

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR ROBLES Y COMBATE, ACCUSED-APPELLANT.

G.R. No. 136731. January 18, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated April 14, 1998, of the Regional Trial Court, Branch 12, Lipa City, finding accused-appellant Cesar Robles y Combate guilty of murder and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the heirs of Antonio Lumbera in the amount of P50,000.00 for his death, and to pay to the said heirs the amount of P44,000.00 as actual damages, P20,000.00 as moral damages, and the costs.

The information[2] against the accused-appellant alleged:

That on or about the 4th day of April, 1987 at about 11:30 a.m. at P. Torres Street, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with bladed weapon (balisong), with intent to kill, without justifiable cause, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault and stab with said deadly weapon one ANTONIO LUMBERA suddenly and without warning, thereby inflicting upon the latter stab wound on the abdomen which directly caused his death.

CONTRARY TO LAW.

When arraigned, accused-appellant pleaded not guilty,[3] where-upon trial was held.

The prosecution presented as witnesses Naxinsino Lumbera, the attending physician Dr. Nemesio K. Villa, and Josefa Robles. Accused-appellant testified in his own behalf.

Lumbera is a nephew[4] of the deceased. He testified that on April 4, 1987, at 11:30 a.m., he was at a jeepney terminal on P. Torres St., Lipa City, waiting for a ride home to San Francisco, Lipa City. According to him, he saw the victim Antonio Lumbera hanging on to the rear portion of a jeepney which was bound for San Celestino when accused-appellant Cesar Robles came from behind and stabbed him (the victim) once on his right chest with a balisong and then ran away.[5] Lumbera claimed he was four meters away from the victim when the incident happened. According to him, his uncle fell to the ground and was later taken to the Villa Hospital in Lipa City by other onlookers. After going to the hospital, he went to the barrio to inform their relatives of the incident.[6]

Dr. Nemesio Villa attended to the victim. The victim was operated on, but he went into cardiac arrest and died shortly thereafter.[7] Dr. Villa testified ten years after the incident. For this reason, he said that in testifying he was relying on what remained of the medical records of the case and that, based on these records, the victim died of two stab wounds: one on the left chest wall and the other at the back, to the left of the posterior mid-line.[8]

The victim's widow, Josefa Robles, testified as to the amount spent on funeral expenses. However, all she could present was a list she dictated to her daughter. She could not show any receipt as proof of the alleged transactions.

As already stated, accused-appellant testified in his defense. He denied having killed Antonio Lumbera. He claimed that at 7:30 in the morning on April 4, 1987, he was in Dallas Mountain in Labo, Camarines Norte, mining for gold. His daily schedule was going home to Barangay Masalong, Labo, Camarines Norte at 11:30 for lunch and returning to the mine at 1:30 in the afternoon.[9] Accused-appellant claimed that to go from Labo, Camarines Norte to Lipa City and back would take about one day of travel.[10]

Accused-appellant claimed that he and Naxinsino Lumbera, the sole eyewitness, were not in good terms. According to accused-appellant, Naxinsino harbored some resentment against him because Naxinsino used to buy coconuts harvested from the land of accused-appellant's father, but because he was unable to pay a huge debt incurred in 1996, accused-appellant took his place as buyer of coconuts.

On April 14, 1998, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, the court finds the accused, CESAR ROBLES y COMBATE, guilty beyond reasonable doubt, as principal by direct participation, of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code and sentences him to suffer the penalty of Reclusion Perpetua, to indemnify the heirs of Antonio Lumbera in the amount of P50,000.00 for his death, to pay the amount of P44,000.00, as actual damages, to pay the amount of P20,000.00 as moral damages and to pay the costs.[11]

Accused-appellant contends that the trial court erred: (1) in giving credence to the testimony of Naxinsino Lumbera; (2) in rejecting the defense of alibi interposed by him which is more credible; and (3) assuming arguendo that accused-appellant killed the victim, in holding that there is sufficient evidence to prove that the killing was attended by the qualifying circumstance of treachery so as to render him liable for murder.

We find this appeal to be well taken.

First. Naxinsino Lumbera's testimony says too little too late. Lumbera did not give any statement to the police despite the fact that he allegedly saw the killing of his uncle. For ten years he kept quiet about the incident. Although he explained it was because he was afraid, there is no evidence that accused-appellant or anyone acting for the latter ever threatened Lumbera.

The Solicitor General argues that the natural reluctance of a witness to get involved in a criminal case and to provide information to the authorities is a matter of judicial notice. He cites the decision in *People v. Villanueva*,^[12] in which it was held that an eyewitness account cannot be disregarded by reason of the delay in its reporting so long as the delay is justified. He also invokes the ruling in *People v. Villamor*^[13] that fear of reprisal is a sufficient explanation for the delay of a witness in divulging what he knows about the commission of a crime.

However, there are material differences between the cases cited and the case at bar. In *Villamor*, in which the witness took four years to disclose what he knew of the crime, it was shown that he came forward when accused-appellant was arrested and charged. On the other hand, in *Villanueva* the witness testified one year after the incident owing to fear of the two accused who were members of the police.

In the foregoing cases, the Court noted the straightforward testimonies of the witnesses which were consistent with the physical evidence. The report of the medico-legal expert regarding the nature and location of the wounds sustained by the victims confirmed the testimony of both witnesses. But, in this case, the physical evidence and the testimony of the attending physician are inconsistent with the testimony of the alleged eyewitness. Thus, Lumbera testified that accused-appellant struck the victim once in his right chest before running away. However, the attending physician testified based on the medical records that the victim died of two fatal stab wounds, one inflicted on the lower left chest wall penetrating the abdominal cavity and the other on the back, to the left of the

posterior mid-line.[14]

Even if Naxinsino Lumbera only mistook the location of the stabbing and the number of wounds inflicted on the victim, his account of the events still is highly suspect. The assailant, whom Lumbera said came from behind, would have to be in a very awkward position to inflict such wounds as the victim was hanging on from the rear portion of a running jeepney.[15]

On the other hand, Dr. Villa himself, when asked to tell the court the position of the victim in relation to the assailant, said: "The assailant if right handed could be in front of the victim and with his right hand he could possibly stab the victim in his left side because I am not a witness to the actual event, it is possible also he could be on the side or even to the left or back if he twist(s) his right hand and stab his side it is very difficult for me to say which one."[16]

As no other witness was presented to prove that accused-appellant committed the offense charged, his conviction by the trial court must be considered without any basis.

Second. We note in passing an affidavit executed by one Nolito Bautista on April 20, 1987 which tends to corroborate the testimony of Naxinsino Lumbera. However, this affidavit was not offered in evidence, nor was Bautista presented as a witness. The affidavit is thus hearsay,[17] and, what is more, cannot be considered in this case.

That the affidavit formed part of the record of the preliminary investigation does not justify its being treated as evidence because the record of the preliminary investigation does not form part of the records of the case in the Regional Trial Court, Branch 12. To be considered part of the records of this case, the record of the preliminary investigation must be introduced as evidence during trial.[18] The prosecution having failed to present Nolito Bautista as a witness, his sworn statement given during the preliminary investigation is inadmissible and deserves no consideration at all.

Third. Accused-appellant's testimony is not without inconsistencies. When he testified on February 2, 1998, he could recall with certainty all that he did more than ten years before, on April 4, 1987, although nothing spectacular was supposed to have occurred. And yet when asked about other matters, such as when he changed residences, he had a very poor recollection of such dates and events. His alibi is not entitled to credit, as he presented no one to corroborate his claim that, at 11:30 a.m., on April 4, 1987, he was in Labo, Camarines Norte working in the mines.

Nevertheless, having ascertained the affidavit of Nolito Bautista to be inadmissible, and considering the conflicting testimonies of prosecution witnesses Naxinsino Lumbera and Dr. Nemesio Villa, we hold that the prosecution failed to present sufficient evidence to warrant the conviction of accused-appellant. Our legal culture demands the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty, or even property. It is not sufficient for a conviction that the evidence establishes a strong suspicion or a probability of guilt. Before an accused can be convicted, the hypothesis of his guilt must flow naturally from the facts proved and must be consistent with all of them.[19]

WHEREFORE, the decision of the Regional Trial Court of Lipa City, Branch 12, finding accused-appellant Cesar Robles y Combate guilty of murder and sentencing him to suffer the penalty of reclusion perpetua is REVERSED and accused-appellant is ACQUITTED on the ground of reasonable doubt.

The Director of the Bureau of Prisons is hereby directed to forthwith cause the release of accused-appellant unless the latter is lawfully held for another cause and to inform the Court accordingly within ten (10) days from receipt hereof.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Vicente F. Landicho.

[2] Rollo, p.5.

[3] Records, p. 20.

[4] TSN, p. 4, Feb. 2, 1998. Naxinsino Lumbera claimed that he and the deceased were first cousins. However, accused-appellant, the victim's brother-in-law, testified that Naxinsino Lumbera's father and the deceased were brothers.

[5] TSN, pp. 1-13, June 23, 1997.

[6] Id., pp. 14-16.

[7] TSN, pp. 1-4, Dec. 2, 1997.

[8] Id., pp. 5-6.

[9] TSN pp. 4-7, Feb. 2, 1998.

[10] Rollo, p. 49.

[11] Id., p. 20.

[12] 284 SCRA 501 (1998).

[13] 284 SCRA 184 (1998).

[14] TSN, p. 5, Dec. 2 1997.

[15] TSN, p. 12, June 23, 1997.

[16] TSN, p. 9, Dec. 2, 1997.

[17] Now Rule 112, §8(b) of the Revised Rules of Criminal Procedure.

[18] *People v. De la Iglesia*, 241 SCRA 718 (1995).

[19] *People v. Morada*, 307 SCRA 362 (1999).

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