

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLITO BULAN, ROLLY VERINO AND JERRY IBABAO A.K.A. “ALIAS” IBABAO, ACCUSED.

G.R. No. 133224. January 25, 2002

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Accused-appellant Rolly Verino was convicted by the trial court of murder for the killing of Reynal S. Bravo and sentenced to reclusion perpetua. He was also ordered to indemnify the heirs of the victim in the amount of P8,500.00 for actual damages, P50,000.00 as death indemnity and another P50,000.00 for moral damages.[1] He now appeals from his conviction as he contends that the lower court erred in convicting him on the basis of circumstantial evidence.[2]

Accused-appellant Rolly Verino, together with Carlito Bulan and one "Alias" Ibabao who are still at large, was charged before the court a quo with murder for having conspired and confederated in killing one Reynal S. Bravo with use of firearms, with intent to kill, treachery, evident premeditation and taking advantage of superior strength.[3]

The version of the prosecution is that on 18 March 1997, at around 9:00 o'clock p.m., the victim Reynal Bravo, together with his two (2) children and two (2) other men, namely, Medes Madredejo and David Afable, was at the house of Danilo Sause, a neighbor, watching television. Sause's house was still undergoing construction, so a portion had neither door nor walls. A little later, Danilo Sause left the house of Juan Bravo, a neighbor and an uncle of Reynal Bravo, to discuss some problems about land.

While at Juan Bravo's house, they heard a gunshot coming from the direction of his (Danilo) house. Danilo ran towards his house. On his way, he heard two (2) more gunshots. When he reached his house, he saw Reynal Bravo lying prostrate on the ground with blood oozing from his neck. He also saw two (2) men, with their backs toward him, running away from the scene. Before Danilo could enter his house, he saw accused-appellant Rolly Verino standing beneath a 100-watt bulb at the back of his house. Verino was wearing a gray jacket with standing collar and a hat. He had a gun which he kept holding when he ran away towards the river.

The victim's wife, Virginia Bravo, also heard the gunshots while she was doing household chores in their house. She went out of her house and met two (2) of her children who told her that their father had been shot, so she immediately ran towards Danilo's house. There she saw her husband with blood coming out of his neck although he was still alive. With the help of her neighbors, she brought her husband to the hospital. On the way, the victim told her that he was shot by Rolly Verino, Carlito Bulan and Jerry Ibabao. They were the same men, according to Virginia, who a few days earlier, had threatened her husband not to testify against them in another murder case. The first hospital they went to was unable to treat the victim for lack of medical facilities so they brought him to the provincial hospital. On the way there, however, Reynal Bravo died. Post mortem examination on the victim revealed that he had succumbed to his three (3) gunshot wounds in the head.[4]

The defense proffered the testimonies of Charlene Bulan, Jaypee de Guzman, Martin Ibabao and of accused-appellant Rolly Verino himself. Charlene Bulan is the daughter of the accused Carlito Bulan, while Jaypee de Guzman and Martin Ibabao were his neighbors.

Charlene Bulan testified that on 18 March 1997, at 9:00 o'clock p.m., she and her three (3) siblings were in the house of Danilo Sause watching television. Later, Danilo left for Juan Bravo's house. As she and her siblings were watching a show in the house of Danilo, she heard a peculiar sound from the back. She turned her head and saw three (3) men approaching Reynal Bravo who then fired their guns at him. She could not recognize the men since they were wearing masks. She asserted however that accused-appellant Rolly Verino could not be one of the three (3) men nor could her father be also one of them since the three (3) assailants were small and thin while accused-appellant and her father were not.

Defense witnesses Jaypee de Guzman and Martin Ibabao testified that on 18 March 1997, at 9:00 o'clock in the evening, they were at the pastoral house of the Iglesia ni Kristo watching television. With them were the accused Jerry Ibabao and Carlito Bulan, and five (5) other people. According to De Guzman, while watching television he heard three (3) successive gunshots. A minute later, accused-appellant Rolly Verino arrived and asked about the gunshots. But De Guzman replied, "Ewan," and continued watching television. Rolly Verino then left to water the plants in the yard of the INK chapel.

According to Martin Ibabao, he also heard gun reports but he was not sure how many there were. A minute after hearing the gunshots, accused-appellant Verino arrived from his house and Martin Ibabao told him about the gunshots he heard, but Verino merely ignored what he said, and went to water the plants in the yard. Later, the police came and talked to Rolly Verino as he was watering the plants. The police left without arresting anyone.

On the part of accused-appellant Rolly Verino, he testified that on the same date and at about the same time, he was in his house watching television when he heard gunfire. So he went out and proceeded to the house of the minister beside the Iglesia ni Kristo Chapel and asked the people there if they heard any gunfire. They told him they did, but they just continued watching television. Since they were not paying him any attention, accused-appellant proceeded to water the plants in front of the chapel. An hour later, the policemen arrived. Gaudencio Ibabao who was also in the house of the minister, went out and talked to the policemen who inquired about the whereabouts of Carlito Bulan. But the police made no arrests, not until eight (8) days later, or on 26 March 1997 when accused-appellant Rolly Verino was finally arrested by the police.[5]

The trial court found accused-appellant Rolly Verino guilty of murder and sentenced him accordingly. In this appeal, accused-appellant alleges that the trial court erred in appreciating the following circumstantial evidence which became the basis for his conviction: (a) Rolly Verino was seen by Danilo Sause holding a gun at the back of his house after he heard three (3) shots and saw Reynal Bravo lying supine and bloody. Then Verino went down the stream rushing towards the forest. Danilo saw two (2) others also running away; (b) Reynal Bravo was a witness to the murder of Vitaliano Maso who was said to have been killed by the same three (3) accused; (c) On the way to the Bagac Medicare Hospital, the victim told his wife that he was shot by Carlito Bulan, Rolly Verino and Jerry Ibabao. This could be considered an ante-mortem statement because of the gravity of the wound suffered by the victim who was dead on arrival at the Bataan Provincial Hospital. At the very least, it is part of the *res gestae*; (d) Before he was shot, Reynal Bravo told his wife that he had been receiving threats from Carlito Bulan, Rolly Verino and Jerry Ibabao; and, (e) Carlito Bulan and Jerry Ibabao disappeared without any explanation after they learned that they were suspected as the other two (2) of the three (3) men who shot Reynal Bravo.[6]

Accused-appellant insists that Danilo Sause is a perjured witness since his testimony is replete with

inconsistencies and contradictions.[7] He argues that Danilo's declarations in the direct examination contradict his statements given on cross-examination. Thus, on direct examination Danilo claimed having seen the accused Verino only after he saw Reynal Bravo lying supine and bloody. That was after he already heard the first shot while he was still in the house of his kumpadre about fifty (50) meters away to his house, and likewise, after hearing the other two (2) successive shots while on his way home. This declaration contradicts his statement on cross-examination that upon reaching his house he saw two (2) persons running with their backs turned toward him. In his written statement, it is very different. According to Danilo, he saw Verino holding a gun and fired three (3) successive shots after which he saw Reynal Bravo lying prostrate.[8]

The appeal is devoid of merit. The prosecution was able to prove beyond reasonable doubt the culpability of accused-appellant who failed to destroy the credibility of the prosecution witnesses.

To warrant a conviction, direct evidence is not always required. Conviction can be had on the basis of circumstantial evidence if the established circumstances constitute an unbroken chain leading to a fair and reasonable conclusion proving that the appellant is the author of the crime to the exclusion of all others.[9] Section 4, Rule 133 of the Revised Rules of Court provides that circumstantial evidence is sufficient for conviction if the following requisites are complied with: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proved; and, (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The circumstances relied upon by the trial court to convict accused-appellant clearly satisfied the foregoing requirements.

The records of the case, particularly the transcripts of stenographic notes of the examination of the prosecution witness Danilo Sause, reveal no such inconsistency alleged by accused-appellant. The testimony of Danilo establishes with moral certainty the presence of accused-appellant at the scene of the crime. On direct examination, he testified:

Prosecutor Mendoza: Now, when you reached that part which according to you is that shed which has no walls what did you see?

A:

I saw the victim lying supine and bloody x x x x

Q:

After you saw Mr. Bravo lying there bloody what happened next, if any?

A:

Before entering our house I saw him, (Witness pointing to accused Verino) at the back of my house just below the light.

Q:

What was he doing there when you saw him?

A:

He was standing holding a gun, wearing gray jacket with standing collar and wearing a hat.

Q:

You said he was standing under the light, where is that light located?

A:

I placed the light attached to the roof at the back of my house.

Q:

Will you please tell this Court what kind of light was that. Was that coming from a fluorescent lamp or bulb?

A:

Electric bulb.

Q:

What was the wattage of that light which you placed?

A:

One hundred watts.

Q:

How far was Verino from where you were at the time when you saw him holding the gun?

A:

More or less ten meters.

Q:

After you saw him at that distance what happened next?

A:

He stepped down towards the sapa or stream x x x [10]

On cross-examination, he stated:

Atty. de Dios: When you reached your house, according to you, who were the first persons you saw?

A:

I first saw the two persons who ran away.

Q:

When you saw them running their backs or behind turned against you?

A:

Yes, sir.

Q:

After you saw these two persons with their backs turned against you what else did you see thereafter? x x x x

A:

David Afable and Medes Madredejos.

Q:

What were these two persons exactly doing when you saw them?

A:

They were also looking at the two persons who ran away.

Q:

Where were they when you saw them in relation to your house?

A:

Right in front of the door of my house x x x x

Court: Who were these persons you first saw, the two persons who ran away or the two persons who were right in front of the door of your house?

A:

I almost saw them at the same time, your Honor x x x x

Atty. de Dios: When you saw these two persons who according to you were running away and their backs turned against you, where did they proceed.

A:

Going up to the highway x x x x

Court:

You did not see the faces of those two who ran away?

A:

I did not see their faces.[11]

The prosecution sought to clarify during the re-direct examination the seemingly contradictory statements made by Danilo:

Prosecutor Mendoza: Mr. Witness, please tell us which is true of your statement that you saw Rolly Verino under that light at the back of your house ten meters away from you or that you saw him the person running away with Carlito Bulan at a distance of fifteen to twenty meters away from where you were standing on that night? x x x x

A:

The statement I gave a while ago that I saw him with his back against me.

Q:

Why did you say that he was with Carlito Bulan when you saw them run away from your house at the distance of fifteen to twenty meters?

A:

Because it is the police who committed an error.

Q:

And when for the first time did you notice this error?

A:

When they gave a copy of that statement to me but a copy of which was already forwarded to the municipal trial court.[12]

The statements made by Danilo Sause show that he was consistent in identifying accused-appellant as the person he saw at the scene of the crime. Sause's categorical statement at his direct examination that he saw Rolly Verino at the back of his house holding a gun was not contradicted by his statement during cross-examination that he saw two (2) men whom he did not recognize run away from his house. In fact, his testimony is consistent with the theory that three (3) armed men shot and killed Reynal S. Bravo.

The question of inconsistency arose from the sworn statement executed by Danilo Sause before the police.[13] Inconsistencies between the testimony and the sworn statement were explained to be due to the fact that affidavits are generally not prepared by the affiants themselves but by others and affiants are only made to sign them.[14] Certain discrepancies between declarations made in an affidavit and those made at the witness stand seldom discredit the declarant.[15] Sworn statements, taken ex parte, are almost always incomplete and often inaccurate for various reasons, sometimes from partial suggestion or for want of suggestion and inquiry.[16] They are generally inferior to the testimony of the witness given in open court.[17] In other words, whenever there is inconsistency between an affidavit and the testimony of a witness in court, the testimony commands greater weight.[18]

Accused-appellant also alleges that in Danilo Sause's testimony, there is a five (5)- minute lapse from the first gunshot which he heard, until he ran to his house. The five (5)-minute lapse is alleged to be such a considerable amount of time that he could not have possibly found anyone of the culprits upon reaching his house.[19] It seems, however, that such allegation is only a misinterpretation or misreading of the testimony of witness Danilo

Sause. Nowhere in the transcripts of stenographic notes is it stated that Danilo waited for five (5) minutes after hearing the first gunshot before he ran to his house. Instead, what the records show is that Danilo stayed at Juan Bravo's house for around five (5) minutes before he heard the first gunshot.[20]

The other pieces of circumstantial evidence relied upon by the trial court have also been duly proved, and were not controverted by the defense. The testimony of Virginia Bravo established that her husband executed a statement in connection with the murder case of one Vitaliano Maso where he was a witness,[21] the ante-mortem statement of her husband naming the three (3) accused as the ones who shot him,[22] and the statement that a week before the incident, her husband had confided to her that he had received threats against his life from the same three (3) accused.[23] That Carlito Bulan and Jerry Ibabao disappeared without any explanation is a fact, since they have eluded arrest and the case against them has been archived.

Circumstantial evidence is considered sufficient when the facts from which the inferences are derived are themselves duly proved.[24] In the case at bar, the prosecution has established accused-appellant's culpability through the aforementioned circumstances. Those circumstances taken together lead to no other conclusion than that he is guilty.

On the other hand, accused-appellant's defense is basically alibi.[25] Alibi is a weak defense and cannot overturn the positive identification by the prosecution witness of the assailant. For alibi to prosper, it must be shown that the accused was at another place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission.[26] In the case at bar, it has been determined from the testimonies of the defense witnesses Jaypee de Guzman and Martin Ibabao that the distance from accused-appellant's house to the scene of the crime is more or less one hundred (100) meters.[27] Accused-appellant's alibi does not satisfactorily show that it was physically impossible for him to have participated in the shooting.

However, we disagree with the trial court that treachery attended the commission of the crime. The trial court based this finding on the testimony of defense witness Charlene Bulan. While finding that her testimony was negative and self-serving, at the same time the trial court stated that the same testimony "established the cold-blooded manner in which Reynal Bravo was slain." [28] The rule in criminal cases is that the burden is on the prosecution to prove beyond reasonable doubt the essential elements of the offense with which the accused is charged. It must do so on the strength of its own evidence and not merely rely on the weakness of the defense.[29]

In the case at bar, the prosecution failed to present any proof as to the manner the attack commenced or how the act which resulted in the victim's death unfolded. The evidence presented by the prosecution only proved the events after the attack had happened. Hence, treachery cannot be appreciated. Nor was evidence presented to establish the alleged circumstances of evident premeditation and abuse of superior strength. In the absence of specific evidence proving these qualifying circumstances, the crime committed is simple homicide, not murder.

Under Art. 249 of The Revised Penal Code, homicide is punished by reclusion temporal. Applying the Indeterminate Sentence Law, the minimum penalty to be imposed is prision mayor, in any of its periods, being the penalty next lower in degree. There being no aggravating or mitigating circumstances, the imposable penalty ranges from six (6) years and one (1) day to twelve (12) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of reclusion temporal, medium, as maximum.

WHEREFORE, the Decision appealed from is MODIFIED. Accused-appellant Rolly Verino is found guilty instead of homicide and is sentenced to an indeterminate prison term of eight (8) years two (2) months and ten (10) days of prision mayor medium, as minimum, to fourteen (14) years eight (8) months and twenty (20) days of

reclusion temporal medium, as maximum, and ordered to pay the heirs of Reynal S. Bravo P8,500.00 as actual damages, P50,000.00 as death indemnity and another P50,000.00 as moral damages. No costs.

Meanwhile, let an alias warrant issue against the accused Carlito Bulan and Jerry Ibabao a.k.a. "Alias" Ibabao for their immediate arrest so that this case against them may finally be terminated.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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- [1] Decision penned by Judge Lorenzo R. Silva, Jr., RTC-Br. 3, Balanga, Bataan; Original Records, pp. 172-182.
- [2] Appellant's Brief; Rollo, p. 61.
- [3] See Information; Original Records, p. 1.
- [4] Appellee's Brief; Rollo, pp. 75-78.
- [5] Appellant's Brief; Rollo, pp. 59-61.
- [6] Id, pp. 61-62.
- [7] Id, pp. 62-63.
- [8] Id., p. 63.
- [9] People v. Bantilan, G.R. No. 129286, 14 September 1999, 314 SCRA 380, 395.
- [10] TSN, 8 July 1997, pp. 9-10.
- [11] Id., pp. 27-28, 30.
- [12] Id., pp. 33-34.
- [13] Exh. "1;" TSN, 8 July 1997, pp. 31-32, 36.
- [14] People v. Amazon, G.R. Nos. 136251, 138606 and 138607, 16 January 2001.
- [15] People v. Seduco, G.R. No. 130643, 16 January 2001.
- [16] People v. Abrera, G.R. No. 109169, 12 December 1997, 283 SCRA 1.
- [17] People v. Silvestre, G.R. No. 127573, 12 May 1999, 307 SCRA 68.
- [18] People v. Ortiz, G.R. No. 133814, 17 July 2001; People v. Estorco, G.R. No. 111941, 27 April 2000, 331 SCRA 38.
- [19] Appellant's Reply-Brief; Rollo, p. 95.
- [20] TSN, 8 July 1997, p. 25.
- [21] TSN, 18 August 1997, pp. 53-54.
- [22] TSN, 22 July 1997, p. 46; TSN, 18 August 1997, p. 58.
- [23] Id, pp. 40-42; Id, p. 53.
- [24] People v. Solis, G.R. No. 138936, 30 January 2001.

[25] Appellant's Brief; Rollo, pp. 60-61.

[26] *People v. Lopez*, G.R. No. 119380, 19 August 1999, 312 SCRA 684, 697; *People v. Domingo*, G.R. No. 104955, 17 August 1999, 312 SCRA 487, 499.

[27] TSN, 7 October 1997, p. 11; TSN, 21 October 1997, p. 13.

[28] See Note 1; Original Records, p. 9.

[29] *People v. Villagonzalo*, G.R. No. 105388, 18 November 1994, 238 SCRA 215, 233.

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