

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO HORA Y LUNGAY, DEFENDANT-APPELLANT.

G.R. No. 52395. August 07, 1987

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an appeal from the judgment of the defunct Circuit Criminal Court of Tagbilaran City,[1] sentencing the accused-appellant as follows:

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WHEREFORE, the court finds the accused Pedro Hora guilty beyond reasonable doubt of the crime of Murder described in the aforequoted information. Finding neither mitigating nor aggravating circumstances, the court holds that the accused should be, as he is, sentenced to the penalty of Reclusion Perpetua, with the accessory penalties of the law; to indemnify the heirs of the deceased Ricardo Clemen in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs.

SO ORDERED.[2]

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The proceedings began from an information accusing the appellant of the offense of murder:

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That on or about the 30th day of January 1978, in the municipality of Panglao, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation and treachery, did then and there, with the use of a bolo, willfully, unlawfully and feloniously attack, assault and stab one Ricardo Clemen, thereby inflicting upon the vital parts of the body of the latter serious physical injuries which were the immediate cause of his death; the crime having been committed with the aggravating circumstance of nighttime, being purposely sought for or taken advantage of to facilitate the commission of the crime; to the damage and prejudice of the heirs of the deceased.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code.[3]

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On arraignment, the accused-appellant pleaded not guilty.

The records disclose that on January 30, 1978, at or about six o'clock in the evening, Ricardo Clemen, Anito Arcay, and Alejandro Dumangcas were on their way to Barangay Duljo, in Panglao, Bohol, for a drinking spree. They stopped at a store where they consumed two "pocket size" bottles of rum. Ricardo Clemen got drunk. Thereafter, they repaired home.

While on their way, Ricardo Clemen mumbled, "you run because I'm stabbed." [4] Thereupon, Dumangcas ran

back toward the store. According to him, he saw Clemen clutching at his wounds in the body and arm. Overcome by shock, he (Dumangcas) allegedly passed out. But before that, he had a glimpse of the assailant grappling with Clemen, whom he subsequently named as the herein accused-appellant. While the night was dark, he allegedly recognized the accused-appellant from a light coming from the house of Olimpia Cloma nearby.[5] He averred that the accused-appellant attacked Clemen with a bolo. When he regained consciousness, Clemen was being loaded onto a vehicle. He was brought to Tagbilaran City for medical treatment. On February 2, 1978, however, Clemen died.

From the medical records, Clemen sustained the following wounds:

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1. Peritonitis, generalized secondary to stab wd, abdomen, penetrating, perforating colon, mid transverse and splenic flexure
2. lacerated wd. (L) forearm, mid 3rd medial, 6 cm
3. lacerated wd. (L) mid finger, proximal phalange, 2 cm. dorsum[6]

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Anito Arcay, on the other hand, testified that he was together with Dumangcas and the deceased on the evening of the tragedy. According to him, the deceased invited them for a drink. They finished two bottles of rum at a nearby store after which they prepared to go home. About 15 meters from the store, the deceased uttered; "Bay, I'm stabbed." [7] Like Dumangcas, he allegedly had a look at Clemen's attacker from the light of Olimpia Cloma's lamp about 15 meters from the scene of the incident. At that time, the victim and the assailant were allegedly locked in struggle.

The victim then instructed him to "get a light." [8] Arcay summoned Hilario Flores, a policeman who owned a pressure lamp. Flores soon arrived with his wife, who carried the lamp. They then rushed Clemen to the provincial hospital located at Tagbilaran City.

Arcay further claims that while at the hospital, Clemen pointed to the accused-appellant as the assailant but cautioned him not to "tell anybody ... even my parents because if I will be already well, I will liquidate the man." [9]

Dumangcas was summoned by the police as early as February 1, 1978. He was "interviewed" separately by two police officers but he did not identify the assailant. On February 6, 1978, another policeman went to his house and again he did not implicate the accused-appellant. It was, however only on March 2, 1978, or more than a month after the unfortunate incident, that he "divulged" to the authorities the identity of Clemen's killer. He adds, however, that he "was afraid ... because I'm working and I might be, the same thing might happen to me, the same thing that happened to the deceased." [10] Arcay himself told the same tale to the police authorities on March 2, 1978.

We reverse the judgment of the trial court. We have reasonable doubt on the guilt of the accused-appellant.

We cannot accept the veracity of the testimonies of Alejandro Dumangcas and Anito Arcay, two supposed key witnesses for the prosecution. We are hard put to believe, in the first place, that the deceased Clemen did not inform the authorities, not even his relatives, as to who attacked him (assuming he knew who it was), notwithstanding enough opportunities for him to do so. The records will show that he had at least two chances to do so, first, before Patrolman Flores, the responding policeman, during and at the scene of the incident itself, and second, before his relatives, who saw and visited him at the hospital. [11] It would have been the first impulse of

one supposedly on the threshold of death.

But what is even more unusual is the fact that he had to confide in, of all people, Arcay, if the latter is indeed to be believed. While it might have been that the deceased did inform Arcay of the identity of the attacker, what is strange is that he -- so Arcay avers -- informed him (Arcay) alone, when he (the victim) could have alerted his very relatives and the police as well.

Neither can we accept Arcay's allegation that Clemen, after pointing to the accused-appellant as the murderer, urged him not to inform the authorities as he planned to get even when he recovered. The fact should be underscored that Clemen was a dying man -- a fact he must have known, judging from the extent of his injuries -- and for one near death, it is odd that he should imagine surviving his wounds in the hope of getting even. What we are saying is that while it is not abnormal for Clemen to have harbored revenge, what disturbs us is Arcay's claim that he (Clemen) took pains to instruct him (Arcay) not to inform the authorities when the natural urge would be to have the assassin brought to the bar of justice where he (Clemen) could have the vindication he sought.

Under the circumstances, we seriously doubt whether Clemen in fact knew who assaulted him. It should be noted that as Arcay himself testified, Clemen, at the time of the incident wished for some light.[12] This suggests that Clemen did not see who attacked him. On top of that, he had imbibed alcohol. We do not trust his faculties for observation in such an inebriated state. When he therefore declared to Patrolman Flores, "I do not know the assail-ant,"[13] we believe that he was telling the truth. This is part of the *res gestae*. And between this and his alleged confession to Arcay, we are more prone to accept the former.

All told, we do not accept Clemen's supposed *ante mortem* declaration to Arcay. Clemen, we reiterate, was on the point of death, and for this reason alone he could not have divulged to Arcay the identity of the murderer and at the same time deny knowing him before the authorities. What this indicates is that he was lying to the police. We do not believe that he would have been inclined to misrepresent in so solemn a moment. It has indeed been said over and over, "truth sits on the lips of dying men."

Yet both Dumangcas and Arcay insist that they saw the accused-appellant attack the victim. According to them, they recognized the accused-appellant from a lighted area nearby Olimpia Cloma's house.

Again, we reject these alleged eyewitness accounts.

The evidence will show that it was a moonless night when the tragedy occurred.[14] The streets of Barangay Duljo had no lights.[15] Moreover, that portion of Barangay Duljo where the stabbing took place was a coconut grove. Except for a faint illumination emanating from an improvised kerosene lamp (a "[b]eer bottle with a wick and with the use of kerosene") [16] inside the house of Cloma, 15 meters away from the killing field, the place was enveloped in darkness. Thus, according to Dumangcas, he could not have identified the assailant (assuming that he saw him) without some light.

To our mind, there was insufficient lighting to have enabled Dumangcas and Arcay to recognize the deceased's attacker, much less, to ascertain the assassin to be the accused-appellant. As stated earlier, the appellant was about 15 meters from Cloma's house when he allegedly sighted him. But Cloma's improvised kerosene lamp furnished a dim light,[17] and from such a distance, we doubt whether he could have in fact recognized the assailant. In addition, the lamp was situated inside the house. It is true that Arcay testified that it was "in the window,"[18] but according to Dumangcas it was "inside." [19] Cloma herself declared that she "took a lamp and placed it on our window,"[20] at which point she saw Clemen staggering below.[21] This means that the lamp was inside the house when the stabbing actually occurred.

The dark of night is compounded by the fact that both Dumangcas and Arcay (and the deceased himself) were

under the influence of spirits. Their intoxication could have dulled their senses.

But if Dumangcas and Arcay truly saw the accused-appellant, it bothers us that it took them more than a month to reveal to the authorities, or to anybody for that matter, the identity of the alleged killer. According to the records, it was only on March 2, 1978 that they made their "disclosures" to the police. We do not accept Dumangcas' excuse that he dreaded reprisals from the accused-appellant to justify his month-long silence.[22] For if this were the case, he would not have made his revelation to the police on March 2, 1978 since at that time, the accused-appellant was still roaming free.[23]

As for Arcay, he claimed that he was requested by the deceased not to say anything to the police. Yet, on the same date, March 2, 1978, he pointed to the accused-appellant as the perpetrator of the killing.

What further appears on record is the fact that the twosome of Dumangcas and Arcay were themselves suspects to the crime in question. It was for this reason that the Philippine Constabulary picked them up for questioning on March 2, 1978, and it was only then that they made their "revelations." This Court believes that they had every reason to point to another person as the author of the offense -- exculpating themselves in the process. They simply played the old, familiar game of "passing the buck."

In addition, we note fatal inconsistencies in the statements of Dumangcas and Arcay. In their sworn declarations before the Philippine Constabulary,[24] they both stated that the accused-appellant had an axe to grind against the deceased. It is claimed that days before, the deceased allegedly threatened to retaliate for the alleged mauling of a certain Nonie Arboleras by the accused-appellant and the latter allegedly resented this. When questioned, however, on the witness stand, both denied knowing the accused-appellant's motives.[25]

The accused-appellant interposes the defense of alibi. According to him, he was at home, sleeping at the time of the incident. He admitted having struck Nonie Alboleras on January 30, 1978 but that was because "he boxed me so I retaliated"[26] He categorically denied having mauled him.[27]

While the rule of long-standing is that alibi is a weak defense,[28] it is an equally enduring rule that the prosecution must rely on the strength of its evidence rather than on the weakness of that of the defense.[29] In this case, we are not convinced that the prosecution has demonstrated the guilt of the accused-appellant beyond reasonable doubt.

According to Section 2 of Rule 133 of the Rules of Court, "the defendant is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt." This is so because an accused person, under the Constitution,[30] is presumed innocent. In the case at bar, we are not morally convinced that the guilt of the accused-appellant has been shown true to this standard. The Constitutional presumption has not been overcome. On account of reasonable doubt alone, we acquit the accused-appellant.

WHEREFORE, the accused-appellant is ACQUITTED on the ground of reasonable doubt. His release from confinement is hereby ordered unless he is held for another legal cause. Costs de oficio.

IT IS SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

[1] The Honorable Regino Hermosisima, Jr., presiding Judge.

[2] Record, 172.

[3] Id., 40.

[4] T.s.n., session of July 17, 1978, 4.

[5] Id.

[6] Record, 184.

[7] T.s.n., id., 18.

[8] Id., 19.

[9] Id., 22.

[10] Id., 7.

[11] Id., 24.

[12] Id., 19.

[13] Id., 23.

[14] Id., 8, 26.

[15] Id., 27.

[16] Id., 9.

[17] Id., 18.

[18] Id.

[19] Id., 26.

[20] Id., session of August 15, 1979, 8.

[21] Id.

[22] Id., 7.

[23] See *People v. Villar*, No. L-34092, August 21, 1974, 58 SCRA 512 (1974).

[24] Record, id., 6-9; 13-16.

[25] T.s.n., id., 5. 28.

[26] T.s.n., session of August 15, 1979, 14.

[27] Id.

[28] *People v. Pecato*, G.R. No. 41008, June 18, 1987; *People v. Ferrera*, G.R. No. 66965, June 18, 1987; *People v. Tuando*, G.R. No. 47720, May 20, 1987.

[29] *People v. Saavedra*, G.R. No. 48738, May 18, 1987; *People v. Ramirez*, No. L-39007, August 21, 1982, 116 SCRA 48 (1982); *People v. Tabayoyong*, No. L-31084, May 29, 1981, 104 SCRA 724 (1981); *Duran v. Court of Appeals*, No. L-39758, May 7, 1976, 71 SCRA 68 (1976).

[30] CONST., art. III, sec. 14(2).

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