

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ROLANDO SISCAR Y CAPIO, DEFENDANT.

G.R. No. 55649. December 03, 1985

Ponente: PLANA, J.

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PLANA, J.:

This is an appeal from the decision of the Court of First Instance of Oriental Mindoro (Criminal Case No. C-1080) convicting the appellant for murder and imposing the penalty of reclusion perpetua in the absence of any modifying circumstance, aside from P12,000.00 civil indemnity.

The Information against Rolando Siscar reads:

"That on or about the 12th day of July, 1972, between 7:00 and 8:00 o'clock in the morning, at barrio Camansihan, Municipality of Calapan, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused Rolando Siscar y Capió, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot several times with twelve (12) gauge rifle one Moises Capió thereby inflicting upon the latter mortal gun shots wounds causing his instantaneous death."

Siscar was arraigned only on January 19, 1978 or five and a half years after the commission of the crime because he eluded arrest.

As summarized in the People's Brief, the facts are as follows:

"In the morning of July 12, 1972, the deceased Moises Capió prepared to leave for the poblacion of Calapan from his residence in Bo. Camansihan, Calapan, Oriental Mindoro to attend the hearing of a criminal case filed against him for grave threats. The complainant was his sister Dionisia Capió, the mother of appellant (Exh. "O", p. 38, rec.; p. 5, tsn, April 2, 1979; pp. 2-4, tsn, Nov. 8, 1979). He was bringing important documents for the case, a bag containing two chickens for his lawyer, and P700.00 in cash (p. 7, tsn, April 2, 1979).

"While Moises was making preparations for the trip, his wife, Mercedes Jimenez Capió, was sweeping the yard (pp. 6-7, id). She had earlier tethered their carabao on a nearby bamboo grove from where she saw appellant forty meters away carrying a long shotgun and a small bag. Used to seeing her nephew hunting wild ducks with a shotgun, Mercedes did not mind his presence nor call his attention (pp. 15-16, 42, id).

"Mercedes was still sweeping the yard when Moises stepped down and left as he followed a 200-meter stretch of pathway towards the main road for the ride (pp. 6-7, id). Shortly thereafter, Mercedes heard three gun reports coming from her husband's direction. Then Juana Caringal, a neighbor, who at the time was at the window of her house, called out loudly to Mercedes that appellant had just shot Moises (pp. 8-9, 22-23, id). As soon as she heard Juana Caringal, Mercedes rushed to the place from where she had heard the shots and saw her husband running back to their house in a zigzag manner (pasuray-suray), wounded. She embraced him to give support as he was falling, and asked what had happened; he said that appellant shot him (pp. 9-10, 28, id). Juana Caringal, who in the meanwhile approached the couple, repeated to Mercedes that appellant was the one who fired the shots (pp. 47-48, id).

"Albino Manalo, a barrio councilman of Camansihan, also heard the shots while tilling his land. Looking at the direction from where the shots came, he saw appellant carrying a long shotgun, run to the main road and board a jeep for Calapan (pp. 4-8, tsn, May 10, 1978). Manalo was then informed by Roberto Viaña that appellant had just shot Moises Capiro. Forthwith he went quickly with Viaña to the scene fifty meters from the victim's house. Seeing Moises lying down, wounded on the breast and back, Manalo asked Moises what happened, and Moises answered that he was shot by appellant (pp. 8-12, id). Upon Manalo's instruction, somebody got a hammock to bring Moises to Calapan for treatment. But it was too late; Moises died as he was placed on the hammock (pp. 12-13, id; pp. 14-15, tsn, April 2, 1979)."

Among the objects recovered from the scene of the crime were an empty shell (Exh. "E"); a brown paper bag (Exh. "E") containing, among others, a pair of pants and a native bag, "bankuwang" (t.s.n., February 21, 1978, pp. 27-28) in which the deceased put the chicken he was bringing to Calapan.

The necropsy report prepared by the Municipal Health Officer, Dr. Alberto C. Montelibano, listed the cause of Moises' death as "Internal Hemorrhage and shock due to the Gunshot Wound." It reads:

"POST MORTEM FINDINGS

"Wound, gunshot, thru and thru, thorax, perforating lobe of right lung.

"Wound of entrance, scapular region, right, level of the 2nd intercostal space, 1 inch from the vertebral column. Wound measures 1 inch at its longest diameter with powder burns around.

"Wound of exit, eight (8) in number, chest, right, scattered around the 2nd and 3rd intercostal space, with seven (7) of the wound Nos. 1 to 7 measuring about inch at its longest diameter while one of it, wound No. 8, measures about ½ inch at its longest diameter."

Rolando Siscar put up the defense of alibi. According to him, on July 12, 1972, at about 5:00 o'clock in the morning, he, together with his mother Dionisia Capiro and others, went to Calapan, Oriental Mindoro; that they arrived at Calapan at about 8:00 o'clock in the morning, after which his companions proceeded to the municipal building where they had an scheduled court hearing, while he boarded a tricycle and proceeded to Calapan pier on his way to Batangas City; that he reached Batangas City on the same day from where he proceeded to Taliba, San Luis, Batangas, arriving there at about 3:00 o'clock in the afternoon. (t.s.n., Oct. 16, 1979, pp. 7, 9 & 15.) Appellant also stated that at about 5:00 o'clock P.M. of July 12, 1972, he received news of his uncle Moises' death; that he went back to Camansihan, Calapan Oriental Mindoro, arriving there on the next day; that after the burial of his uncle, he again went to Taliba, San Luis, Batangas to work at a sugar cane plantation, returning to Camansihan once in a while to give money to his mother; that in one of his visits to Camansihan, he was told by his mother that police authorities were looking for him but he did not give himself up because "it was martial law" and he was afraid, having been informed that he could be subjected to punishment. During the hearing, Rolando Siscar identified the pair of pants in the brown paper bag as his own, but claimed that he had previously lost them. He stated that he did not know any reason why the crime was imputed to him. (Ibid., pp. 12, 22-23, 25.) Rolando's mother, Dionisia, and his uncle, Doroteo, corroborated Rolando's alibi.

This appeal is based upon the following assigned errors:

"1. The court a quo erred in concluding without factual basis that the testimonies of all prosecution witnesses were gospel truths while those of the accused were devoid of truth.

"2. The lower court erred in not considering that there was no dying declaration presented, no motive shown, and no circumstantial evidence to prove the guilt of the accused.

"3. The lower court erred in not considering the failure of the prosecution to present Juana Caringal, an alleged eyewitness, and the reason why she was not presented, as suppression of evidence.

"4. The lower court erred in giving so much importance on the alleged flight of the accused as basis for conviction without other evidence of guilt.

"5. The lower court erred in admitting the documentary evidence introduced by the prosecution without stating the purpose of the offer in violation of Sec. 35 of Rule 132 of the Rules of Court.

"6. The lower court erred in not acquitting the accused of the crime charged on the basis of the weakness of the prosecution evidence and on the strength of the defense."

The appeal is mainly based on the posture that the guilt of appellant has not been proven beyond reasonable doubt since no eyewitness was presented by the prosecution and that the testimonies of Mercedes Jimenez and Albino Manalo against appellant are hearsay and therefore inadmissible.

The rule on *res gestae* is one of the well recognized exceptions to the hearsay rule. It is embodied in Section 36 of Rule 130 of the Rules of Court. It reads:

"Sec. 36. Part of the *res gestae*. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as a part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as a part of the *res gestae*."

There are three requisites for the admission of evidence of *res gestae*: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) that the statements were made before the declarant had time to contrive; and (3) that the statements refer to the occurrence in question and its attending circumstances (*People vs. Ricaplaza*, 23 SCRA 374.)

Mercedes Jimenez testified:

"Q. A few minutes before your husband left did you hear anything unusual?

A. After a short while I heard something.

Q. What was that something?

A. The report of three shots coming from a gun.

Q. Where did those shots come from?

A. According to my own estimate, the shots came from the direction where my husband was?

Q. So, what did you do upon hearing those shots?

A. A certain woman called while I was looking around and I learned that it was my husband who was the target of those three shots.

Q.

When you were called upon, what did you do?

A. I ran towards the place where the shots came from together with my daughter.

Q. What was the age of your daughter?

A. About three years.

Q. As you were rushing to the place where the shots came from, what did you see?

A. I saw that my husband was already running zigzagly and learned that he was already wounded.

Q. Towards what direction was your husband going when you saw him "pasuray-suray"?

A. Towards the direction of our house.

Q.

And what did you do when you saw your husband coming and walking zigzagly?

A. I put down my daughter and then went to his aid by embracing him.

Q. And now, what did you do afterwards?

A. I asked what happened to him considering the condition in which he was.

Q. And what did he tell you?

A. I was told by my husband to keep calm and not to get afraid and that he was shot up by Rolando.

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Q. When your husband told you that he was shot by Rolando, to whom was he referring to?

A. Rolando Siscar, his nephew." (t.s.n., April 2, 1979, pp. 8-11; Records, pp. 50--53.)

Albino Manalo testified that while he was tilling his land in the morning of July 12, 1972 at Camansihan, Calapan, Oriental Mindoro, he heard three successive shots after which, looking at the direction from where the shots came, he saw appellant Rolando Siscar running towards the road carrying a shotgun. Thereafter, a certain Roberto Viaña came to him (Manalo) and informed him that Moises Capio had been shot. He then went to see Moises. Manalo further testified:

"Q. And did you see Moises Capio?

A. Yes, sir.

Q. Do you know the house of Moises Capio?

A. Yes, sir.

Q. Now, how far from his house was Moises Capio when you saw him?

A. About fifty meters.

Q. When you arrived at the place where Moises Capio was, what was the condition of Moises Capio?

A. He was talking.

Q.

What did you do upon reaching that place?

A. I asked him something.

Q. What did you ask him?

A. I asked what happened to him.

Q. And what was the answer?

A. He said he was shot.

Q. By whom?

A. Rolando Siscar.

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Q. While you were interrogating Moises and asked him who shot him, and he answered that he was shot by Rolando Siscar, were there any other persons present aside from you?

A. There were.

Q. Who, if you can remember, were these persons?

A. Roberto Viaña, the widow, and many others.

Q.

Do you mean the widow of Moises?

A. Yes, sir.

Q. So, after talking with the wounded Moises Capio, what else did you do?

A. I sent somebody to get a hammock for the purpose of transporting the victim to Calapan.

Q. Were you able to transport the victim for medication?

A. While we were in the act of placing the victim on the hammock he died." (t.s.n., May 10, 1978, pp. 9-10, 12-13; Records, pp. 19-20, 22-23.)

The shooting of Moises, the *res gestae* or the principal act, was a startling occurrence. Almost immediately thereafter or before any opportunity to contrive, Moises told his wife Mercedes and Albino Manalo that it was his nephew, the appellant, who shot him. There was thus full compliance with the requirements for the admission of the testimonies of Mercedes and Manalo as evidence of *res gestae*. (See *People vs. Alban*, 1 SCRA 931; *People vs. Tiongson*, 47 SCRA 279; *People vs. Putian*, 74 SCRA 133.)

No adverse implication can be drawn from the failure of the prosecution to present as witness Juana Caringal, who witnessed the perpetration of the crime. As pointed out in the People's Brief, Juana Caringal died in November, 1972, some five months after the incident in question. Therefore she could not have testified when the case was heard in 1978.

Appellant impugns the credibility of prosecution witnesses. He has however failed to adduce any compelling reason why the factual findings of the trial court should be overturned. We therefore affirm those findings in line with the settled rule on the matter.

"We have held in a long line of cases that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the finding of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case." (*People vs. Mercado*, 97 SCRA 232.)

"In assailing the credibility of the state witnesses, appellants, unfortunately, are up against the formidable wall protective of the validity of the findings of the trial court. The well-established doctrine is that findings of trial court relative to the credibility of the testimony of the witnesses, as well as of the witnesses themselves, are entitled to high respect, and, therefore, generally sustained by the appellate court. The only exception arises when it could be shown that the trial judge has overlooked or misinterpreted any fact or circumstance of weight and value as to impeach his findings or call for a different finding. No such showing has been made by appellants, as demonstrated convincingly by the Solicitor General who refuted appellants' arguments intended to show the incredibility, for being allegedly contradictory and improbable, of the testimony of the three eyewitnesses for the prosecution named above, in a manner We can do no better than to quote from his brief were it not for the fact that to do this would unduly lengthen this decision. Suffice it to say that We are convinced from the discussion in appellee's brief of the alleged contradictions, inconsistencies or improbabilities in the testimonies of the state witnesses that all these are either non-existent or that they refer to details of no consequence that they could not affect the integrity of said testimonies." (*People vs. Surban*, 123 SCRA 218.)

That appellant allegedly returned to Camansihan one day after the killing of Moises, does not negate appellant's guilt. It must be stated however that even during the wake for Moises, the Calapan Police already asked for the

whereabouts of appellant, but Dionisia Capio, the mother, told the police that Siscar was in Batangas working in a sugar plantation. Testifying on direct examination, Dionisia Capio stated:

"Q. Did you attend the vigil (lamay)?

A.

Yes, sir.

Q.

Did any policemen ask you where was your son, Rolando Siscar at the time?

A.

They inquired me and I told them that Rolando was in Batangas working in the sugar plantation." (t.s.n., July 16, 1979, p. 14; Records, p. 139.

It must not be overlooked that Jimenez and Manalo testified not only on Moises' identification of appellant as the culprit but also on the fact that they saw appellant immediately before and after the commission of the crime. Jimenez categorically stated that when her husband was about to leave for Calapan, she saw appellant carrying a shotgun and a small bag. Manalo said that right after hearing the fatal shots he saw Siscar carrying a shotgun, running from where the shots came and towards the direction of the road. Manalo further testified that Siscar boarded a jeep upon reaching the road (t.s.n., May 10, 1978, p. 8; Records, p. 18). The positive testimonies of Jimenez and Manalo together with the identification of appellant by the victim, admissible as part of the *res gestae*, overcome the alibi put up by the appellant.

Alibi is the weakest defense that an accused can avail of, and cannot prosper, even where proof thereof is corroborated by defense witnesses, when the identity of the defendant as the person who committed the crime is fully established by clear, explicit and positive testimony (*People vs. Yutila*, 102 SCRA 264.)

The trial court did not err in taking flight as evidence of guilt. At the latest, Siscar learned that the police was looking for him one week after Moises' burial. According to Dionisia Capio, she went to Batangas to inform his son that "he was wanted" (t.s.n., July 16, 1979, p. 41; Records, p. 166). While it may be true that since then, appellant used to go back once in a while to Camansihan, Calapan to bring money to his mother, the fact is that, for over five years, he never gave himself up to the police until he was apprehended on January 19, 1978. Appellant's explanation that he did not surrender because it was martial law and he was afraid of punishment, did not justify his flight from justice. As stated in the People's brief, appellant could have surrendered through intermediaries if he was really innocent. That he did not, indicates consciousness of guilt. (*People vs. Vengco*, 127 SCRA 242, 248; *People vs. Millape*, 134 SCRA 555; *People vs. Hecto*, 135 SCRA 113.)

Appellant assails the admission of some documentary evidence presented by the prosecution in the absence of a statement of the purpose for which they were offered. The defect was, however, subsequently corrected when the trial court allowed the prosecution to state the purpose of the offer of evidence. At any rate, the defense was not prejudiced thereby. For even in the absence of documentary evidence, there would be enough evidentiary support to sustain appellant's conviction.

Notwithstanding that appellant has been proven beyond doubt to be the killer of Moises, his conviction for murder cannot be affirmed. The information against him alleged treachery and evident premeditation; but there has been failure of proof in this regard. Nowhere in the records is there evidence of treachery or evident premeditation.

Hence, appellant can only be convicted for homicide. (People vs. Ramolete, 56 SCRA 66; People vs. Putian, 74 SCRA 133.)

Accordingly, the appealed decision is modified and the appellant Rolando Siscar y Capio is convicted of homicide. He is sentenced to an indeterminate penalty of eight years and one day of prison mayor as minimum to fourteen years, eight months and one day of reclusion temporal as maximum. The civil indemnity due the heirs of the victim is increased to P30,000.00. Costs against appellant.

SO ORDERED.

Teehankee, (Chairman), Gutierrez, Jr., De la Fuente, and Patajo, JJ., concur.

Melencio-Herrera and Relova, JJ., on leave.

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