLY IN IMPOSING AND METING OUT THE DEATH PENALTY UPON THE ACCUSED-APPELLANT NOTWITHSTANDING THE PRESENCE OF REASONABLE DOUBT CALLING FOR HIS EVENTUAL EXCULPATION OF THE CRIME CHARGED HEREIN.

We find accused-appellant’s contentions well taken.

Sattar Sahi’s alleged eyewitness account is improbable and unworthy of credence. Sattar Sahi claimed he saw the shooting from a distance of 20 meters and that when the shooting started, he immediately dropped to the ground and sought cover.[16] He identified the armed men to be Hasim Muddalam, Ummal Maneh, Hassanul Lamsinul, Marid Hamsain, Nuruddin Muddalam, Pungo Mandul, and accused-appellant. According to him, the first four had a Garand, while Nuruddin Muddalam and Pungo Mandul were both armed with M-16 Armalites.[17] As for accused-appellant’s weapon, Sahi at first testified that accused-appellant had a Garand.[18] Later, he said that accused-appellant’s firearm was an M-16 Armalite.[19] Despite considerable constraints, he was able to identify all seven men and even their respective firearms. Yet he cited the same constraints in explaining why he could not tell which of the armed men, if any, wore Muslim headgear.[20]

His claim that accused-appellant was armed with an M-16 Armalite makes even more improbable his other testimony that while accused-appellant fired at Pianang Salih several times, only one bullet pierced her body.[21] It is also a cause for wonder how Sattar Sahi could be so positive that only one bullet hit Pianang Salih when there was a great commotion as the armed men, according to this witness, went on a rampage, shooting wildly in all the directions at the houses of the villagers.[22]

The suspicion cannot be helped that Sattar Sahi was a rehearsed witness. It is significant that although the type of firearms carried by the men does not appear in Sattar Sahi’s affidavit[23] but in that of Hadji Muin Salih,[24] it was only Sattar Sahi who testified regarding these details. Sattar Sahi may have been present during the shooting, but it is more likely that he did not really see what he claimed in his testimony because he was more concerned with his own safety.

As to Hadji Muin Salih's claim that before she died, Pianang Salih was able to identify the men who fired at her, it must be stressed that the rule on the admissibility of dying declarations does not determine their weight and credibility. These matters must be determined under the same rules used in testing the weight and credibility of any other testimonial evidence.[25]

In this case, while Pianang Salih's ante-mortem statement allegedly given to Hadji Muin Salih may satisfy the requirements of Rule 130, §37 for admissibility,[26] it is doubtful whether the same was actually made, in view of the fact that according to the prosecution's own evidence, Pianang Salih was so seriously injured that she could not talk anymore. Thus, Sattar Sahi testified that, when he tried to assist Pianang Salih after the assailants had left, she could no longer talk.[27] The attending physician, Dr. Pilardo Perez, likewise testified that Pianang Salih was already unconscious when he saw her and that he was not able to talk to her. He said:[28]

Q The first time you saw her at the hospital was that there was so much blood on her stomach, is that correct?

A Yes.

Q And when you saw her bathe in blood your impression that entered your mind was the woman was merciless?

A Yes.

Q You had that impression of the seriousness of the wound because of the fact that she was unconscious at that time already?

A Yes.

Q When you attended to her she was unconscious?

A Yes.

Q And the fact that she was unconscious she was not able to talk to you?

A Yes.

Q She was moaning with pain and she would not talk?

A Yes.

Hadji Muin Salih's testimony was also riddled with inconsistencies. He said that when he saw his sister in the hospital she was already in the intensive care unit and was immediately attended to by a doctor.[29] In the course of his testimony, however, he claimed he was able to talk with his sister for an hour before she was treated by the doctor.[30] In his affidavit (Exh. B) he claimed that in that one hour, Pianang Salih's mind was so lucid she could give the names of her assailants and the type of weapons each one carried. This is indeed hard to believe because according to Sattar Sahi, Pianang Salih was bathing herself when the shooting started.

There is also a serious inconsistency in the testimonies of Hadji Muin Salih and Sattar Sahi as to who actually shot Pianang Salih. Hadji Muin Salih testified that according to his sister, all seven armed men fired at her.[31] On the other hand, Sattar Sahi testified that only accused-appellant fired at Pianang Salih, while the rest trained their firearms on the houses in the village.[32] This discrepancy creates reasonable doubt as to the veracity of both testimonies.

More doubts as to the veracity of these testimonies stem from the fact that while they both testified that seven armed men committed the shooting, in their affidavits and in the information in this case, the number of armed men involved in the incident was ten.[33]

Finally, it is noteworthy that both Hadji Muin Salih and Sattar Sahi gave their sworn statements only on May 18, 1995, more than two weeks after the incident. The delay is hard to understand, considering that both claimed they had knowledge of accused-appellant's complicity. Hadji Muin Salih is a brother of the victim and could not

possibly have been fearful of reprisals as he did not reside in the same municipality as the accused-appellant and the victim.

To sum up, the prosecution has failed to make out a clear and convincing case for accused-appellant's conviction. There are too many loose ends ^¾ how many exactly were the men who engaged in the shooting spree in Amaloy on May 1, 1995; whether it was accused-appellant alone who shot the victim; whether it was a Garand rifle or an Armalite that he used; whether Pianang Salih's condition after being shot was such as to allow her to identify those who shot her ^¾ for the Court to conclude that accused-appellant's guilt has been established beyond reasonable doubt. It is not sufficient for conviction that the evidence establishes a strong suspicion or even a probability of guilt.[34] A moral certainty that the accused committed the crime is required. This was not established by the prosecution in this case. The Court, therefore, has no other recourse but to acquit accused-appellant.

We note that playing no small part in the conviction of accused-appellant in the eyes of the trial court are perceived material inconsistencies in his testimony as to where he was at the time of the commission of the crime. As the trial court noted, "first, he testified that [at] the time of the incident he was at Sabah, Malaysia as a construction worker, then he testified again that on May 1, 1995, he was at Lamitan viewing a motion picture." [35] The inconsistencies pointed out, however, are more apparent than real. What accused-appellant actually said was that he arrived from Sabah sometime in April, less than a month before May 1, 1995, when the shooting occurred.[36] At all events, it is immaterial where he was, considering, as previously stated, the prosecutor's failure to establish accused-appellant's guilt beyond reasonable doubt. The defense of alibi does not have to be inquired into as the prosecution's evidence did not satisfy the test of moral certainty.[37]

WHEREFORE, the decision of the Regional Trial Court, Branch 2, of Isabela, Basilan is REVERSED and accused-appellant Abubakar Ang-Nguho is ACQUITTED on the ground of reasonable doubt. He is, therefore, ordered immediately released from custody unless he is lawfully held in custody for another cause.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

[1] Per Judge Salvador A. Memoracion.

[2] Variouslly spelled as "Naggoho," "Anggoho," and "Angngoho" in the Records.

[3] Rollo, p. 1.

[4] Records, p. 24.

[5] Exh. A, Folder of Exhibits, p. 1.

[6] TSN, pp. 2-9, Aug. 13, 1996.

[7] Exh. B, Records, p. 3.

[8] TSN, pp. 2-12, Aug. 28, 1996.

[9] Exh. C, Records, p. 4. There he signed and his name was given as "Satar Sahi."

[10] TSN, pp. 13-17, Aug. 28, 1996.

[11] Exh. D, Folder of Exhibits, pp. 2-3.

[12] TSN, pp. 2-7, Sept. 9, 1996.

[13] Decision, pp. 10-11; Rollo, pp. 33-34.

[14] Records, p. 99.

[15] Appellant's Brief, p. 5; Rollo, p. 66.

[16] TSN, pp. 3, 9-12, Aug. 28, 1996.

[17] Id., pp. 7-8. Those mentioned in the information but omitted from Sattar Sahi's testimony are Kusain Hajibain, Oh Kusain, and Lamsinul Hinting.

[18] Id., p. 8.

[19] Id., p. 11.

[20] Id., p. 9.

[21] Id., p. 3.

[22] Id., p. 11.

[23] Exh. C, Records, p. 4.

[24] Exh. B, id., p. 3.

[25] *People v. Alegarbes*, 173 SCRA 64 (1989).

[26] This rule requires (1) that the declaration must concern the cause and surrounding circumstances of the declarant's death; (2) that at the time the declaration was made, the declarant was under a consciousness of an impending death; (3) that the declarant is competent as a witness; and (4) that the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is a victim.

[27] TSN, p. 10, Aug. 28, 1996.

[28] TSN, pp. 6-7, Sept. 9, 1996. (Emphasis added)

[29] TSN, p. 6, Aug. 13, 1996.

[30] Id. p. 7.

[31] Id., pp. 8-9.

[32] TSN, p. 11, Aug. 28, 1996.

[33] Hadji Muin Salih's affidavit (Exh. B) mentions "Nuruddin NOT MUDDALAM with M16 rifle, HASSIM MUDDALAM with FN rifle, PUNGO MANDUL with M79 rifle, UMMAL MANEH with M16 rifle, HASSANUL LAMSINUL with M16 rifle, ABUBAKAR ANGGOHO with Garand rifle, MARID KUSAIM HAJIBAIN, with Garand rifle and LAMSINUL HINTING with Garand rifle and three unidentified companions." However, Sattar Sahi's affidavit (Exh. C) mentions "NURUDDIN MUDDALAN alias 'NOT,' HASSIM MUDDALAN, PUNGO MANDUL, KUSAIN HAJIBAIN, UMMAL MANEH, HASSANUL LAMSINUL, ABUBAKAR ANGGOHO, MARID HAMSAIN, OH KUSAIN and LAMSINUL HINTING all MNLF lost

command based at TIPO-TIPO, Basilan.”

[34] People v. Morada, G.R. No. 129723, May 19, 1999.

[35] Decision, pp. 9-10; Rollo, pp. 32-33.

[36] TSN, p. 20, Jan. 13, 1997.

[37] People v. Marcos, G.R. No. 115006, March 18, 1999.

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