

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO IBO, ACCUSED-APPELLANT.

G.R. No. 132353. March 05, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the Decision of the Regional Trial Court, Seventh Judicial Region, Branch 32, Dumaguete City convicting accused-appellant Alfredo Ibo of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

Accused-appellant Alfredo Ibo was charged with the crime of Murder in an Information which reads as follows:

That on December 31, 1995, at around 7:00 o'clock in the evening, at barangay Sta. Agueda, Pamplona, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there with intent to kill and with treachery or means to insure or afford impunity SHOT one LIBRADO PAEL with a firearm which the accused was then armed and provided, inflicting upon said Librado Pael the following injuries:

- 1) Gunshot wound - left armpit;
- 2) Gunshot wound - left side of abdomen, 3 inches away from navel;
- 3) Gunshot wound - left side of abdomen, 5 inches away from abdomen;
- 4) Gunshot wound - lateral medial part of the left thigh;
- 5) Gunshot wound - right plantar area of foot;

thereby causing the immediate death of said victim, to the damage and prejudice of his heirs.

CONTRARY TO LAW.[1]

Upon being arraigned, the accused-appellant pleaded not guilty. Accordingly, trial ensued. The prosecution presented the following witnesses: Martina Pael, the wife of the victim, Cristobal Pael, the son of the victim, and Municipal Health Officer Dr. Rogelio Kadile. On the other hand, the defense presented Marcelino Cay, PO3 Ariston Ybarrista, SPO2 Nicanor Segismar, Rebecca Ebona, Jesus Benfijo and accused-appellant Alfredo Ibo.

The prosecution's version of the events surrounding Librado Pael's death is as follows:

At around 7:00 in the evening of December 31, 1995, in barangay Sta. Agueda, Pamplona, Negros Oriental, deceased victim Librado Pael (Librado) was at his home. Librado was with his wife Martina, his daughter-in-law and grandson having supper at the kitchen. Meanwhile, his son Cristobal was taking a rest on the bench nearby.[2] 2 From where he was, Cristobal had a view of the entire kitchen.[3] While eating, Librado was suddenly shot several times. Upon hearing the gunfire, Cristobal immediately arose and saw the accused at a small exit in the kitchen used by the family to get firewood. Librado asked, "What is that Tim?" (referring to his wife Martina

Pael). Librado then stood up holding his armpit with his right hand saying, "Aguroy" (painful).[4] He walked towards the other end of the table where he was shot again in less than two (2) seconds from the first round of gunshots. Thereafter, Librado fell to the floor face down. Martina, upon hearing the gunfire, hid behind the curtains. From there, she saw the accused again shoot her husband who was then already on the floor.[5] The accused did the firing from the kitchen door.[6] Cristobal also saw accused fire a gun at the direction of his father during the second round of gunfire.[7] The kitchen at that time was illuminated by a petromax lamp which hung above the dining table.[8] Cristobal wanted to help his father but was held by his mother Martina for fear he too might be shot. After shooting Librado, accused-appellant ran towards the coconut and sugarcane fields. Librado was thereafter brought to the Negros Oriental Provincial Hospital, but he died on the way.

The post-mortem report dated January 12, 1996 issued by Dr. Rogelio Kadile, Municipal Health Officer, who examined the corpse of Librado, shows that he sustained five (5) gunshot wounds on different parts of his body.[9] According to the medical report, the cause of death was hemorrhagic shock secondary to gunshot wounds.[10]

After the victim's funeral, the witnesses lost no time in having their affidavits taken on January 5, 1995, just five (5) days after he was killed. Cristobal Pael named appellant as the killer.[11]

For his part, the accused-appellant denied the murder charge and presents the defense of alibi. He claimed that on December 31, 1995, at the time the victim was shot, he was in Sitio Manaol, Barangay Sta. Agueda, Pamplona, Negros Oriental, attending a New Year's party at the home of his neighbor Jesus Bendijo. Bendijo's house is about three (3) kilometers from the house of the victim, and it is a 40-minute walk from the victim's house to Bendijo's. Accused-appellant and his wife Alicia arrived at the house of Jesus Bendijo at about six in the evening and left at around ten in the evening.[12]

Jesus Bendijo corroborated accused-appellant's defense of alibi and testified that accused-appellant and his wife, as well as several other guests, were at his home from 6 p.m. to 10 p.m. in the evening of December 31, 1995 for supper and drinks.

On October 10, 1997, the trial court rendered its Decision finding the accused-appellant guilty as charged in the information, the dispositive portion of which is quoted as follows:

WHEREFORE, premises considered, the Court finds accused Alfredo Ibo y Ramirez guilty beyond reasonable doubt of murder, penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences him to suffer the penalty of reclusion perpetua together with all the accessory penalties provided for by law, to pay the lawful heirs of deceased victim Librado Pael the sum of P50,000.00 as death indemnity, and to pay the costs.

The jailer is hereby ordered to make the proper reduction of the period during which the accused was under preventive custody by reason of this case in accordance with law.

SO ORDERED.[13]

Hence, accused-appellant is before this Court seeking a reversal of his conviction. The accused-appellant raises the following assigned errors:

I

THE TRIAL COURT ERRED IN FINDING THAT THE POSITIVE IDENTIFICATION OF THE ACCUSED-APPELLANT BY THE PROSECUTION WITNESSES WAS NOT ILL MOTIVATED AND A PRODUCT OF AN AFTERTHOUGHT.

II

THE TRIAL COURT ERRED IN REJECTING ACCUSED-APPELLANT'S DEFENSE OF ALIBI.[14]

Accused-appellant argues that the prosecution failed to establish his identity as the perpetrator of the crime. He points to the following inherent weaknesses in the evidence of the prosecution: (1) the testimony in open court of Cristobal Pael identifying him as the killer is inconsistent with his sworn affidavit that his father was killed by an unknown assailant; (2) the entry in the police blotter of the Pamplona, Negros Oriental Police Station, which was based on the information received from Barangay Captain Rodrigo Aguilar stated that the victim was shot to death by an unidentified person. Aguilar, on the other hand, based his report on what was related to him by Cristobal; and (3) statements made by Nenita Villato, daughter of the deceased, at the police station in Pamplona that her father was killed by an unidentified person.

According to accused-appellant, if indeed the family of the victim knew the identity of the assailant, why did they not reveal the same immediately to the police during the investigation? There was no reason for them not to do so as there was no threat or intimidation against them. Moreover, the family of the victim personally knew the accused-appellant making it easy for them to name him during said investigation. Hence, the failure of the family of the victim, at the first instance, to identify accused-appellant as the perpetrator of the crime casts a reasonable doubt on their testimony that he indeed was the killer.

We are not persuaded.

It is true that the family of the victim did not reveal the identity of the victim to the barangay captain when they first reported the death of the victim. However, this is sufficiently explained during the preliminary investigation, where Cristobal Pael testified that they were advised not to disclose the identity of the killer so as not to alert him and give him the opportunity to evade arrest.[15] As regard the entry in the police blotter that Librado was shot by an unknown assailant, based on the statements made by Nenita Villato, such is of no moment as Nenita did not witness the killing of her father, hence, her statements are of no probative value being hearsay. Neither is the police blotter entry based on the statement of Barangay Captain Aguilar of any probative value the same likewise being hearsay.

All told, the questions raised by accused-appellant regarding the inconsistencies on his identification as the perpetrator by the victim's family goes into the issue of credibility. Cristobal as well as his mother Martina were categorical in their testimony that they saw accused-appellant kill the victim. Cristobal Pael thus testified:

Q: Do you know who fired these shots?

A: Yes.

Q: Will you please tell the Court the name of the person whom you said shot your father?

A: Alfredo Ibo.

Q: The accused in this case?

A: Yes, sir.

Q: Why do you say that it was Alfredo Ibo who shot your father?

A: Because I really saw him.

Q: Where did you see him.

A:

I saw him there right at the door where we used to pass through to get coconut husks used for fuel holding a gun firing.

Q: You said you saw him at the door firing a gun, to what direction did he fire his gun?

A: To the direction of my father.

Q: And your father was hit?

A: Yes.

FISCAL BUSTAMANTE:

Q: In what part of his body was your father hit?

A:

Once at his left armpit, twice at the left side of his stomach; once at his left leg; and once at the sole because he was also shot when he was already lying down.

Q: Now, you said you saw the incident clearly, why is it so when it was nighttime?

A: Because our house was lighted with a petromax.

Q: What did you do upon seeing your father being shot by Alfredo Ibo?

A: I have not done anything because I was afraid.

Q: After the six (6) shots were fired, can you tell us what Alfredo Ibo did?

A: Yes.

Q:

What did he do?

A:

He ran away towards the back portion of our house.[16]

Martina Pael was likewise steadfast in her testimony that it was accused-appellant who killed her husband:

Q:

Now, considering that it was already 7:00 o'clock in the evening, can you tell us why you were so positive about the identity of the assailant of your husband?

A

Why could I not identify him positively when the petromax light was very glaring and it was right on top of us.

Q: Was that petromax lighted at that time?

A: Yes.

Q: What kind of weapon did accused Alfredo Ibo use in shooting your husband?

A:

Short barreled firearm.

Q:

When you said it was a short barreled firearm, can you estimate how short is it?

A:

This short (witness indicated a length of six (6) to seven (7) inches).[17]

The trial court found these two witnesses to be credible since it found no evil or improper motive for them to falsely accuse Alfredo Ibo. Time and again this Court has ruled that the trial court's finding on the credibility of witnesses deserves full faith and credit since it had the opportunity to observe the actuation and demeanor of the witness on the stand.[18] We find no reason, in the case at bench, to deviate from this ruling.

In contrast, accused-appellant invokes the defense of alibi. He argues that at the time of the killing of Librado Pael, he and his family were at Jesus Bendijo's home attending a New Year's Eve party. However, as accused-appellant stated the Bendijo household was only three (3) kilometers away, and it would take more than an hour to walk from the Bendijo household to the victim's home and back.

For alibi to prosper as defense, it must be established by positive, clear and satisfactory evidence because it is easily manufactured and usually unreliable such that it can rarely be given credence. It is not enough that the accused was at some other place at the time of the commission of the crime, but that it was physically impossible for him to be at the locus delicti or within its immediate vicinity.[19] This accused-appellant failed to do. By his own statements, accused-appellant admitted that it was possible for him to go leave the party, kill the victim and go back to the party unnoticed. It must be remembered that there was a drinking spree with more than fifteen guests at the party. Hence, it would not be unlikely that his absence for a period of more than an hour would go unobserved.

Telling too of accused-appellant's guilt are his actuations after the death of the victim. Accused-appellant is related to the victim by affinity, his wife being the niece of Martina Pael. As correctly noted by the trial court, by local custom, relatives, friends and neighbors pay their last respects to the departed, more so if they are living in the same barangay. This accused-appellant did not do. He testified that he and his wife did not attend the wake because they were both busy working on the farm. This, according to the trial court, is shallow and unconvincing and only enhances the Court's impression that he felt guilt.[20]

Considering the straightforward testimonies of the prosecution witnesses and the imperfect defense of alibi put up by accused-appellant, we find that the guilt of the accused-appellant was proven beyond reasonable doubt.

We now come to the proper determination of the crime committed. The trial court found that there was treachery in the taking of the life of the victim as without any warning, accused-appellant suddenly and unexpectedly shot Librado Pael, in front of his family right in his own home. Neither Librado nor his family had any opportunity to put up any defense. The mode of attack was executed in such a manner that retaliation was not possible.[21]

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.[22] The qualifying circumstance of treachery attended the killing as the two conditions for the same are present, i.e., (1) that at the time of the attack, the victim was not in a position to defend himself and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[23] In the present case the victim did not even have an inkling of the danger to his life, the attack against him being sudden and unexpected. The prosecution has effectively shown that the shooting was calculated as to ensure the infliction of the fatal wounds without giving the victim and his family any opportunity to put up a defense. The qualifying circumstance of treachery having been likewise proven

beyond reasonable doubt, the accused-appellant is guilty of the crime of murder.

At the time of the commission of the crime in 1995, the penalty for murder was reclusion perpetua to death. There being no aggravating nor mitigating circumstance, the trial court correctly sentenced accused-appellants to suffer the penalty of reclusion perpetua.

IN VIEW OF THE FOREGOING, the challenged decision dated 10 October 1997 of the Regional Trial Court, Branch 32 of Dumaguete City in Criminal Case No. 12871 finding herein appellant Alfredo Ibo guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the lawful heirs of deceased victim Librado Pael the sum of P50,000.00, and to pay the costs, is hereby **AFFIRMED** in toto.

SO ORDERED.

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

[1] Rollo, p. 9.

[2] TSN, July 11, 1997, pp. 6-9

[3] Id., at 8.

[4] TSN, July 15, 1997, p. 4.

[5] Id., at 6.

[6] Id., at 5-6.

[7] TSN, July 11, 1997, p. 35.

[8] Id., at 12; TSN, July 15, 1997, p. 6.

[9] Exhibit "B."

[10] Exhibit "B-2."

[11] Exhibit "A."

[12] TSN, September 2, 1997, pp. 15-20.

[13] RTC Decision per Judge Eleuterio E. Chiu, Rollo, pp. 17-26.

[14] Brief for the Accused-Appellant, Rollo, p. 43.

[15] TSN, Preliminary Investigation of eyewitness Cristobal Pael, January 19, 1996:

Q:

During the question of counsel, you informed your cousin Sixto Calibugar that Alfredo Ibo shot your father. Now, did Sixto Calibugar made (sic) comments or answer to your information?

A:

He advised us not to divulge it to another person the identity of Alfredo Ibo because he might evade arrest.

[16] TSN, July 11, 1997, pp. 11-12.

[17] TSN, July 15, 1997, pp. 6-7.

[18] *People v. Agsunod, Jr.*, 306 SCRA 612 (1999).

[19] *People v. Vicente Hilot (Deceased) and Patrocinio Bihag, Jr.*, G.R. No. 129532, October 5, 2000.

[20] Rollo, p. 8.

[21] See RTC Decision, p. 8; Rollo, p. 24.

[22] REVISED PENAL CODE, Art. 14, par. 16.

[23] *People v. Galam*, G.R. No. 114740, February 15, 2000.

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