

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO COSCOS AND JOHN DOE “ROEL MARCUJOS,” ACCUSED-APPELLANTS.

G.R. No. 132321. January 21, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This case originated from an Information filed by Provincial Prosecutor Francisco G. Rivero against Alfredo Coscos and one John Doe, charging them with the crime of Murder, committed as follows:

That on or about October 31, 1995, in the Municipality of Maco, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, accused Alfredo Coscos, conspiring, confederating and mutually helping with one John Doe, who is at large, with treachery and evident premeditation, with intent to kill, armed with a firearm, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Johnny de la Cruz, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[1]

Alfredo Coscos was arraigned on 11 December 1995 and pleaded "Not Guilty" to the accusation. John Doe was later on identified as Roel Marcujos and the Information was accordingly amended.[2] However, while a warrant was issued for Marcujos' arrest, he was able to evade the authorities, and the trial proceeded against Coscos alone.

Belly de la Cruz, widow of the victim, testified for the prosecution. She recalled that on 31 October 1995, at around eight o' clock in the evening, while she was inside their bedroom and her husband was feeding their rabbits, she heard people throwing stones at their dogs. She peeped through a window and saw Alfredo Coscos, Coscos' son Ricky and Roel Marcujos entering their premises.[3] Coscos, who was holding a kerosene lamp,[4] shouted "Dong Johnny!" Her husband approached the trio. She next heard Coscos saying "Tan-awa ang tiil sa akong bata naghubag, tungod napaakan sa iro" (Look at the leg of my son, it swells because it was bitten by your dog).

An altercation ensued between the victim and Coscos. Suddenly, Belly heard a burst of gunfire and saw her husband staggering. She heard two (2) more shots and saw her husband fell about ten (10) meters away from where she was. She also saw Coscos holding a gun.[5] Fearing that she would also be killed, she decided not to make any noise.[6] After Coscos and his companions left, she immediately asked for their neighbors' assistance[7] and brought her husband to the Davao Regional Hospital where he was pronounced dead on arrival.[8]

Belly de la Cruz further testified that her husband, prior to his death,[9] earned about P15,000.00 per month.[10] She likewise stated that for his farm animals, her husband earned about P150,787.79 for a year. To prove her allegation, de la Cruz submitted the following documents to the court: (1) a receipt, dated 15 September 1995, showing that from June to August 1995, her husband earned 8,162.25 from copra harvest; (2) a receipt, dated 07

December 1995, showing that her husband earned P13,820 from copra harvest ending November 1995; and (3) a letter from the Office of the Provincial Treasurer of Tagum, Davao showing that the deceased extracted about 5,716 cubic meters of gravel and sand from his quarry business from 01 January to 31 July 1995.[11]

Finally, the witness testified that the total expenses she incurred for the wake of her husband, as well for the funeral service, memorial park and other expenses, amounted to P61,588.75.

Dr. Ricardo Rodaje of the National Bureau of Investigation (NBI), Southeastern Mindanao Regional Office, who conducted the autopsy examination on the cadaver of Johnny de la Cruz, testified that the cause of the death was gunshot wounds.[12] The victim sustained three (3) wounds, found on the neck and on the head. Dr. Rodaje declared that while he recovered a slug on the victim's neck, he could not determine the kind of bullet used as he was not an expert on the matter.[13]

Dr. Rodaje further testified that based on the entrance wound on the neck of the victim, he was shot while either standing or sitting down.[14] He stated that the muzzle of the gun was a little bit lower than the entrance wound; hence, the gun could be at a lower angle in relation to the neck of the victim.[15] The second wound, located on the left side of the victim's head, exited on the right portion of the head, which could mean that the victim was already lying prostrate when it was inflicted.[16]

The witness also asserted that the entries of the wound were 5 x 1.3 cm. and 3 x 2.0 cm., which means that the assailant used a short firearm.[17] However, he could not determine which wound was inflicted first.[18] There was a possibility that both the assailant and the victim were standing and that the former was taller than the latter.[19] Finally, Dr. Rodaje declared that powder burns could not be traced if the assailant was wearing gloves when the gun was fired.[20]

The defense presented a number of witnesses to dispute the allegations of the prosecution.

Jacinto Cole testified that on 31 October 1995, at around eight o' clock in the evening, he heard three (3) gunshots.[21] When he heard a fourth gunshot coming from Ambugan bridge, he left his house to investigate. Somebody told him that Belly de la Cruz needed a vehicle to bring her husband to the hospital.[22] He went to the house of the de la Cruzes and was told by Belly that Alfredo Cocos shot her husband.[23] He was able to get a tricycle and he helped in bringing the victim to Davao Regional Hospital. However, Johnny de la Cruz was declared dead on arrival.[24] In the hospital, he overheard Belly talking with the head nurse and saying that she was not certain if it was Alfredo Cocos who shot her husband although she had a strong suspicion because their dog bit Cocos' son.[25] Cole, likewise, testified that the victim showed him his .38 caliber revolver, which he used to fire during nighttime.[26]

Miguel Travenio, a kagawad of Barangay Dumlan, Maco, Davao, testified that on 31 October 1995, at about eight o'clock in the evening, he was in their house when he heard four (4) gunshots.[27] However, he did not do anything because nobody reported to him.[28] Later that night, at around ten o' clock in the evening, Alfredo Cocos went to his house and reported that an unidentified person wearing a black jacket shot Johnny de la Cruz.[29] He recorded the report in the barangay logbook. Cocos was wearing a yellow sleeveless shirt.[30] Leonel Ballispin and Alfredo Marcujos were in his house when Cocos arrived.[31] Travenio further stated that the next morning, he, together with Barangay Captain Wilfredo Gonzales and some barangay officials went to the site of the incident.[32] Travenio also maintained that the deceased told him that he was a military asset.[33]

Leonil Ballispin corroborated the testimony of Travenio. He stated before the trial court that he was in the store of Kagawad Travenio when Cocos arrived to report that de la Cruz was shot.[34]

Barangay Captain Wilfredo Gonzales asserted in his testimony that on 31 October 1995, at around ten o' clock in

the evening, he was awoken by someone who told him that Johnny de la Cruz was shot by an unidentified assailant.[35] He tried to contact the police station through an ICOM radio to report the incident but he was unable to do so. The following morning, Miguel Travenio apprised him of what transpired and he was told that it was Alfredo Coscos who reported the shooting.[36]

The testimony of Police Inspector Leonardo Merced, Chief of Police of Maco, Davao, revealed that on 03 November 1995, he requested the PNP Crime Laboratory to examine Alfredo Coscos for the presence of powder burns.[37] The accused tested negative for powder burns.[38]

Judge Mary Anne T. Gonzales-Israel of the Municipal Trial Court of Maco, Davao was also called to testify for the defense. She handled the preliminary investigation of the case and recommended the filing of Information against Alfredo Coscos and John Doe. She recalled that sometime in December 1995, she received a letter addressed to Belly de la Cruz, which appeared to have been sent by a member of the New People's Army (NPA). The sender claimed responsibility for the killing of Johnny de la Cruz. The letter was mailed from Maco, Davao but she could not determine who the sender was.[39]

Atty. Restituto Suelto, counsel for Alfredo Coscos, also testified that on 14 December 1995, he, too, received a letter similar to the one received by Judge Gonzales-Israel. The letter came from a certain Vergel Montenegro who claimed to be a member of the Sparrow Unit of the NPA.[40] Atty. Suelto claimed that a military intelligence officer informed him that Vergel Montenegro was indeed a leader of a Sparrow Unit.[41]

The accused, Alfredo Coscos, declared before the trial court that he was at New Corella, Davao in the morning of 31 October 1995. He returned to Dumlan, Maco, Davao at around seven o' clock in the evening.[42] Later, he and his eleven-year old son Ricky went to fetch water from the water pump located in the premises of Johnny de la Cruz.[43]

Coscos recalled that as they were getting water, the de la Cruzes' dogs barked at them, prompting him to throw stones at the animals.[44] Johnny de la Cruz approached them and he explained that he threw stones at the dogs because his son was bitten earlier that day. He even asked Johnny to look at the wound but the latter said they would discuss the matter the next morning.[45] As Johnny was about to leave and he was about to pick up the pail of water, he heard a gunshot. He saw a person, wearing a black jacket, pumped two more gunshots at the victim. The assailant thereafter ran towards the creek.[46] He and his son ran towards their house because they were afraid. They had dinner and later, he reported what he witnessed to Kagawad Travenio.[47]

Coscos further testified that he went to New Visayas the day after the incident.[48] Upon his return, he learned from his wife that the police were looking for him. He proceeded to the Maco police station where he was investigated and later, arrested.[49] He was examined for powder burns but tested negative therefor.[50]

The trial court found for the prosecution and in a decision, dated 05 May 1997, ruled as follows:

WHEREFORE, in view of the foregoing, the accused is found guilty beyond reasonable doubt, and he is hereby sentenced to suffer the penalty of reclusion perpetua. He is further required to pay Belly de la Cruz the following:

1. P50,000 for the death of Johnny de la Cruz;
2. P50,000.00 for moral damages;
3. P68,588.75 for actual expenses;
4. P180,000.00 for the loss of the earning capacity of the deceased and to pay the cost.

SO ORDERED.[51]

In his appeal before this Court, Alfredo Cocos faulted the trial court for his conviction and asserted that:

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE SOLE EYEWITNESS ACCOUNT OF MRS. BELLY DE LA CRUZ.

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED ALFREDO COSCOS AS THE PROSECUTION FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER AS THE AGGRAVATING CIRCUMSTANCE OF TREACHERY WAS NOT DULY PROVED.[52]

After a careful review of the records of this case, the Court finds no reason to reverse the conviction of accused-appellant Alfredo Cocos.

As a general rule, the trial court's evaluation of the testimony of the witnesses is accorded great respect and finality unless it is shown that it overlooked certain facts and circumstances of weight and influence which, if considered, would alter the result of the case.[53] Here, accused-appellant failed to show that the trial court misinterpreted or misapprehended the evidence presented before it.

The widow of the deceased positively identified accused-appellant as the assailant. Thus, she testified:

Q

On October 31, 1995 at about 8:00 o'clock in the evening, where were you?

A

I was inside our bedroom.

Q

How about your husband?

A

He was outside, in the house of the rabbits.

Q

What was he doing there?

A

Feeding the rabbits.

Q

Could you remember of any incident that happened at that time?

A

On that time, I heard Alfredo Cocos calling my husband to look to the swollen foot of his son.

Q

Before that incident happened, where did Alfredo Coscos come from?

A

He was coming from their house and then went inside our premises.

Q

How large is your fenced premises?

A

It's big. More than 500 square meters.

Q

How did you know that they are coming?

A

Because of the barking of the dogs.

Q

How many dogs do you have?

A

Four (4), sir.

Q

What did you do when you heard the barking of the dogs?

A

I peeped thru our window to see who were outside.

Q

What did you see?

A

I saw that our dogs were (being) thrown by (sic) stones.

Q

Who threw the stones?

A

I did not probably identify who threw the stones, what I could see was only the stones being thrown to my dogs.

Q

And what did you do when the stones were thrown to the dogs?

A

I just peeped and observed.

Q

What did you see?

A

I saw Alfredo Cocos bringing a lamp and a certain Joel Marcujos and then followed by his son, Ricky Cocos.

Q

And you said one was bringing a lamp, who was it?

A

Alfredo Cocos.

Q

When you saw them, where were you at that time?

A

I was peeping at the window.

Q

How far is your window from the place where you saw the accused Alfredo Cocos?

A

Our distance was very close, they went near the door of the house and the window is just above the passage or entrance door?

Q

Granting that you are (sic) at the place when you saw these persons, how far was it, referring to the place of his court room?

A

This is our bedroom.

Q

How far?

A

From here to the table of madam (referring to stenographer's table.) About 2 ½ meters.

Q

You said, somebody was bringing a lamp who was it?

A

Alfredo Coscos, sir.

Q

What kind of lamp?

A

A kerosene lamp.

Q

And from the lamp he was bringing, what chances of identification do you have to identify him?

A

I am very sure because he was my neighbor.

Q

How about the other fellow also, who was it?

A

Roel Marcujos, whom I said when I was investigated by the police as a certain familiar face.

Q

At that time, do you know the name of the other fellow?

A

I missed the name of this fellow but this time, I got his name.

Q

What chances of identification could you have if I will show to you that Ruel Marcujos?

A

I am very sure that I could identify this person who went inside our fenced premises.

Prosecutor:

We are submitting the motion to amend the information to include Ruel Marcujos as the John Doe. We are going to submit that Your Honor.

Court:

How about the one.

Prosecutor:

That is the son, Your Honor.

Court:

Was the son identified?

Prosecutor:

Yes, Your Honor.

Court: (to the witness)

Q

How old is Ricky Coscos?

A

Thirteen (13), Your Honor.

Atty. Suelto:

We would like to request the prosecution to file his amended information in writing so that we can have our objection, and we would like to manifest to defer the hearing of this witness until such time.... (court interrupted.)

Court:

What is the pleasure now of the prosecution?

Prosecutor:

The amended information does not affect the testimony of this witness. So, we will continue the presentation of this witness, we will continue the hearing.

Court:

So, we will proceed.

Prosecutor:

So, we will be submitting our amended information.

Atty. Suelto:

This is for the purposes of placing it in the records.

Prosecutor:

Q

Mrs. Dela Cruz, you said that Alfredo Coscos and your husband had an argument, do you know what was it all about?

A

Yes, sir. Alfredo Coscos told my husband to look at the foot of his son which was swollen because of the bite of our dog.

Q

What was your husband's response?

A

He told the accused Alfredo Coscos to settle the matter the following morning.

Q

What did Alfredo Coscos say or do?

A

He did not say anything, after that, I heard gunburst.

Q

Where did (the) gunburst come from?

A

Infront of them.

Q

And who was holding the gun?

A

Alfredo Cocos.

Q

How long, was it long or short?

A

A short gun.

Q

Do you remember the kind?

A

I did not.

Q

How many gunburst?

A

Three (3) gunburst.

Q

And what happened after the gunburst?

A

I saw my husband fell on the ground.

Q

How did he fall?

A

He was staggering after the two (2) shoots (sic), he fell down on the ground.

Q

How far?

A

About ten (10) meters.

Q

From the place where you are, looking, about ten (10) meters?

A

Yes, sir.

Q

What did you do when you heard that gunburst which caused your husband staggering and falling down on the ground, what did you do?

A

I decided not to make any noise for reason that they also could kill me.

Q

Do you think, they knew that you were there?

Atty. Suelto:

The witness is incompetent, Your Honor.

Court:

Reform, counsel.

Prosecutor:

Q

When Alfredo Coscos and other persons came to your house, you said you knew the name of these persons?

A

Yes, sir.

Q

Does he know you?

A

Yes, sir.

Q

Was your name called?

A

Did not.

Q

Was your name called even after the gunburst?

A

No, sir.

Q

And what happened after your husband fell on the ground, what did they do?

A

They left the area.

Q

How did they leave the area?

A

Slowly, sir.

Q

Where was the lamp then?

A

They carried along with them.

Q

Could you say what Alfredo Coscos did with the gun after he shot your husband?

A

He carried the gun with him.

Q

And what did you do after they left?

A

I tried to carry my husband but he was heavy so I solicited assistance or help from my neighbors to bring my husband to the hospital.[54]

Accused-appellant faulted the trial court for giving credence to the testimony of Belly who was the only witness to the incident. However, it should be remembered that the lone declaration of a sole eyewitness is sufficient to convict if that testimony is found to be credible. Credibility does not go with numbers[55] and witnesses are to be weighed, not numbered.[56] The matter of assigning values to declaration on the witness stand is best and most competently performed by the trial judge who had the unmatched opportunity to observe the witnesses and to assess their credibility by various indicia available but not reflected on the record.[57]

Accused-appellant's defense fails to convince this Court. Denial of the accused, being inherently weak, cannot prevail in the face of the positive identification of the accused as the perpetrator of the crime.[58] Denial must be buttressed by strong evidence of non-culpability to merit credibility.[59]

The defense also raised the defense that Johnny de la Cruz was killed by the New People's Army. This allegation was buttressed by a letter, addressed to Belly de la Cruz, purportedly sent by Vergel of the DN Sparrow Unit. The letter was in the local dialect but as translated[60] stated as follows:

9 November 1995

For you Mrs. de la Cruz,

We would like to extend to you the answer to the death of your husband who is Johnny de la Cruz.

We are greatly sorry to punish him but it is needed because of these following heavy basis:

- 1) active military asset
- 2) land grabbing
- 3) harassment of residents

We did everything for him to realize and change his deeds/acts. We gave him ample time but he did not value it. It is a big possibility that you were not informed about this by your husband because you seldom goes (sic) home.

Don't worry if you will be included of his acts. You, your children and your relatives are not included of the

said acts. You know about Revolutionary Justice.

Again, we are sorry that it happened unexpectedly. We hope that you understand this.

For the People,

Vergel

DN Sparrow Unit

New People's Army[61]

On this score, the Court agrees with the trial court that the veracity of the letter could not be determined, and it could merely be concoctions used to create doubt on the mind of the trial judge. The Court notes with interest that copies of the letter were allegedly sent by the New People's Army to Judge Mary Anne Israel who conducted the preliminary investigation of the case and also to Atty. Restituto Suelto who was the counsel for accused-appellant.

The Court also agrees with the trial court that the crime was attended by treachery.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specifically to insure its execution without risk to himself arising from the defense which the offended party might make.[62] Its essence lies on the deliberateness and unexpectedness of the attack, giving the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[63]

While it may be true that the deceased and accused-appellant had an altercation before the shooting, the Solicitor General correctly pointed out that there was no evidence that the confrontation was heated or intense or that accused-appellant was provoked to shoot the victim. In fact, it would appear that accused-appellant already had an ax to grind when he went to the house of the victim, and he already had a gun with him. The records would also show that Johnny de la Cruz was not even facing accused-appellant when he was shot, suddenly and unexpectedly. Indeed, there could be treachery if the attack is frontal, if it is sudden and unexpected, giving the victim no opportunity to repel it or defend himself.[64]

Finally, the fact that accused-appellant tested negative for powder burns does not prove that he was not the assailant. A finding that the paraffin test yielded negative results is not conclusive evidence that an accused had not fired a gun.[65]

WHEREFORE, in view of the foregoing, the decision of the trial court, finding accused-appellant Alfredo Coscos guilty beyond reasonable doubt of the crime of Murder is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Rollo, p. 9.

[2] Records, at 79.

[3] TSN, 19 January 1996, at 9-11.

[4] Ibid., at 12.

[5] Ibid., at 14-16.

[6] Ibid., at 16.

[7] Ibid., at 17.

[8] Ibid., at 19.

[9] The victim died at age 43, TSN, 19 January 1996, at 25.

[10] TSN, 19 January 1996, at 24.

[11] Records, at 55. Since quarry fee was about P50.00 per ten (10) cubic meters, the deceased earned about P28,580.00 for the period.

[12] TSN, 06 March 1996, at 8.

[13] Ibid., at 13.

[14] Ibid., at 15.

[15] Ibid., at 15-16.

[16] Ibid., at 17.

[17] Ibid., at 20.

[18] Ibid., at 22.

[19] Ibid., at 26.

[20] Ibid., at 27-28.

[21] TSN, 29 July 1996, at 17-18 and 32.

[22] Ibid., at 19.

[23] Ibid., at 20.

[24] Ibid., at 21-27.

[25] Ibid., at 28.

[26] Ibid., at 14-15.

[27] TSN, 11 September 1996, at 16.

[28] Ibid.

[29] Id., at 17-18

[30] Id., at 22.

[31] Id., at 20.

[32] Id., at 47.

[33] Id., at 9.

[34] TSN, 10 Oct. 1996, at 7-8.

[35] TSN, 09 October 1996, at 37-38.

[36] Ibid., at 38-39.

- [37] TSN, 09 October 1996, at 10-11.
- [38] Ibid., at 15.
- [39] TSN, 26 June 1996, at 8-15.
- [40] Ibid., at 17-18.
- [41] Ibid., at 26.
- [42] TSN, 05 November 1996, at 8.
- [43] Ibid., at 9-10.
- [44] Ibid., at 11.
- [45] Ibid., at 11-13.
- [46] Ibid., at 13-14.
- [47] Ibid., at 15-16.
- [48] Ibid., at 19.
- [49] Ibid., at 19-21.
- [50] Ibid., at 22-24.
- [51] Rollo, at 37.
- [52] Rollo, pp. 80-81.
- [53] *People vs. Caratay*, 316 SCRA 251 (1999); *People vs. Lopez*, 302 SCRA 669 (1999).
- [54] TSN, 19 January 1996 at 9-17.
- [55] *People vs. Hayahay*, 279 SCRA 567 (1997).
- [56] *Marco vs. Court of Appeals*, 273 SCRA 276 (1997).
- [57] *People vs. Barellano*, 319 SCRA 567 (1999).
- [58] *People vs. Andaya*, 306 SCRA 202 (1999); *People vs. Macahia*, 307 SCRA 404 (1999).
- [59] *People vs. Acuno*, 313 SCRA 667 (1999).
- [60] By Niza P. Tacandong, Court Interpreter III.
- [61] Records, at 127.
- [62] *People vs. Mangahas*, 311 SCRA 342 (1999); *People vs. Gaballo*, 316 SCRA 881 (1999).
- [63] *People vs. Pinca*, 318 SCRA 270 (1999).
- [64] *People vs. Feloteo*, 290 SCRA 627 (1999).
- [65] *People vs. Abrera*, 283 SCRA 1 (1997).

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