

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMSON ROBIN, ET AL., ACCUSED, PANFILO CAONTI, ZOSIMO NAVALE AND ROBERTO REAS, DEFENDANTS-APPELLANTS.

G.R. No. 51528. November 12, 1981

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PER CURIAM:

Automatic review of the decision of the Court of First Instance of Leyte imposing the death penalty on the above named appellants for the crime of robbery with multiple homicide, aggravated by nighttime, dwelling and band.

The facts as recited in Appellee's brief, based on the evidence of the prosecution, are as follows:

"In the evening of August 21, 1975, Samson Robin went to the house of Celestino Gaviola in Bo. Anibongon, Abuyog, Leyte, purportedly to sell lumber to Virgilio Gaviola, the son of Celestino Gaviola. In the house at the time were Celestino Gaviola's wife Enrica America, his daughters Celestina Gaviola Andrino and Guillerma Gaviola and the 7-month old son of Celestina, Roy Andrino. Celestino Gaviola and Virgilio Gaviola were out at the time. Samson Robin engaged Enrica America in conversation. He asked how much harvest she and her husband got from their lands and whether she had money (pp. 17--21, t.s.n., January 21, 1978).

"At about 9:00 p.m., Celestino Gaviola arrived. Not long after his arrival, he and his family decided to go to sleep. As Samson Robin was their relative, he was allowed to remain in the house. Samson Robin chose to lie down beside the door. (Ibid, pp. 21-22).

"At about 11:00 p.m., Samson Robin opened the door and let in four persons who were later identified to be Panfilo Caonti, Zosimo Navale, Roberto Reas and Pascual Bermoy (Ibid, p. 22). The four persons who entered the house were armed with bolos, locally called 'Goodbye Jaro' and 'pisaw'. Samson Robin was himself armed with a bolo. After the four persons had entered the house, they and Samson Robin immediately started hacking at the occupants, fatally wounding Celestino Gaviola, Enrica America and Guillerma Gaviola. Celestina Gaviola Andrino was herself wounded, but she managed to crawl under a sewing machine and cover herself with a mosquito net (Ibid, p. 23). Her son Roy Andrino was unharmed.

"When the assailants thought that all the victims were already dead, they started ransacking the house. Samson Robin, Roberto Reas and Panfilo Caonti opened a trunk and rummaged through its contents. Zosimo Navale examined the pockets of Celestino Gaviola. On his part, Pascual Bermoy frisked the body of Enrica America and found tucked to her waist money in the amount of P3,700.00. The five assailants took the P3,700.00 and fled (pp. 29-31, t.s.n., January 27, 1978).

"After the accused had fled, Celestina Gaviola Andrino came out from her hiding place and scampered from the house. Roberto Reas who had apparently lingered behind saw her. He gave chase but he was not able to catch up with her. Along the way Celestina Gaviola Andrino met her cousin Ernesto Dumangon. He brought her to his house and thereafter to the hospital.

"When the killings were taking place, Aurelio Janola, who lived five meters away, was boiling water for his wife who had just given birth. He heard screams coming from the house of the Gaviolas. He went out to investigate. When he was about five meters away from the house of the Gaviolas, he hid behind a coconut tree.

From his hiding place, he saw Roberto Reas jumped from the house of the Gaviolas, followed by four others. When he thought that the five persons were already gone, Aurelio Janola went up the balcony of the house of the Gaviolas and peeped inside. He saw the dead bodies of the Gaviola family. He hastily left and proceeded posthaste to the house of the barrio captain to report what he had witnessed. In the company of the barrio captain, Aurelio Janola returned to the house of the Gaviolas. Using a "Petromax" lamp, they examined the place and saw the carnage. (t.s.n., March 14, 1978, pp. 4-18).

"Accused Panfilo Caonti, Zosimo Navale and Roberto Reas were later arrested by the police and investigated. Samson Robin and Pascual Bermoy went into hiding.

"When the bodies of Celestino Gaviola, Enrica America and Guillerma Gaviola were examined, it was concluded that their wounds were caused by several pointed and sharp-edged instruments in view of the various sizes and shapes of the wounds (Exhibits C, C-1, D, D-1, E and E-1, t.sn., January 27, 1978 pp. 7, 8, 11 and 12). It was also determined that the three died because of hemorrhage resulting from multiple wounds." (Ibid)[1]

It is the contention of appellants that their defense of alibi, contrary to what the court a quo found, was duly established, whereas the evidence of the prosecution is insufficient to establish their guilt beyond reasonable doubt, also contrary to how the court assessed it.

Their defense of alibi simply puts in issue the question of whether appellants were the real and actual perpetrators of the crime. That they are so, as the prosecution asserts in the instant case, was duly established by their having been positively identified by witnesses who could affirm with all credibility that it was they (appellants) who actually committed the offense charged.[2]

An eye-witness, Celestina Gaviola Andrino, one of the victims who survived the carnage despite wounds inflicted on her, actually saw appellants herein and their companions Samson Robin and Pascual Bermoy who are still at large, attack her father, mother, sister and herself. She knew Samson Robin because he is her cousin, and also Pascual Bermoy whom she met during the fiesta of Anibongon.[3]

Another state witness, Aurelio Janola also saw appellants and their two absconding companions jump from the house where the killing and robbery took place and run away. This witness was a close neighbor of the Gaviola's who heard screams from the latter's house because he was awake at the time to boil water for his wife who had just given birth, prompting him to go out to see what was happening. He went up the balcony after seeing the appellants and their two companions run away, and peeping inside the house, he saw the dead bodies of the slain inmates. He could not be mistaken in identifying all the five culprits because he knew them well, specially Roberto Reas whom he had known since child-hood being a relative, Navale for two years and Pacifico Caonti, for nine months.[4]

Understandably, appellants attempt to destroy the credibility of the two eyewitnesses accounts, that of Celestina, because of the darkness inside the house which could not have permitted identification of the intruders, and that of Janola, because it was also dark outside. Moreover, Janola could not tell the trial court the date of the birth of his child his wife had delivered recently at the time of the incident.

Contrary to the above contentions of appellant, there was enough light inside the house to enable Celestina to recognize the intruders and assailants. She testified that in the middle of the room, there was a gas lamp. The light from the moon, it being then a moonlit night could pass through a piece of glass, 15 by 12 inches in size, in the roofing of the house. With illumination jointly so provided, Celestina could easily recognize persons whom she had known so well as a cousin, Samson Robin, and also Pascual Bermoy whom she had known before the bloody incident, which by its violence tends to make the victims strive to know the identity of their attackers.

As to the testimony of Janola, his inability to tell the trial court the birthdate of his recently born child when the gruesome killing occurred is of no consequence to affect his credibility, considering that he had ten children and he was virtually without any schooling. Furthermore, as disclosed by the evidence, he had suffered head injury inflicted by a bolo which could have affected his capacity to remember matters of relatively minor or very negligible significance.

That at first, his testimony was to the effect that he first peeped into the house and saw the dead bodies, but when he was recalled to the stand a second time, but long after he first took it, he stated that after he saw the accused leave the house, he immediately went to the barrio captain to report, and that he did not go inside the house, is likewise, not of any real contradiction to affect his credibility. In his first testimony, he did not say he went inside the house; he merely peeped inside the house from the balcony. The uncontrovertible fact is that he forthwith reported the matter to the barrio captain about the killing, and he could not have done so unless he saw the dead bodies inside the house.

In a more futile way of trying to discredit Janola as a state witness, appellants claim that if Janola watched from behind a coconut tree and saw the five assailants jump out of the house, he would have seen Celestina who allegedly scampered also from the house after the intruders had left, and was promptly chased by Roberto Reas. Appellants would then conclude that if Janola's testimony that he saw the five assailants flee from the house is true, then the testimony of Celestina that she ran out of the house right after the five intruders left, cannot be true.

There is no irreconcilable inconsistency in the testimony of the two state witnesses. If Janola did not see Celestina leave the house, it must be because his attention was drawn to the intruders as they jumped from the house and riveted upon them as they fled, thereby missing sight of Celestina as she was going out of the house. Again, the uncontroverted fact that Celestina met her cousin Ernesto Dumangon on the way coming out of their house, Dumangon bringing her to his house, thence to the hospital, places beyond doubt the truth of her testimony that she left the house after she felt that the intruders were gone.

Having miserably failed, as shown, in impeaching the credibility of the two principal eye-witnesses of the prosecution, appellant's defense of alibi must of necessity also fail.

In the case of Panfilo Caonti his alibi that he was in the house of Salvador Caonti, his brother, helping in the preparation of the birthday celebration of Salvador's daughter showed by itself its utter weakness from the fact that Panfilo told the court that at the time referred to, he worked in the farm of his father, and that while Salvador testified that he supported Panfilo through second grade, Panfilo said that he had never gone to school. Likewise, while his brother Salvador said that he (Panfilo) was arrested in the house of Francisco Biron, Panfilo said it was in Salvador's house that he was arrested. The marked inconsistencies so readily noticeable would not earn credence for Reas' alibi specially after he had been positively identified as one of the perpetrators of the heinous crime charged by witnesses not shown to have any improper motive to falsify or prevaricate.

As to Roberto Reas' alibi that he was sleeping with his wife and children at the time of the incident, same is without any corroboration. The testimony of Patrolman Clemente Felizarta that Reas was arrested in Barrio Traya, not in Barrio Anibongon, by no means serves to corroborate Reas' alibi. In this connection, Reas would blame the court for not exercising its coercive power to require his common-law wife to testify in court. The records show that a sub-poena was issued precisely for this purpose, but she did not appear despite that, even without a subpoena, this appellant could have easily brought his own wife to court and testify in his behalf. Totally uncorroborated, his alibi must fall.

The alibi of Zosimo Navale that he was in his house with his parents, five brothers and a sister was also not believed by the court, and properly so, because all that this appellant offered to prove the alleged truth of his alibi

is his supposed candor in admitting that he was acquainted with the victims. This might be a fact positively beyond his denial that his admission is unavoidable and would thus not be that candor that will earn credibility for him in putting up his kind of defense.

In their attempt to impugn the positiveness with which they were identified, they presented Bonifacio Furing, Chief Meteorological Officer of PAGASA in Tacloban City who testified that cumulus cloudes obstructed the moon on the night of August 21, 1975, and faulted the trial court in not giving much weight to the testimony. The court acted rightly.

In the first place, Furing testified only on the basis of office records the contents of which he had no personal knowledge, and secondly, the records referred to Tacloban City which is 60 kilometers distant from Barrio Anibongon, Abuyog, Leyte where the sky could have been clear even if it was not so over other places quite distant therefrom.

Appellants' complaint of having been deprived of their opportunity to be heard because the trial court was reluctant to allow them to fully cross-examine the two witnesses against them is without basis. The records show that their counsel cross-examined the witnesses, the court only at times exercising its discretion to protect the witnesses from unduly aggressive cross-examination with proper cautionary admonition.

In their third and last assignment of error, the court allegedly committed the impropriety of acting as judge and prosecutor when, after the defense had closed its evidence, it re-called certain prosecution witnesses. In the interest of justice, a trial judge has the discretion to reopen the proceedings in a criminal case in order to receive additional evidence before decision is rendered.⁶ If in the instant case, the trial judge felt the need of clarifying certain matters for him to be able to render a just decision, there is nothing objectionable to ordering the reopening of the case for the purpose, with a view to doing justice to all concerned. This is, as the records would disclose, all that the trial judge did in the honest discharge of a most sacred duty as dispensing justice.

WHEREFORE, the judgment appealed from is hereby affirmed. Cost de oficio.

SO ORDERED.

Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

[1] pp. 1-4, Appellee's Brief, p. 102, Rollo.

[2] People vs. Barut, 89 SCRA 14; People vs. Paredes, 98 SCRA 369; People vs. Resurreccion, 94 SCRA 696; People vs. Villamada, 78 SCRA 145; People vs. Mercado, 97 SCRA 232.

[3] p. 57, t.s.n., January 27, 1978.

[4] pp. 9-11, t.s.n., March 4, 1978.

⁶ Samar Milling Co., Inc. vs. Arnado, 24 SCRA 402-407.

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