

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMAD AGANDO AND MIKINOG MINANGGA, ACCUSED

G.R. No. 130670. May 31, 2000

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the decision[1] of the regional trial court[2] convicting Mikinog Minangga of two (2) counts of murder and sentencing him to two terms of reclusion perpetua.

Originally, only Samad Agando was charged with the crimes. The information[3] was amended on June 27, 1994 to include Mikinog Minangga. It alleged:

“That on or about September 17, 1993, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other, armed with a deadly weapon[,] to wit: a .45 caliber pistol, by means of treachery and with evident premeditation, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, shoot and wound one Virgilio Capangpangan and his minor daughter Ivy Capangpangan, thereby inflicting upon Virgilio Capangpangan the following physical injuries, to wit:

Multiple GSW face, neck and body

Hypovolemic shock

Cardio respiratory arrest

which caused his death; and inflicting physical injuries upon Ivy Capangpangan, to wit:

Bullet wound thru & thru (L) temporal to (R) parietal

Intracerebral hematoma (R) parietal

Bilateral cerebral contusion & swelling edema

Cardio-respiratory arrest

which caused her death.

“Contrary to and in violation of Article 248 of the Revised Penal Code, with the qualifying circumstances of treachery and evident premeditation.”

Only Mikinog Minangga was arrested and tried. He pled not guilty upon arraignment on March 23, 1995.

At the trial, the prosecution presented its evidence which showed that on September 17, 1993, Virgilio Capangpangan, his 9-year old daughter named Ivy, Patricio Alegarme and his younger brother, Rolando, were on their way to Iligan City. Virgilio was driving their vehicle, a fierra, loaded with sand. Seated beside him was Ivy.

Patricio rode at the top while his brother was at the back. Behind them was a truck that also hauled sand. At about 8:30 A.M., while they were traversing the road of Linangonan, Hinaplanon, Iligan City, Samad Agando, Mikinog Minangga and another person flagged down the fierra. Samad proceeded to the left side while Mikinog went to the right side of the vehicle. They drew their firearms and shot Virgilio. Before leaving, Mikinog shot Ivy. The trio escaped toward a river nearby.

Patricio and Rolando jumped from the vehicle when the carnage began. They hid in a house five meters away from the fierra. After twenty minutes, military men arrived and Patricio and Rolando came out of their hiding place. Patricio gave the eyewitness account of the incident.

Virgilio died on the spot. His body bore eight gun shot wounds, seven of which were fatal.[4] Ivy Capangpangan was brought to the Mindanao Sanitarium and Hospital. A bullet was lodged at the right side of her brain.[5] She died after seven days.

Mikinog interposed alibi as his defense. He claimed that at the time of the incident, he was at Lindungan, Munai, Lanao Del Norte, helping in the preparation of the wedding of a relative of Mayor Tawantawan Cauntongan of Munai. He chopped wood at 7:00 A.M. and decorated the wedding hall at 8:30 A.M. Mayor Cauntongan arrived at 10:00 A.M. After the visitors left, he helped remove the decorations. He alleged that he did not go to Hinaplanon in 1993. In 1994, he visited his mother at Hinaplanon. He was buying cigarettes at the store of the victim when the police arrested him.[6]

His alibi was corroborated by Mayor Cauntongan. The mayor recounted that he attended the wedding in Munai on September 17, 1993 and that Mikinog was one of those who served food to him. He saw Mikinog upon his arrival at about 8:00 A.M. and when he left at about 12:00 P.M.[7]

The defense also presented Hadji Panda Malang who claimed to have witnessed the incident. Malang alleged that he was riding on the truck that trailed the vehicle of Virgilio. He stood behind the driver's seat. He saw Samad Agando, Oca Agando alias Sultan and Mamao Agando alias Skinol flag down the fierra of Virgilio. Samad shot Virgilio while Mamao shot Ivy. The trio then ran and escaped. He added that only Virgilio and Ivy were riding the fierra. He knows the assailants because he often sees them at the house of their barangay captain, Rabar Agando, and at the public market. He said that Mikinog and Mamao are of the same height and built and both have a scar on their right face.[8]

Saidali Gandamra testified that Malang reported to him the shooting. Malang told him that the perpetrators were Samad Agando, Oca Agando and Mamao Agando alias Skinol. Saidali confirmed that Mamao Agando has a scar on his face.[9]

In convicting the appellant, the trial court gave more weight to the positive assertions of Alegarme. It noted that he had no motive to testify falsely against the accused. It dismissed the defense of the accused as originating from a polluted source.[10] It held that treachery attended the commission of the crimes as the attack was sudden and unexpected. It disposed of the case as follows:

"WHEREFORE, and in view of the foregoing considerations and findings, judgment is rendered declaring accused MIKINOG MAMANGGA (sic), GUILTY beyond reasonable doubt as principal for two (2) separate crimes of murder as defined and penalized under Article 248 of the Revised Penal Code, sentencing accused MIKINOG MAMANGGA (sic) to suffer two (2) reclusion perpetua and to indemnify the heirs of Virgilio Capangpangan in the sum of P50,000.00 and the heirs of Ivy Capangpangan in the sum of P50,000.00 plus the sum of P20,000.00 each, representing for moral damages (sic).

"However, accused MIKINOG MAMANGGA (sic) is entitled to full credit of his preventive imprisonment.

Likewise in the service of the two (2) reclusion perpetua, the forty (40) year limit fixed in Article 70 of the Revised Penal Code should be observed. With costs."

Appellant argues that the trial court erred:

I

IN NOT GIVING WEIGHT TO THE FACT THAT PROSECUTION ALLEGED EYEWITNESS PATRICIO ALEGARME'S TESTIMONY IS CONTRARY TO HIS SWORN STATEMENT.

II

IN NOT GIVING CREDENCE TO THE POSITIVE IDENTIFICATION MADE BY DEFENSE WITNESS, MR. PANDA MALANG, AS TO THE REAL IDENTITY OF THE TRUE PERPETRATORS OF THE CRIME.

III

IN NOT CONSIDERING THE FACT THAT THERE IS A PENDING FEUD BETWEEN THE AGANDO FAMILY AND THE CAPANGPANGAN FAMILY WHICH IS THE MOTIVE BEHIND THE KILLING OF HEREIN VICTIMS.

IV

IN FAILING TO RESOLVE THAT THE INSTANT CASE IS A CLASSIC CASE OF MISTAKEN IDENTITY. THE TRIAL COURT IGNORED THE DEFENSE OF ALIBI.

V

THE TRIAL COURT IGNORED THE DEFENSE OF ALIBI THAT ACCUSED WAS IN BARANGAY LINDUNGAN, MUNAI, LANA DEL NORTE ON THE DATE AND TIME OF THE IMPUTED CRIME AND WELL CORROBORATED BY NO LESS THAN THE HONORABLE MAYOR, TAWANTAWAN CAUNTONGAN, ALHADJ, OF THE SAID MUNICIPALITY, HENCE IT ERRED IN HOLDING THAT ALIBI IS NOT SUSTAINABLE IN THE CASE AT BAR.

VI

THE COURT A QUO WHIMSICALLY IGNORED THE FACT THAT THE ACCUSED WAS IGNORANT, DOES NOT KNOW ANY REASON WHY HE WAS ARRESTED AND LATER ON INCARCERATED WHEN HE WENT TO COMPLAINANT'S HOUSE AT HINAPLANON, ILIGAN CITY.

The first and fourth assigned errors assail the credibility of Alegarme in identifying the accused-appellant. Accused-appellant asserts that Alegarme contradicted his affidavit wherein he stated that he did not know Agando's companions.[11] Alegarme allegedly even failed to furnish their description. It is also underscored that Alegarme was able to identify the accused-appellant only through the scar on his face. Mamao Agando, a.k.a. Skinol, whom accused-appellant points as one of the killers, has a similar scar on the face.

Discrepancies between a sworn statement and testimony in court do not outrightly justify the acquittal of an accused. Such discrepancies do not necessarily discredit the witness since ex parte affidavits are often incomplete. They do not purport to contain a complete compendium of the details of the event narrated by the affiant. Thus, our rulings generally consider sworn statements taken out of court to be inferior to in court testimony.[12] In the case at bar, Alegarme ably explained the alleged discrepancy between his testimony and sworn statement. When

he executed his affidavit, he informed the police that one of the culprits has a scar on his face. Unfortunately, this information was omitted but he did not rectify it at that time for fear of his life. Previous to the execution of his statement, he was warned that he would be liquidated by Agando and Minangga.[13] He was in a hurry during the investigation.

Furthermore, the scar on the face of accused-appellant is not the sole basis of Alegarme in his identification. Prior to the incident, he knew appellant by face as a friend of Agando.[14] He had a good view of Minangga during the shootings. When Capangpangan was executed in cold blood, appellant stood near Alegarme. Appellant also shot Alegarme at close range after the latter jumped off the vehicle.[15] These circumstances lead to the conclusion that Alegarme unmistakably identified the assailants.

The second assigned error calls us to gauge the credibility of defense witness Panda Malang against that of Alegarme. At the outset, it is settled that the findings of the trial court on the credibility of witnesses are given the highest degree of respect by this Court.[16] Malang asserted that he was an eyewitness to the crime. He was riding on the truck that was following the vehicle of the victims. He identified Mamao Agando as one of the criminals. Accused-appellant contends that Malang is more credible because his testimony was corroborated. Moreover, as he is the barangay secretary of Mandulog, Hinaplanon, Iligan City, he testified at the risk of incurring the ire of their barangay captain, Rabar Agando, an uncle of the perpetrators.

Like the trial court, we also find Alegarme to be more credible than Malang. As well noted by the Solicitor General, Alegarme was in a better and nearer position to witness the circumstances of the killing compared to Malang who was riding on the truck that trailed the Capangpangan's vehicle[17]. Alegarme was only two meters away[18] when the assailants fired at their victims. Alegarme's testimony was more complete with details. He even helped bring Ivy to the hospital and Virgilio's body to the funeral home.

Accused-appellant failed to impute any sinister motive on the part of Alegarme that would cause him to testify falsely against him. The trial court observed that "Alegarme, in all appearances, is not the type of man who will perjure and send his fellow men to jail for no reason at all or on a mistaken identity." [19] The record bears out that Alegarme was subjected to an exhaustive cross-examination. But everytime his ability to identify accused-appellant was tested, he never waffled. We see no reason to disbelieve him.

Accused-appellant next argues that the Agandos have the motive to kill the victims. Malang alleged that there was a feud between the Agandos and the Capangpangans that had triggered a series of killings between them. Suffice it to state that the testimony of Malang is hearsay. As he admitted, he only heard about this feud.[20] Even Saidali testified that the theory that the victims were killed as a retaliation by the Agandos was merely a speculation.[21]

Next, accused-appellant asserts that his alibi is credible because it was corroborated by the Municipal Mayor of Munai, Lanao Del Norte. The distance between Linangonan, Upper Hinaplanon which is the place of the incident and Barangay Lindungan, Munai Lanao Del Norte where accused-appellant attended a wedding is about fifty kilometers. It will take three to flue hours to negotiate the distance between these places.[22]

Time and again, it has been held that alibi is a weak defense and cannot prevail over the positive identification of the accused by the prosecution's unbiased witnesses.[23] For alibi to serve as a basis for acquittal, it must be established with clear and convincing evidence that it was physically impossible for an accused to have been at the scene of the crime at the time of its commission.[24] An alibi does not become unassailable simply because it was corroborated by a government official.

In the case at bar, there are conflicting statements between the testimony of Mayor Cauntongan and appellant. Mayor Cauntongan claimed that he arrived at the wedding at about 8:30 A.M.[25] while appellant allegedly saw

him come at 10:00 A.M.[26] Mayor Cauntongan said that they walked from the poblacion to Lindungan because there were no passable roads[27] but appellant testified that the mayor and his companions arrived in a truck.[28] Mayor Cauntongan stated that appellant is a relative of the father of the bride.[29] On the contrary, appellant testified that the couple was related to the mayor.[30] Appellant could not even recall the names of the bride and groom. He could only remember Mayor Cauntongan, a certain Zenaida Baliling and Rumpar Batingting from among the guests who attended the wedding. Yet he claimed to have helped in the preparation of the wedding from 7:30 A.M. to 4:00 P.M. His amnesia makes his alibi suspect.

The sixth assigned error is concerned with the alleged low intelligence of appellant. The record, however, bears out that he was well represented by his lawyers. More importantly, his testimony shows that his answers were responsive to the questions asked of him.

We now come to the penalty meted to appellant. The information alleged treachery and evident premeditation as qualifying circumstances. Evident premeditation can not be appreciated against the appellant. To establish this aggravating circumstance, the prosecution must prove: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused clung to his determination; and (c) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act. These elements were not established. Nonetheless, the qualifying circumstance of treachery was proven. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[31] The evidence shows that the victims were shot while they were seated inside their vehicle. Virgilio had no inkling that he would be killed for he even stopped when his vehicle was flagged down. He was helpless from the sudden attack. Indeed, he was not even able to protect his daughter. With the presence of treachery, appellant was properly convicted of two murders and meted two sentences of reclusion perpetua. The awards of damages are also in accord with current case law.

In view whereof, the appealed judgment is affirmed in toto. Cost against appellant

SO ORDERED.

Kapunan, and Pardo, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

Ynares-Santiago, J., no part.

*** At large.

[1] Criminal Case No. II-5019.

[2] Branch 2, Iligan City.

[3] Records, p. 8.

[4] TSN, May 2, 1996, p. 5.

[5] TSN, September 11, 1995, p. 14.

[6] TSN, March 24, 1997, p. 18.

[7] TSN, March 13, 1997, pp. 10-15.

[8] TSN, October 17, 1996, pp. 4-8.

[9] TSN, October 23, 1996, pp. 4-5.

[10] Decision, pp. 6-9.

[11] The portion of the affidavit reads:

“Q-Were you able to know the persons responsible?

A-As I have seen the suspect was identified as SAMAD AGANDO with two unidentified companions, all of Cabaro Compound Hinaplanon, Iligan City.”

[12] *People vs. Lazaro*, 249 SCRA 234 (1995).

[13] TSN, June 6, 1995, pp. 32-33; TSN, June 6, 1995, p. 18.

[14] TSN, June 5, 1995, pp. 12-13; p. 31-34, 37-38.

[15] *Ibid.*, p. 40.

[16] *People vs. Mañozca*, 269 SCRA 513 (1997).

[17] Appellee’s Brief, p. 8.

[18] TSN, June 5, 1995, p. 14.

[19] Decision, p. 7.

[20] TSN, October 17, 1996, pp. 9-10, 21.

[21] TSN, October 23, 1996, p. 6.

[22] TSN, March 13, 1997, pp. 18-20.

[23] *People vs. Pacapac*, 248 SCRA 77 (1995).

[24] See *People vs. Mancao*, 208 SCRA 573 (1992).

[25] TSN, March 13, 1997, p. 11.

[26] TSN, March 24, 1997, p. 11.

[27] TSN, March 13, 1997, p. 13.

[28] Fn. 28.

[29] TSN, March 13, 1997, pp. 32-33.

[30] TSN, March 24, 1997, p. 10.

[31] Revised Penal Code, Article 14 (16).

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