

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR PERUELO, ACCUSED-APPELLANT.

G.R. No. 50631. June 29, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the morning of October 19, 1971, Alex de Guzman, a motorized tricycle driver of Linoc, Binmaley, Pangasinan, was found dead near a fishpond in Maasin, Mangaldan, Pangasinan. The tricycle, he was driving was missing.

The autopsy performed by Dr. Numeriano Presto, Health Officer of Mangaldan, revealed that Alex de Guzman was stabbed with a long bladed weapon on the upper left side of the abdomen. There was a five to six inch-wound on the abdomen which perforated the liver and caused severe blood loss.

For some time, the police authorities of Dagupan City had no clue on the slaying of Alex de Guzman until they apprehended some tricycle drivers, in the course of their "anti-dognapping" campaign when they came across a certain Demetrio Runez on May 9, 1973.

According to police Sgt. Pedro Landingan who took part in the campaign, one of the tricycle drivers told him that Demetrio Runez had something to do with the slaying of Alex de Guzman. And when Sgt. Landingan investigated Demetrio, he revealed the circumstances surrounding the death of de Guzman, and executed a two-page sworn statement dated May 9, 1973, Exh. "E".

Exhibit "E" stated in substance that at around 8:30 in the evening of October 18, 1971, Demetrio Runez was invited by Salvador Peruelo and one "Teofing" to Pol's Place in Dagupan City; that thereafter Teofing invited him to Bonuan for a good time; that at 10:30 o'clock they took a tricycle, he sat behind the driver and Peruelo and "Teofing" were in the side car; that they reached Mardi Grass Night Club, whereupon he noticed that the driver of the tricycle was Alex de Guzman; that they proceeded to Maasin; until he noticed that they were in a fishpond; that they stopped and his two companions alighted; that "Teofing" went into the motion of urinating, but instead of urinating, "Teofing" produced a knife, went to Alex de Guzman and stabbed the latter; that Salvador Peruelo, armed with a blunt weapon struck Alex de Guzman causing the latter to fall to the ground; that he left the place and walked towards Dagupan City; that while he was walking "Teofing" and Salvador Peruelo overtook him in the same tricycle, then, driven by "Teofing", with Peruelo in the side car; and that he did not report the incident to the police because he was confused and was threatened by "Teofing" not to reveal the incident to anybody.

An information for robbery with homicide dated October 30, 1973, was filed in the Court of First Instance of Pangasinan (Branch XI), charging Salvador Peruelo and two "Does" as follows:

"That on or about the 18th day of October, 1971, in the City of Dagupan, Philippines, and within the jurisdiction of this Court, the above-named accused SALVADOR PERUELO together with JOHN DOE @ 'Teofing' and one PETER DOE, whose real names and identities have not as yet been ascertained, accused SALVADOR PERUELO being then armed with a deadly weapon (dagger), confederating together, acting

jointly and helping one another, and with evident premeditation and treachery and with intent to kill, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the person of ALEX DE GUZMAN, a motorized tricycle driver whom the said accused hired, by stabbing him so suddenly without giving him a chance to defend him-self while on stop riding on his tricycle, while accused JOHN DOE @ 'Teofing' and PETER DOE, stood vigilant and on guard for any eventuality, which caused his death thereafter, and on occasion thereof, the said accused SALVADOR PERUELO, JOHN DOE @ 'Teofing' and PETER DOE, with intent of gain and by means of force and violence, stole, robbed and rode away with the said motorized tricycle taken from the said ALEX DE GUZMAN, the driver, to the damage and prejudice of the heirs of the deceased in the amount of P12,000.00 damages, and other conse-quential damages sustained."

On March 20, 1975, the case was archived, no arrest having been made of Salvador Peruelo, who, it was said could not be found in his address at Mabayan, Olongapo City.

On July 18, 1978, Salvador Peruelo showed up at the police headquarters. He was accompanied by Atty. Roberto Merrera, Municipal Mayor of Binmaley, who presented him to the police.

It turned out that on July 17, 1978, Salvador Peruelo, a waiter in Great China Night Club in Olongapo City, applied with the Olongapo City Police Department for a police clearance in connection with his application for employment in Olongapo Naval Base. When informed that there was a pending case against him in Dagupan City, Salvador Peruelo and his wife, Conchita de Guzman went to Conchita's uncle, Pablo de Guzman in Linoc, Binmaley. Together, they asked the help of Mayor Roberto Merrera, who brought Salvador to the Dagupan City police. Whereupon Salvador Peruelo was detained at the Dagupan City jail.

On July 24, 1978, a certain Federico Moulic was summoned to the police department. Federico Moulic was a caretaker of the fish-pond, near which Alex de Guzman was found dead. He was said to have seen the slaying of de Guzman that evening of October 18, 1971, and recognized the assailants.

Federico Moulic confronted Salvador Peruelo and Demetrio Runez in the investigation section of Dagupan City Police. He pointed at Peruelo as the person who hit the victim at the back with a blunt instrument. Two pictures were taken showing Moulic identifying Peruelo, (Exhs. "C" and "C-2"). He also identified Demetrio Runez, as the one who stabbed the victim. Pictures were also taken of Moulic pointing at Runez (Exhs. "C" and "C-3").

Federico Moulic executed a two-page sworn statement dated July 24, 1978, (Exh. "B"), narrating what he witnessed that evening of October 18, 1971. His testimony, as the lone prosecution eye-witness was but a repetition of this sworn statement.

On October 8, 1978, Salvador Peruelo was arraigned and he pleaded not guilty. So the case which had been filed five years before and archived for more than three years was revived.

During the trial, the information was amended to substitute Demetrio Runez in lieu of "Peter Doe." It appears, however, that Runez was never arrested and tried.

What started in 1971 as an indictment against Salvador Peruelo for robbery with homicide, ended in 1979, with a conviction for murder. Robbery was discarded for lack of evidence of such fact. The killing was denominated as murder qualified by treachery with the aggravating circumstance of despoblado but mitigated by voluntary surrender. Salvador Peruelo's alibi that in the evening of October 18, 1971, he was in his brother's house in Otero, Mabayan, Olongapo City, celebrating with relatives the first birthday of his nephew, Jesus Peruelo, Jr., was rejected.

In its decision of February 21, 1979, the trial court held:

"WHEREFORE, with these considerations, judgment is hereby rendered finding the accused, SALVADOR

PERUELO, guilty beyond reasonable doubt of the crime of MURDER as proven by the evidence and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to indemnify the heirs of the deceased, ALEX DE GUZMAN, in the amount of Twelve Thousand Pesos (P12,000.00). With one-third (1/3) of the costs."

Before Us, Salvador Peruelo seeks acquittal on the ground that his guilt had not been established beyond reasonable doubt. Through his able counsel, Atty. Roberto Merrera, he points out seven interrelated errors committed by the court a quo which for brevity may be summed up as follows: (a) The incriminating testimony of Federico Moulic is weak, unconvincing and unreliable, and does not therefore deserve the credence accorded to it by the trial court; (b) the sworn statement of Demetrio Runez (Exh. "E") should not have been admitted as part of the prosecution evidence, it being hearsay; and (c) his alibi is worthy of belief.

It is clear from the records that the conviction of the accused?appellant was founded solely on the testimony of Federico Moulic.

Federico Moulic who claimed that in the evening of October 18, 1971, he saw how the deceased was assaulted and stabbed by two assailants, showed up at the Dagupan City Police Department on July 24, 1978, executed Exh. "B" and later, testified during the trial that: As a caretaker of his brother-in-law's fishpond, he was in his hut at around 8:00 o'clock that fateful evening when he heard somebody shout. He got his flashlight and went out to investigate. He went to the direction of the shout (south of his hut), and at about 10 meters from the source, he "flashed the beam" of his flashlight towards it. Thereupon, he saw three persons "struggling."

In his own words he narrated what he saw:

ATTY. FERRER:

Q: What were those three persons doing, if any?

A: The three persons were struggling, sir.

Q: About the other one, what was he doing, if any?

A: The third person clubbed one of the protagonist hitting him at the back of the head, sir.

Q: What happened to that person who was clubbed or hit by the other one?

A: He was able to release himself with (sic.) the person struggling, sir. He was able to loss hold from the other one with home (sic.) he was struggling.

Q: After that man who was hit, lossen his hold, what happened next, if any?

A: The other one, stabbed him, sir.

ATTY. FERRER

Q: Who was stabbed, the other fellow who was also hit by the club?

A: Yes, sir.

Q: And who stabbed him, who stabbed that man who was earlier hit with the stone? Who was hit?

A: Their companion, sir.

COURT:

Q: What other companion, the fellow embracing him?

A: Yes, sir.

Proceed.

ATTY. FERRER

Q: After that, what happened next after the stabbing incident, what happened next?

A: He fell down, sir.

ATTY. FERRER:

Q: Who fell down?

A: The person who was stabbed, sir.

Q: Could you tell us what did that man who fell down was stabbed of? (sic). What instrument the man who fell down was stabbed of? (sic.)

A: I cannot remember, sir.

Q: After that man who was stabbed and fell down, what happened next if any? (sic.)

A: They shouted at me, sir.

Q: Who shouted at you?

A: The person who stabbed, sir.

Q: What did you do when he shouted at you?

A: I switch off my flashlight, sir.

Q: And what did you do after you switch off your flashlight?

A: I went nearer to them, sir.

CONTINUING:

I moved back a little bit, sir.

ATTY. FERRER

Q: Why did you moved (sic.) backward?

A: Because they shouted at me, sir.

Q: What did you do if any when you moved backward?

A: I observed them, sir.

Q: And what did you observe if any?

A: They were tying his body, sir.

Q: Who was being tied?

A: The person who was stabbed, sir.

Q: And who were trying him?

A: The person who stabbed him, sir.

Q: And after that, what happened next?

A: Then they boarded the tricycle, sir.

Q: And did you notice where did they proceed when they boarded on the tricycle? (sic.)

A: Yes, sir.

Q: Where did they proceed?

A: They proceeded west, sir.

Q: After that what did you do?

A: I returned to my hut, sir.

Q: How long did you stay in your hut when you returned?

A: Until the next morning, sir. (TSN, pp. 62-66)"

At 6:30 o'clock the following morning, this witness said that he went to the place of the incident and he saw several persons but he could only recall Barangay Captain Atong Gubatan, Trinidad Naboa and Nanding Damaso, and some policemen. He approached By. Captain Gubatan and related to him the incident. When asked if he knew the perpetrators, his reply (to Gubatan) was that he could recognize their faces if he could see them again. He further said that he did not get near the policemen investigating the case.

Federico Moulic described the person who hit the victim as tall and thin with an oblong face, and said that it was the accused-appellant Salvador Peruelo. He also described the one who stabbed the victim as small and dark. He looked at the faces in the courtroom. There were many of them, but he said: "the person is not here, sir."

On Federico Moulic's testimony, the trial court, concluded:

"Under the pertinent evidence, this Court must convict. The prosecution had established guilt beyond reasonable doubt.

But then, the crime proven is that of Murder, not Robbery with Homicide, as charged in the Information. For so it is that evidence is wanting on the fact that the main intention was to rob and on the occasion thereof, death resulted. Rather, Alex de Guzman's death was directly attributable to Salvador Peruelo's acts of concerted aggression. Federico Moulic's testimony in this regard is credibly believable. Doubtlessly, there was treachery. The attack was suddenly made at night and with use of superior strength. Alex de Guzman had no way to effectively repel, much less, evade the aggression. All the odds were against him.

It is inconsequential that Federico Moulic only formally submitted his version of the incident on July 24, 1978. (Exhibits 'B' and series). For so it is that as early as May 9, 1973, Salvador Peruelo was already named as one among the assailants. (Exhibits 'E' and series). But, an extensive investigation could not be achieved. Salvador Peruelo was nowhere to be found. In fact, the warrants of arrest served at his known residence were unavailing. Precisely, for this reason, this case was archived on March 20, 1975.

Even more, on the day after October 18, 1971, Ludovico Moulic already made known to Maasin, Mangaldan Barangay Captain Gubatan that he could establish the assailants' identity in a confrontation. So that, when on July 24, 1978, Salvador Peruelo, while under detention because of this case, was identified, there was no reason for him to complain. (Exhibits 'C' and series). Certainly, Federico Moulic was never shown to entertain an evil motive to implicate Salvador Peruelo. On the contrary, his coming forward days immediately upon Salvador Peruelo's detention, should be commended.

It may be that, under the evidence, Salvador Peruelo hit Alex de Guzman at the back, not stab the victim, as

charged in the Information. But then, cons-piracy was alleged and proven. For Salvador Peruelo was in the company of Demetrio Runez at the time. So that, the act of one is that of the other. More so that evidence along this line never met any serious objections from Salvador Peruelo. Even when Demetrio Runez was named in the Amended Information, Salvador Peruelo never made the slightest outcry. Since then, Demetrio Runez similarly evaded arrest."

On appeal, the findings of the trial court on the credibility of witnesses would not normally be disturbed, in deference to the trial court's peculiar advantage of having observed in the first instance, the demeanor or deportment of the witnesses in giving their testimony. But it has been consistently held that this rule of appreciation of evidence must yield to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt. It is fundamental that an accused is presumed innocent. And this presumption must prevail unless overturned by competent and credible proof.

Evidence to be believed must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. On this, the testimony of Federico Moulic the only person who was supposed to have witnessed the commission of the crime must be tested.

It was said that upon hearing a shout, Federico Moulic went out of his hut, directly to its source. At a distance of ten meters, he focused his flashlight at the source. And, then, by the beam of his flashlight, Moulic watched the unfolding of a violent assault, allegedly by Salvador Peruelo and Demetrio Runez upon the helpless victim.

Moulic's story was just too pat to be true. No man in his normal wits would deliberately approach and view a violent assault being perpetrated by armed assailants, knowing that he himself was actually exposed to the danger of being seen by them and risk possible liquidation. And, yet there was Moulic, unflinching even as he focused his flashlight on what the culprits apparently preferred to commit in the dark.

Equally strange - the culprits seemed unmindful that as they inflicted the fatal blows upon the victim, they were being watched by a probable eye-witness. Following Moulic's story, though, one of them shouted at him. But, what did Moulic allegedly do? When shouted at, he shut off his flashlight and even went nearer the culprits, then moved backward. Moulic, then saw the culprits tie the victim, and thereafter, leave with the latter's tricycle.

It could be seen that Moulic's behavior was utterly unusual. He could have sounded a bit credible, if he said he ran away from the scene as fast as he could. But, to compound it all, this witness only betrayed himself when he said he shut off his flashlight and still saw the culprits tying the victim and then took his tricycle.

If indeed Moulic had seen the entire fateful scenario, would it not be natural for him to approach the victim after the culprits had left? Instead he calmly walked back to his hut, slept until the next morning, as if nothing had happened.

Finally, Federico Moulic claimed that he recognized the assailants and described them in court. He thus pointed at Salvador Peruelo as the tall and thin man with an oblong face who hit the victim with a blunt instrument.

It should be noted that this witness was testifying after more than eight years from the fateful evening of October 18, 1971, which was the first time he allegedly saw the assailants. If this witness had indeed recognized the malefactors there appears no reason why he kept silent for such a length of time.

The natural tendency of an eye-witness to a crime is to report it, and to describe the malefactors to the authorities, at the earliest possible opportunity. According to Moulic's uncorroborated story, he had that opportunity when at 6:30 o'clock of October 19, 1971, he went to the scene of the crime where he saw Maasin By. Captain Atong Gubatan and some policemen investigating the case. But Moulic did not even approach the police investigators. It would be recalled that for some time after the finding of de Guzman's dead body, the police had no clue at all as

to the slaying of the victim.

The trial court found it sufficient that Moulic had made known to By. Captain Gubatan that he (Moulic) "could establish the assailants' identity in a confrontation." But if this witness had indeed recognized the culprits, why did he not describe their appearance to the proper authorities, i.e. the police? His behaviour was unusual for a man who claimed to have witnessed a startling occurrence the previous night and to have recognized the evil-doers. If after a few hours from the occurrence Moulic did not describe the assailants to the authorities, could he now be believed when he described them during the trial after more than eight years?

All told, what is at once revealing of Moulic's incredibility is his claim that appellant Salvador Peruelo struck the victim at the back of the head with a blunt instrument, when Dr. Numeriano Presto who autopsied the victim's body on October 19, 1971, categorically declared that the only wound he found on the victim's body was the fatal stab wound on the abdomen.

To our mind, Federico Moulic's unconvincing and unreliable testimony failed to link appellant Salvador Peruelo to the killing of Alex de Guzman. A conviction based on this testimony alone, must perforce be reversed.

Neither did Exhibit "E" (the two-page sworn statement of Demetrio Runez) strengthen the case of the prosecution. The statement was nothing but hearsay. It did not serve as proof of the facts asserted therein. Runez, the affiant was not presented in court. And so, Salvador Peruelo against whom the statement was admitted in evidence, was not given an opportunity to cross examine him thereon.

Apparently, the prosecution made up for its failure to present Demetrio Runez, by presenting Sgt. Pedro Landingan of the Dagupan City Police who allegedly took Runez' affidavit. Landingan testified that Runez admitted to him that he (Runez) and Salvador Peruelo assaulted the victim. But Landingan's testimony was double hearsay and does not deserve even a slightest consideration.

Attached to the records, Exh. "E" is but a valueless scrap of paper. Unfortunately it influenced the court a quo in its appreciation of Moulic's credibility, (Quoted decision, supra.) It also served as the basis of the information filed against the accused-appellant.

Incidentally, it is noted that Demetrio Runez was not arrested in connection with this case, despite his having allegedly executed Exhibit "E". On the whole this only points to the weakness of the case of the prosecution.

It must also be stressed that no motive was shown for the killing of Alex de Guzman. True, motive need not be proved where the killer has been positively identified. But where, as in this case, the identification is extremely tenuous, proof of motive is essential and the prosecution has shown none.

Salvador Peruelo testified as to his actual situs when the deceased was killed in Maasin, Mangaldan, Pangasinan that eve-ning of October 18, 1971. He was attending a birthday celebration of his nephew, Jesus Peruelo, Jr. in Otero, Mabayan, Olongapo City. Peruelo was amply corroborated by his wife Conchita Ocampo, a brother Generoso Peruelo and a neighbor who went with him to the birthday party, Herminigildo Liganad. And, the certificate of live birth of Jesus Peruelo, Jr. (Exh. "2") showing that he was born on October 18, 1970, supported Salvador's claim that October 18, 1971 was his nephew's birth anniversary.

It is true that alibi is a weak defense which an accused can easily fabricate to escape criminal liability. But where prosecution evidence is weak, and betrays lack of reliability as to the identification of the defendant, alibi assumes commensurate strength. This is but consistent with the presumption of innocence in favor of the accused. It will be noted, that the prosecution did not even attempt to show that it was possible for the accused to have been at the place of the crime in Pangasinan, either before or after the time he was in Olongapo City.

WHEREFORE, the guilt of the accused not having been proved beyond reasonable doubt, the judgment appealed from is hereby reversed. Costs de oficio.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., and De Castro, JJ., concur.
Aquino, J., in the result.

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