

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JURRIE DUBRIA, ACCUSED-APPELLANT.

G.R. No. 138887. September 26, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision[1] of the Regional Trial court of Iloilo City, Branch 23, finding accused-appellant guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

The information[2] against accused-appellant alleged:

“That on about September 30, 1996, in the Municipality of Maasin, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a long homemade firearm and a sharp instrument with treachery and evident premeditation, with deliberate intent and decided purpose to kill, did then and there willfully, unlawfully, and feloniously attack, assault, shoot and hack one Patricio Calambro, Jr. with said weapons he was then provided, hitting and inflicting upon the latter, wounds on the different parts of his body which caused his death thereafter.

CONTRARY TO LAW.”

Accused-appellant pleaded not guilty to the charge[3], whereupon trial on the merits commenced.

The prosecution presented three witnesses, namely Dr. Tito Doromal, Virgilio Medina, and Norma Calambro.

The first witness for the prosecution was Dr. Tito Doromal, the medico-legal officer who conducted the autopsy on the body of Patricio Calambro, Jr. For this purpose, he prepared an autopsy report[4] that contained his findings. He testified that the victim suffered a hack wound, located on the lateral portion of his left eye extending to the back portion of his left ear, and seven (7) pellet wounds.[5] He stated that a shotgun probably caused the pellet wounds. Of these wounds, he considered two as fatal.[6] He estimated that the distance between the assailant and the victim was about two to three meters.[7]

Virgilio Medina testified that in the afternoon of September 30, 1996, he and the victim Patricio Calambro, Jr. were walking from the Poblacion of Maasin, Iloilo towards the watershed area in Sto. Nagpo-on, Maasin, Iloilo.[8] He claimed that the victim was fifty (50) meters ahead of him when he witnessed the fatal shooting of Calambro. He heard a shot and he saw the victim immediately spin around. He then heard another shot and afterwards, he saw Calambro fall to the ground. Immediately afterwards, he saw accused-appellant come out from the place where he was hiding on the left side of the road. He noticed that accused-appellant was holding a bolo and had a rifle (a long barrel “pugakhan”) slung around his shoulder. He then saw accused-appellant hack the victim on the left ear with his bolo.[9] He estimated that the hiding place of accused-appellant was two to three meters away from the victim. He claimed that he was able to recognize accused-appellant as they were barriomates and he had known him since childhood.[10] When the shooting and hacking was over, he saw

accused-appellant fleeing towards the forested area. As he was also afraid for his life, he ran straight to his house after the incident and he did not anymore check on the condition of Calambro. At his house, he immediately informed his wife that accused-appellant Jurrie Dubria had shot Patricio Calambro, Jr.[11] It was his wife who informed the parents of the victim that their son had been killed. He also informed the trial court that prior to the incident, he was a witness for Patricio Calambro, Jr. in a case which accused-appellant had earlier filed against the victim. The said case had earlier been dismissed because accused-appellant failed to appear in court.[12]

The next witness for the prosecution was Norma Calambro, the mother of the victim. She testified that she was also the aunt of accused-appellant as the latter was the son of her brother. She recounted that at about 3:00 in the afternoon of September 30, 1996, she went to the public market of Maasin, Iloilo to do some marketing and to meet her son, Patricio Calambro, Jr. She failed to meet her son at the marketplace and so she went back to her house.[13] At around 5:30 p.m. of the same day, the wife of Virgilio Medina went to her house and informed her that accused-appellant Dubria had shot her son. Thereafter, she went to personally meet Virgilio Medina who told her to go to the crime scene to check if her son was still alive.[14] She arrived at the crime scene at around 6:00 in the evening where she saw that her son was still alive but gasping for breath. At around 8:00 in the evening, she brought her son back to her house but the victim had already died by the time they arrived at the house.[15] She reported the shooting to the police authorities and the incident was entered into the police blotter of the Maasin Police Station.[16] She further testified that she spent a total of P18,956.80 in connection with the death and burial of her son, of which only P7,615 was properly receipted.[17]

For its part, the defense presented the testimonies of Charles Marticular, Rodrigo Capalla and accused-appellant Jurrie Dubria.

Charles Marticular, a farmer and a resident of Brgy. Bugang, Alimodian, Iloilo, testified that accused-appellant could not have committed the crime as on September 30, 1996, he was with accused-appellant in the town proper of Alimodian, Iloilo. He recalled that at around 8:00 a.m. of that day, he and accused-appellant, were planting bananas at the Katin-aran Center at the Poblacion of Alimodian, Iloilo. He claimed that they planted bananas until 5:00 o'clock p.m. of the same day together and at no instance was accused-appellant ever away from him.[18] After working, he claimed that they just ate their supper and slept. He further stated that he and accused-appellant worked in the banana plantation from September 25 to October 10, 1996.

He estimated that Brgy. Bugang, where he resides, is twenty-five (25) kilometers away from the Katin-aran Center in the poblacion of Alimodian and if you take public transportation, it would take about one (1) hour to travel the distance. He added that Sto. Nogpo-on, Maasin, Iloilo, where the shooting incident took place, is about ten (10) kilometers away from Brgy. Bugang and that there was no available means of transportation plying between the two barangays.[19]

On cross-examination, Charles Marticular averred that Sto. Nogpo-on, Watershed Area, Maasin, Iloilo is thirty-five (35) kilometers from the poblacion of Alimodian and the same can be negotiated in one (1) hour travel via public transport. On the other hand, Sto. Nagpo-on is about ten (10) kilometers from Brgy. Bugang which can be negotiated by walking in about one and a half (1 ½) hours.[20] He admitted that he knew the victim, Patricio Calambro, Jr. but that he only learned of the latter's death on October 15, 1996.[21] He asserts that Jurrie Dubria stayed with him at Katin-aran continuously from September 1996 up to October 1996.[22]

For his part, witness Rodrigo Capalla attempted to prove that prosecution witness Virgilio Medina could not have been at the crime scene on the date of the incident as the latter was in Antique. He testified that he knew Virgilio Medina as he was the brother of his brother-in-law Rolando Medina and that he was his barriomate.[23] He claimed that a week before September 30, 1996, he met with Virgilio Medina who invited him to accompany him

to Antique in order to harvest palay. He did not accept the invitation of Virgilio Medina but as far as he knew, Medina, had indeed gone to Antique for the harvesting job.[24] He alleged that on September 30, 1996, he had occasion to speak with the wife of Virgilio Medina, a certain Gloria Calambro, who told him that Virgilio Medina was still in Antique harvesting palay.[25]

The last witness for the defense was the accused-appellant himself, Jurrie Dubria. He testified that from 7:00 to 11:00 o'clock in the morning and from 1:00 to 5:00 o'clock in the afternoon on September 30, 1996, he was at the poblacion of Alimodian, Iloilo, planting bananas at the Katin-aran Center of the Central Philippine University.[26] After working, he went home to his boarding house in front of the poblacion in Alimodian, Iloilo. He estimated that Brgy. Bugang, where he lives, is more than twenty (20) kilometers away from the poblacion of Alimodian and the distance can be negotiated in around one and a half hours via public utility jeepneys which usually make two (2) trips per day. On the other hand, he estimated that the crime scene at the Sto. Nogpo-on Watershed Area, Maasin, Iloilo is more than ten (10) kilometers away from Brgy. Bugang. As such, it was about thirty (30) kilometers away from the poblacion of Alimodian, Iloilo. He stated that it would take more than two hours travel time if you were to go to the crime scene from the poblacion of Alimodian passing through Brgy. Bugang.[27]

In answer to the questions propounded by the trial court, accused-appellant Dubria denied having shot with a homemade firearm and hacking the victim Patricio Calambro, Jr. with a bolo. He also stated that he did not have any quarrel with prosecution witness Virgilio Medina prior to September 30, 1996 but he opined that Virgilio Medina suspected him as being one of the assassins of latter's father.[28]

On May 22, 1998, the trial court rendered a decision[29] finding accused-appellant guilty of the crime of murder. The dispositive portion of the said decision states as follows:

"WHEREFORE, premises considered, JUDGMENT is hereby rendered finding accused Jurrie Dubria GUILTY beyond reasonable doubt of the crime of Murder and there being no aggravating or mitigating circumstance attendant to the commission thereof hereby sentences the said accused to suffer the penalty of Reclusion Perpetua pursuant to Section 6 of Republic Act 7659 amending Article 248 of the Revised Penal Code further condemning the aforementioned accused to indemnify the heirs of the deceased Patricio Calambro, Jr. P30,000 moral damages, P50,000.00 death compensation, and P7,615.00 actual damages.

SO ORDERED."

Hence, this appeal where accused-appellant raises the following assignment of errors[30] :

I.

THE LOWER COURT ERRED IN DISREGARDING MATERIAL INCONSISTENCIES IN THE TESTIMONIES OF ALLEGED EYEWITNESS VIRGILO MEDINA.

II.

THE LOWER COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF ALLEGED EYEWITNESS VIRGILIO MEDINA.

III.

THE LOWER COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT.

We affirm the conviction of accused-appellant.

In convicting accused-appellant for the killing of Patricio Calambro, Jr., the trial court relied on the testimony of

Virgilio Medina who positively declared that herein accused-appellant shot the victim Patricio Calambro, Jr. with a homemade shotgun and then hacked him on the head with a bolo. Thus:

“DIRECT EXAMINATION BY PROSECUTOR VENTANILLA:

Q:

Mr. Virgilio Medina, can you recall where were you (sic) in the afternoon of September 30, 1996?

A:

Yes, sir.

Q:

Where were you on that particular date and time?

A:

I was walking together with Onyok Calambro, Jr. going towards the watershed area, Maasin.

Q:

When you said Onyok Calambro you are referring to Patricio Calambro, Jr.?

A:

Yes, sir.

Q:

From where did you come from?

A:

From Maasin.

Q:

Are you referring to the Poblacion of Maasin?

A:

Yes, sir.

Q:

While you were together with this Patricio Calambro, Jr. at Sitio Nogpu-on, Watershed (sic) area, Maasin, could you still recall whether an unusual incident happened?

ATTY. JALBUNA:

Objection, the question is leading, Your Honor.

COURT:

Let the witness answer.

WITNESS:

A:

Yes, sir.

PROSECUTOR VENTANILLA:

Q:

What was that incident about?

A:

That was the time when Jurrie Dubria shot Patricio Calambro, Jr.

Q:

You said you were walking with the deceased Patricio Calambro, Jr. along the watershed area of Maasin. How far were you from the deceased?

A:

A distance of about 50 meters.

Q:

Because you said you were about 50 meters distant from the deceased, who was ahead between the two (2) of you while walking along the watershed area?

A:

Patricio Calambro, Jr. was ahead of me.

Q:

In other words Mr. Witness, you were behind Patricio by 50 meters?

A:

Yes, sir.

Q:

You said that it was at this juncture while you were walking that this Jurrie Dubria shot the deceased in this case, Patricio Calambro, Jr. Can you tell us or can you describe to us how this Jurrie Dubria shot Patricio Calambro, Jr.?

A:

Yes, sir.

Q:

Please tell that to the Honorable Court?

A:

While we were walking I heard a shot and saw immediately Patricio Calambro spinning around. Seconds later, I heard another shot and that was also the time when Patricio Calambro fell on the ground. Immediately, I saw Jurrie Dubria coming out from the place where he was hiding, holding a bolo and with a firearm slinged on this (sic) shoulder, he also hacked Patricio Calambro with his bolo.

Q:

In what part of the body was this Patricio Calambro, Jr. hit when this Dubria, you said, hacked him?

A:

On his left ear.

INTERPRETER:

(Witness pointing to his left ear)

PROSECUTOR VENTANILLA:

Q:

Mr. Witness, you said you first heard one (1) shot and then followed by another shot. What is the time interval between the first shot and the second shot?

A:

Less than one (1) second when another shot was heard. The second shot immediately followed the first shot and that was also the time when Patricio Calambro spinned (sic) around.

COURT:

Q:

Can you tell the Court what is the approximate distance between the place where Patricio “Onyok” Calambro, Jr. was standing when he was shot, in relation to the place where the accused emerged from his hiding place after the second shot?

A:

Between two (2) to three (3) meters, Your Honor.”[31]

This testimony of Virgilio Medina is supported by the testimony and autopsy findings of Dr. Tito Doromal. Per his findings, Dr. Doromal declared that the victim suffered from wounds caused by a bladed weapon and a shotgun. Furthermore, Dr. Doromal also opined that the distance between the assailant and the victim when the shots were fired was two to three meters.[32]

In support of his first assigned error, accused-appellant asserts that there were material inconsistencies in the testimony of Virgilio Medina, particularly if taken together with the testimony of the mother of the victim and with his own affidavit. Specifically, accused-appellant points out that the testimony of Medina and the victim’s mother, Norma Calambro, differed as to the whereabouts and activities of the victim prior to the shooting incident. This inconsistency, accused-appellant argues, is material to the determination of the case as it was highly impossible for the accused-appellant to have waited in ambush for the victim when the victim’s own mother was not even sure of the whereabouts of her son on the day of the incident. With regard to the affidavit of the Virgilio Medina, accused-appellant pointed out that in the said affidavit, Medina stated that a certain Nelson Capalia also witnessed the shooting incident. On the other hand, in his testimony before the trial court, he denied ever seeing Nelson Capalia near the crime scene.

There is no merit in the argument of accused-appellant.

The alleged inconsistencies between the testimonies of prosecution witnesses Virgilio Medina and Norma Calambro are neither substantial nor of such nature as to cast a serious doubt on their credibility. We fail to see how the inconsistency as to the whereabouts of the victim prior to the shooting incident would have any decisive bearing on the case. This alleged inconsistency does not alter the fact that an eyewitness positively identified accused-appellant as the person responsible for the death of Jurrie Dubria. The established rule of evidence is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or the weight of their testimony.[33]

With respect to the alleged inconsistency between the affidavit executed by Virgilio Medina and his testimony in open court, suffice it to say that it is a matter of judicial experience that an affidavit or sworn statement, being

taken ex parte, is almost always incomplete and often inaccurate.[34] It lacks the directness of testimony given in response to questioning, either by the prosecutor or by the defense counsel.[35] For this reason, it is generally considered inferior to testimony given in open court.[36]

Accused-appellant likewise puts into issue the alleged bias of witness Virgilio Medina in pinpointing accused-appellant as the author of the crime. He points out that the testimony of Virgilio Medina bared the fact that the said witness was motivated by ill motives and grudges in testifying against the accused. Specifically, he points to the statements made by the said witness declaring that the accused-appellant was his enemy[37] and that accused-appellant was responsible for the theft of his rice crop.[38]

Again there is no merit in this contention. The admission of Virgilio Medina that accused-appellant was his enemy does not prove that the witness contrived his account to get even with accused-appellant. His declaration does not imply that he was moved by a desire for vengeance into making up the story that accused-appellant shot the victim. In fact, the witness's honesty in admitting his enmity with accused-appellant should be counted in his favor.[39]

While motive, bias or interest of the witness in testifying affects his credibility, the presence of personal motives on the part of the witness to testify against accused-appellant should be supported by satisfactory proof in order that his testimony may be considered biased.[40] Accused-appellant failed to discharge this burden. It is settled that where there is insufficient evidence to indicate that a principal prosecution witness was actuated by improper motive, the presumption is that he was not so actuated and that he would not prevaricate and cause damnation to one who has brought him no harm or injury.[41] Hence, his testimony should be entitled to full faith and credit.

The trial court correctly held that accused-appellant's defense of denial and alibi failed to pass the test of credibility. For the defense of alibi to be appreciated, it is not enough to prove that the accused was somewhere else when the offense was committed. It must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission. The rule is settled that for the defense of alibi to prosper, the requirement of time and place must be strictly met.[42]

In the case at bench, accused-appellant failed to prove that his presence at the place where the shooting occurred was physically impossible at the time the incident occurred. Accused-appellant's insistence that on the day of the incident, he was in another barangay thirty-five (35) kilometers and two and one-half hours away from the scene of the crime serves him no useful purpose. The relatively short distance and travel time between the two barangays do not render impossible his presence at the scene of the crime at the time of the incident.

We likewise affirm the finding of the trial court that the crime for which accused-appellant should be convicted for is murder as the killing was attended by treachery. The evidence for the prosecution shows that accused-appellant Jurrie Dubria crouched and hid behind a bush where he waited for the victim to pass by. When the victim was two to three meters away from him, accused-appellant emerged from his hiding place and fired two shots with his firearm. Not satisfied with this initial assault, accused-appellant then hacked the victim with his bolo. These facts show that accused-appellant positioned himself in such a way that he could easily hide himself and thus catch the victim off-guard. Moreover, accused-appellant allowed the victim to come closer at about three to four arms length away from him to make sure that his shots would hit their target. Clearly the requisite elements of treachery were present; namely: (1) the means of execution employed gives the person no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[43]

As the prosecution has not proven any generic aggravating circumstance, other than the qualifying circumstance of treachery, the trial court correctly imposed on accused-appellant the penalty of reclusion perpetua.

We affirm the award of P50,000.00 as indemnity ex delicto, which may be awarded without need of proof other than the commission of the crime. We likewise affirm the award of P30,000 as moral damages and P7,615.00 as actual damages.

We note however that the trial court failed to award damages for the loss of earning capacity of the victim to the heirs of the deceased Patricio Calambro, Jr. The fact that the prosecution did not present documentary evidence to support its claim for damages for loss of earning capacity of the deceased does not preclude recovery of said damages.[44] The testimony of the mother of the victim, Norma Calambro, as to the earning capacity of her husband sufficiently establishes the basis for making such an award. It was established that Patricio Calambro, Jr. was 23 years old at the time of his death in 1996. His average monthly income was P3,000.00.[45] Hence, in accordance with the American Expectancy Table of Mortality that has been consistently adopted by the Court[46], the loss of his earning capacity is to be calculated as follows:

$$\text{Award for} = \frac{2}{3} [80 - \text{age at time of death}] \times [\text{gross annual income} - 80\%(\text{GAI})]$$

Lost earnings

$$= \frac{2}{3} [80 - 23] \times [P36,000.00 - 80\%(P36,000.00)]$$
$$= (38) \times (P7,200.00)$$
$$= P273,600.00$$

As such, accused-appellant should likewise be made to pay the amount of P273,600.00 representing the loss of earning capacity of the deceased.

WHEREFORE, the decision appealed from is MODIFIED. It is affirmed insofar as accused-appellant Jurrie Dubria is found guilty beyond reasonable doubt of the crime of murder and is accordingly sentenced to reclusion perpetua, and accused-appellant is ordered to pay the heirs of the victim Patricio Calambro, Jr., the amount of P50,000.00 as death indemnity, P30,000.00 as moral damages, and P7,615.00 as actual damages. Furthermore, accused-appellant is ordered to pay the additional sum of P273,600.00 for the loss of earning capacity of the victim.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Penned by Judge Tito G. Gustilo.

[2] Rollo, p. 7.

[3] Records, p. 35.

[4] Exhibit "A", Roll of Exhibits, p. 1.

[5] T.S.N., May 13, 1997, pp. 7-9.

[6] Ibid, pp. 18-19.

[7] Ibid, p. 21.

- [8] Ibid, p. 25.
- [9] Ibid, pp. 26-27.
- [10] Ibid, pp. 28-30.
- [11] Ibid, p. 32.
- [12] Ibid, p. 33.
- [13] T.S.N., June 2, 1997, p.27.
- [14] Ibid, p. 28.
- [15] Ibid, pp. 29-30.
- [16] Exhibit “F”; Records, p. 151.
- [17] Ibid, p. 32.
- [18] T.S.N., July 11, 1997, pp. 3-4.
- [19] Ibid, pp. 5-6.
- [20] Ibid, pp. 8-9.
- [21] Ibid, p. 11.
- [22] Ibid, pp. 12-13.
- [23] T.S.N. September 10, 1997, pp. 3-4.
- [24] Ibid, pp. 4-8.
- [25] Ibid, p. 12.
- [26] T.S.N., October 16, 1997, pp. 3-5.
- [27] Ibid, p. 12.
- [28] Ibid, pp. 13-16.
- [29] Rollo, pp. 16-26.
- [30] Rollo, pp. 41-42.
- [31] T.S.N., May 13, 1997, pp. 25-28.
- [32] Ibid, p. 21.
- [33] *People vs. Nicolas*, 241 SCRA 67 (1995).
- [34] *People vs. Atrejenio*, 310 SCRA 299 (1999).
- [35] *People vs. Rivera*, 295 SCRA 99 (1998).
- [36] *People vs. Gutierrez, Jr.*, 302 SCRA 643 (1999).
- [37] T.S.N., June 2, 1997, p. 14.
- [38] Ibid, p. 23.

[39] People vs. Ramos, 260 SCRA 402 (1996).

[40] People vs. Ilao, 296 SCRA 658 (1998); People vs. Cabiling, 74 SCRA 285 (1976).

[41] People vs. Ong Co, 245 SCRA 733 (1995).

[42] People vs. Bahenting, 303 SCRA 558 (1999); People vs. Alberca, 257 SCRA 613 (1996).

[43] People vs. Caisip, 290 SCRA 451 (1998).

[44] People vs. Verde, 302 SCRA 690 (1999).

[45] T.S.N., June 2, 1997, p. 33.

[46] People vs. Dizon, G.R. No. 129893, December 10, 1999.

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