

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NAPOLEON BERNAT, DEFENDANT-APPELLANT.

G.R. No. 55176. February 28, 1983

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

This is an appeal from the judgment of the Circuit Criminal Court stationed at Tagbilaran City finding appellant Napoleon Bernat guilty beyond reasonable doubt of the crime of murder, for the killing of Primitivo Ampo, and sentencing him to suffer the penalty of reclusion perpetua with the accessory penalties of the law and to indemnify the heirs of the victim in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The facts of the case were narrated by prosecution witness Maria Nimfa Felisilda, a fifteen year old granddaughter of the victim and summarized by the trial court as follows: "The Ampo household retired at 8:00 P.M. on July 3, 1979. In one among three bedrooms of the upper floor of the house, located at Barangay Lobogon, Duero, Bohol, she and her grandmother, Ursula Ampo slept together. The victim slept alone in another room. At the ground floor of the house could be found the sala, the dining room and the kitchen. Extended beyond the sala was a store with a roof over it. The bedrooms upstairs were accessible from the sala by means of a stairs with eight steps.

"At dawn the next day, July 4, 1979, she heard a loud explosion of a gun coming from downstairs. She rose from her bed and saw her Lola crawl hurriedly to the window and to the top of the roof over the store, shouting for help at the top of her voice and pounding vigorously on the galvanized iron roofing. Around her Lola's waist was tied the sum of P2,000.00, the proceeds of sales of copra the day before. Shocked and frightened, Maria Nimfa cowered at a corner of her room not knowing what to do or what next will happen. All of a sudden, a person came up the stairs with gun on hand. Illuminating the room with a flashlight, the man found only the trembling form of Maria Nimfa. Although at the outset aiming his gun at Maria Nimfa, it became apparent that he had no intention of harming the child, because, without saying a word, he simply went back from where he came.

"Maria Nimfa joined her 'Nanay' at the roof and shouted for help, likewise. Neighbors arrived but they were unable to enter the house. When her father arrived, her father entered the house by climbing up the roof of the store. He sent for the police and an investigation and inquiry was made by the authorities.

"When investigated by Lt. Julienoto Bernadas, Maria Nimfa, while informing that she saw the killer of Primitivo Ampo, would not name him. She explained that, at the time, she could not name Napoleon Bernat because, ten minutes after the police arrived, Napoleon Bernat was in the house, particularly at the store, hanging around, apparently observing the result of the investigation by the police. Even during nightly prayers for the dead, Napoleon Bernat was in attendance."

The investigation conducted by Police Lt. Julienoto Bernadas, showed that the assailant entered the house through a window shelf at the kitchen. A .38 caliber slug and a destroyed flashlight, with batteries thrown out and scattered around were found near the body of the victim. The body was examined by Municipal Health Officer

Mariano Ll. Salas, who made the following report:

"Findings:

- (1) Through and through gunshot wound from the base of the neck on left lateral side (about 3/4 cm. diameter) coming out at the base on the right lateral side just above the right clavicle (lateral 3rd) about 3/4 cm. in diameter (measured);
- (2) Powder burns and tatooring around the left side of the wound;
- (3) Blood clots all over the mouth and nose;
- (4) Blood all over the body and over the floor where the victim lay;

Conclusion:

The victim died probably due to severe external bleeding (hemorrhage) secondary to gunshot wound."

Five days after the killing or on July 9, 1979, Maria Nimfa executed an affidavit and pointed to accused-appellant Napoleon Bernat as the person who killed her grandfather. Assistant Provincial Fiscal Abundio K. Ello, after investigation and evaluating the evidence submitted, found a prima facie case for murder against Napoleon Bernat and filed the corresponding information on September 20, 1979.

During the trial of the case, accused-appellant interposed the defense of alibi, alleging that he was at the time of the commission of the crime, sleeping in their house together with his friend Antonio Caper. He allegedly slept at 9:00 P.M. of July 3, 1979 and woke up at 6:30 A.M. the following day. Antonio Caper corroborated his testimony. But the trial court discredited the defense of alibi and relying on the testimony of Maria Nimfa, found Napoleon Bernat guilty beyond reasonable doubt of the crime of murder. The judgment of conviction is now before us on appeal.

Accused-appellant anchors his plea of acquittal on the alleged failure of Maria Nimfa to identify the accused at the initial investigation of the crime. This, however, was explained by Maria Nimfa herself who testified that at that time she could not point to Napoleon Bernat because of fear. After the police arrived, Napoleon Bernat was in the house, hanging around observing the investigation. The trial court correctly appraised the issue before him as one of credibility — "which to believe, the testimony of Maria Nimfa Felisilda or that of the accused?" and made the following findings:

"(A)s regards these lingering doubts we grant great latitude and allowance to the tender age of said witness and her fragile nature as a young girl not usually exposed to violence.

"That she would not denounce a neighbor whom she saw to be capable of killing anyone, even her grandfather, and who could easily go for her as soon as police authorities leave the place, is easily understandable. Had she in mind the idea to concoct or fabricate, she could have easily said that she saw the actual shooting. But, no; she furnished circumstantial evidence only, out of which it may be deduced that no one but the accused was the killer.

"Besides, try as we might, we cannot conceive of any reason for bias or prejudice — any ground for telling an untruth — on the part of this simple youth. She has not been shown to have an ax to grind against Napoleon Bernat; neither can it be said that the police officers and investigators or, perhaps, her grandmother, Ursula Ampo, persuaded her to identify the accused as the culprit. Station Commander Bernadas tried it on July 4, 1979 and the child clammed up out of fear. Why, among the many persons in the Barangay, would she pick on Napoleon Bernat if she did not see the said accused during or after the killing is beyond us. This, and the foregoing considerations, have convinced us beyond per adventure of a doubt as to the culpability of the accused Napoleon

Bernat."

Indeed, on matters of credibility the Court has accorded the highest degree of respect for the findings of the trial judge because he had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies. The trial judge's findings of facts should not be disturbed unless it appears from the records that facts or circumstances of weight or influence were overlooked, their significance misinterpreted, or there were inherent weaknesses in the supporting evidence.[1]

Accused-appellant insists that there is no direct evidence pointing to him as the perpetrator of the crime, for Maria Nimfa did not actually see the shooting of her grandfather. This contention is without merit. Maria Nimfa testified that she saw accused-appellant come up the stairs immediately after she heard the shooting with gun on hand, and later aimed the same gun at her. She recognized him as there was light emanating from the kerosene lamps at the stairs and inside the bedroom. Accused-appellant was identified by Maria Nimfa because she was acquainted with him, because he was a neighbor. And as stressed by the Solicitor General, considering that he was at the scene of the crime immediately after its commission holding a gun and he was the only person present other than the members of the Ampo household, with no other intervening events, the circumstantial evidence adduced by the prosecution sufficiently established his guilt for the crime beyond reasonable doubt and overturned the presumption of innocence in favor of an accused.

While evidence as to the identity of the accused as the person who committed the crime should be carefully analyzed, the Court has consistently held that "where conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should normally be accepted. And this is more so where the witness is the victim or his near-relative, as in this case, because these usually strive to remember the factions of the assailants."[2]

As to the question of motive, the trial court expressed its belief "borne out of experience and knowledge of human behaviour" that the accused had the intent to rob the couple, stating that accused-appellant, who is a neighbor and frequent customer at the store of the spouses, must have seen that the couple had a lot of copra sales the day before. After having killed Primitivo Ampo and finding no money with him, he proceeded upstairs to look for the victim's wife but found only Maria Nimfa in one corner of the room. Not finding Ursula Ampo in the room and knowing that the money could not be with Maria Nimfa he retreated, fearing that the explosion of the gun might have awakened the neighbors. At any rate, motive or lack of it gains significance only when the identity of the culprit is doubtful[3], whereas here, appellant's identity as the perpetrator of the crime has been convincingly established.

Accused-appellant relied on the defense of alibi. He claimed that he was asleep at his parent's house from 9:00 o'clock in the evening of July 3, 1979 up to 6:30 o'clock in the morning of the next day, so that he could not have committed the offense that took place on the dawn of July 4, 1979. And to corroborate his alibi, he presented his friend Antonio Caper, who testified that he and accused-appellant slept together on the night of July 3, 1979 and when he woke up at 6:00 o'clock in the morning of the next day, accused-appellant was still asleep. The Court finds that the trial court committed no error in disregarding accused-appellant's defense of alibi, for, as admitted by accused-appellant himself, alibi, being easily fabricated and inherently weak, should not be seriously considered under the proven circumstances. The trial court correctly ruled that "the circumstances that the accused Bernat was sleeping in his house 500 meters or so away from the place of the killing at the time of its commission would certainly not exclude the possibility of the accused's presence and participation thereof. With Antonio Caper sleeping soundly from 9:00 P.M. to 6:00 A.M. the next day, what could have been easier to do than sneak out of the house and commit the act which we presume he previously planned to do without anyone the wiser because he did so in the stillness of the night."

The Court, however, disagrees with the trial court's conclusion that accused-appellant is guilty of the crime of murder on the premise that the killing was qualified by treachery. Its own finding was that the accused-appellant "may not have had the least intention of killing the old man" which negates the element of treachery, as follows:

"In justice to the accused, he may not have had the least intention of killing the old man, Primitivo Ampo. Considering the destroyed flashlight of the old man and its scattered batteries, it is safe to assume the old man must have gone down to the sala with a flashlight and flashed the light at the accused. The accused must have done him violence by reason of the discovery of his presence inside the house. The old man must have used his flashlight either for offense or defense, resulting in its destruction."

ACCORDINGLY, the judgment of the trial court is hereby modified in that accused-appellant is found guilty only of the crime of homicide for which the law prescribes the punishment of reclusion temporal in its medium period, absent any aggravating or mitigating circumstance. The accused-appellant is hereby sentenced to an indeterminate sentence of 8 years and 1 day of prision mayor to 14 years, 8 months and 1 day of reclusion temporal. In all other respects, the judgment is affirmed, with costs against the accused-appellant.

Melencio-Herrera, Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

[1] People vs. Tintero, 111 SCRA 714; also People vs. Bautista, et al., 92 SCRA 465, 472; People vs. Espejo, Dec. 30, 1970, 36 SCRA 400; People vs. Ancheta, 60 SCRA 333.

[2] People vs. Zapanta, 45 O.G. 1312.

[3] People vs. Pajenado, 69 SCRA 172; People vs. Sales, 44 SCRA 489.

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