

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RUBEN ORNOZA AND MARIO ORNOZA, DEFENDANTS AND APPELLANTS.

G.R. No. 56283. June 30, 1987

Ponente: CORTES, J.

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CORTES, J.:

This is an appeal from the decision of the then Court of First Instance of Quezon, Branch VIII, finding appellants Ruben Ornoza and Mario Ornoza guilty beyond reasonable doubt of the crime of Murder and sentencing them to each suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased Virgilio Bayanin the sum of P12,000.00 and to pay the costs.

The information filed against the accused Ruben Ornoza and Mario Ornoza alleged:

"That on or about the 10th day of September 1977, at Barangay Malabanban Sur, Municipality of Candelaria, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court the said accused, conspiring and confederating together and mutually helping each other, armed with a bladed weapon and a hard object, with intent to kill and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault, stab several times with the said bladed weapon and strike with a hard object one Virgilio Bayanin, thereby inflicting upon the latter multiple wounds in the different parts of the body which caused the instantaneous death of the said victim.

Contrary to law." (Rollo, p. 4.)

Upon arraignment on March 5, 1979, both accused with the assistance of their counsel de parte, pleaded NOT GUILTY to the crime charged.

The trial started on April 2, 1979 and terminated on June 24, 1980. On September 23, 1980, the trial court promulgated its decision finding the two accused guilty of the crime of murder. The dispositive portion of the decision reads as follows:

"WHEREFORE, the Court finds the accused Ruben Ornoza and Mario Ornoza guilty beyond reasonable doubt of having committed the crime of murder, defined and punished under Article 248 of the Revised Penal Code, attended by treachery and evident premeditation, without any mitigating circumstance, hereby sentences both the accused Mario Ornoza and Ruben Ornoza, to each suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of the deceased Virgilio Bayanin, the sum of TWELVE THOUSAND (P12,000.00) PESOS, jointly and severally; to suffer all the accessories of the law and to pay the costs.

It appearing that the two (2) accused are detention prisoners, they are hereby credited with the full period of preventive imprisonment pursuant to R.A. No. 6127 approved on June 17, 1979, provided they have complied with the terms and conditions of said law.

SO ORDERED."

The trial judge anchored his decision primarily on the testimonies of three prosecution witnesses: Jesus Rebistual, a friend of the deceased Virgilio Bayanin, Efren Bayanin, the brother of the deceased and Ernesto Bati, cousin of Virgilio.

The prosecution also presented three members of the Integrated National Police stationed at Candelaria, Quezon, namely, Cpl. Manuel C. Legazpi, who conducted the investigation of the killing of Virgilio Bayanin, Pat. Cesar Magsumbol, the police photographer who took pictures of the dead body of Virgilio Bayanin, and Sgt. Jose Sevilla, the policeman assigned to look for the Ornoza brothers. The last witness for the prosecution was the medical officer who conducted the post mortem examination on the body of the deceased.

The defense called to the stand Mario Ornoza and Ruben Ornoza and three other witnesses, namely, Agapito Frago, Wilfredo Ornoza and Araceli Baesas, who all testified to strengthen the common defense of alibi.

The trial court found the following facts established:

On September 10, 1977, at about 7:00 o'clock in the evening, Virgilio Bayanin and Jesus Rebistual were at the house of Barrio Councilman Wilfredo Ornoza at Malabanban Sur, Candelaria, Quezon, where a dance party was being held. One at the guests, Ruben Ornoza, approached Jesus Rebistual and asked why Virgilio Bayanin was with him. Jesus Rebistual replied that he and Virgilio Bayanin were on their way to get bananas which they will use for the "lupakan" at Rebistual's place.

Jesus Rebistual and Virgilio Bayanin proceeded afterwards to the house of Ernesto Bati to ask for some bananas. Bati gave them a bunch and because it was dark on that particular evening, he also lent them a long flashlight with a wide head.

Jesus Rebistual and Virgilio Bayanin left the house of Bati at around 7:30 o'clock in the evening. Virgilio Bayanin, who held the flashlight, walked ahead of Rebistual. The two had just passed a bridge over a canal which was around 300 meters from the house of Bati when Rebistual saw Bayanin fall on his back face upward. By means of the flashlight which also fell to the ground, Rebistual who was about one meter away, saw Ruben Ornoza beating the deceased on the forehead while Mario Ornoza was stabbing the victim on the area of his left breast. While being thus beaten and stabbed, Rebistual heard the victim utter the following words: "Ano бага ang pagkakasala ko sa inyo, Mario, Ruben, bakit ninyo ako ginaganito?" Rebistual who got scared by what he witnessed turned around and ran towards his ricefield and went home and relayed the incident to his wife. Gloria Lumerio and he and his wire went to Virgilio Bayanin's wife and informed her about what happened to Virgilio Bayanin.

Ernesto Bati, who was invited to the "lupakan" to be held in Rebistual's place, decided to follow Jesus Rebistual and Virgilio Bayanin. On his way, Bati saw Virgilio Bayanin lying dead on the pathway. Upon closer examination, Bati noticed that Bayanin's forehead was broken and there were wounds on his chest. Afterwards, he went to the house of Rebistual and asked him about what happened to Virgilio Bayanin. He was told that Ruben Ornoza and Mario Ornoza killed Virgilio Bayanin. Later, Bati went to the house of Mario and Ruben to ask them why they killed Virgilio Bayanin but they were not there. He was puzzled and confused so he did not report the matter to the authorities. Instead, he went to the parents of Virgilio Bayanin and told them about the death of their son.

At around 8:00 o'clock in the evening of September 10, 1977, Efren Bayanin, the brother of the deceased, was sent by his father to get their carabao from the grazing area. While on his way, he heard somebody talking ahead of him. He hid behind coconut tree near the pathway and while thus hidden, two men passed by the place where he was hiding, whom he recognized to be Ruben Ornoza and Mario Ornoza. Efren Bayanin heard Ruben Ornoza

asked Mario Ornoza about the condition of Virgilio Bayanin and Mario answered: "Siguradong patay na iyon." Efren Bayanin waited for the two to pass by then he went home and related what he heard to his father. Balbino Bayanin, in the presence of his mother and Ernesto Bati.

On that very same evening at around 9:45 o'clock, Efren Bayanin reported the incident to the Integrated National Police of Candelaria, Quezon. Cpl. Manuel C. Legazpi, together with Pat. Cesar Magsumbol and Pat. Cesar de Chavez, accompanied by Efren Bayanin, conducted an investigation right at the place of the incident at Malabanban Sur where they saw the body of Virgilio Bayanin on the pathway, with injuries on the head and wounds on the chest. The police recovered at the scene a flashlight with the lights still on, at a distance of about one-half meter from the cadaver of the deceased. Photographs of the cadaver and the surroundings were taken.

The medical officer, Dr. Presentacion V. Daelo, conducted a post mortem examination of the cadaver of Virgilio Bayanin at about 4:15 o'clock in the afternoon of September 11, 1977. In the medico-legal report that she issued, the causes of death of Virgilio Bayanin are fracture of the skull and massive hemorrhage due to stab wounds.

The defense presented Agapito Frago to prove that from 5:00 o'clock in the afternoon of September 10, 1977, Mario Ornoza was in his house at Malabanban Sur, Candelaria, Quezon and stayed there during the night because they were going to haul coconuts the next day. Ruben Ornoza had a similar defense of alibi through Wilfredo Ornoza who testified that from 7:00 O'clock in the morning of September 10, 1977. Ruben was in his house helping in the preparation on the occasion of Wilfredo's birthday celebration.

The accused-appellants raise two assignment of errors as follows:

- I. The lower court erred in giving credence to the testimony of Jesus Rebistual on the ground that said testimony is incredible, inconsistent and contrary to the natural course of things and human conduct.
- II. The lower court erred in finding the accused-appellants guilty beyond reasonable doubt, on the basis of the accused's weak defense.

The first assignment of error assails the credibility of the prosecution's eyewitness, Jesus Rebistual.

To support its contention, the defense cites parts of Rebistual's testimony where he allegedly manifested incredibility as a witness. First, Rebistual's story about receiving threats from the Ornoza brothers and being scared afterwards is allegedly negated by the testimony of the police officer that when he went to look for the accused-appellants on information of Rebistual, they were nowhere to be found and that Rebistual was far from being scared because he relayed the incident to his wife and later to the police. The defense argues that if Rebistual's testimony is to be believed then he would have been killed as threatened because he had already informed the authorities.

The contention is without merit. The fact that the police officers could not locate the accused-appellants is not an indication that beforehand, the two of them had already gone to Rebistual and had warned him. Rebistual's assertion that he was so scared is supported by the fact that he did not report the matter to the police authorities until the latter went to him and asked him about the incident. The actuation of Rebistual is not to be wondered at since it is not uncommon for a witness to a crime to show some reluctance about getting involved in a case. The natural reticence of most people to get involved in a criminal case is of judicial notice (*People v. Coronado*, G.R. No. 68932, October 28, 1986, 145 SCRA 250; *People v. Pacabes*, G.R. No. 55417, June 24, 1985, 137 SCRA 158).

Second, the defense puts at issue Rebistual's testimony that when he witnessed the killing of Virgilio Bayanin, he dropped the bunch of bananas he was carrying when allegedly nowhere in the photographs presented as exhibits

was a bunch of bananas shown.

The fact that the photographs do not show any bunch of bananas cannot be taken to detract from the credibility of Rebistual's testimony since the two photographs, a close-up of the body of the deceased, which were presented by the prosecution as part of its exhibits cover a very limited area (Exhibits "B" and "C").

Lastly, the defense assails Rebistual's testimony that he witnessed the crime through the single light or a flashlight arguing that if it were so then Rebistual could not have escaped unharmed as the assailants would have known of his presence and would have disposed of him so that he may not testify against them.

We note, however, that Ruben Ornoza was aware that the deceased was with Rebistual that evening. When Rebistual and Virgilio Bayanin dropped by the birthday party of Wilfredo Ornoza, Ruben Ornoza even approached Rebistual and asked him why Virgilio Bayanin was with him (TSN, February 27, 1981, p. 6). The accused-appellants' target that night was Virgilio Bayanin but as they were aware of Rebistual's presence, they took care of this problem by going to his house and threatened him not to inform the police authorities about what he saw.

We find no reason, therefore, to depart from the well-settled rule, that the findings of fact of the trial court on the credibility of witnesses are accorded the highest respect because it has the advantage of observing the demeanor of a witness while on the witness stand and therefore can discern if such witness is telling the truth or not (*People v. Adones*, G.R. No. 63453, September 24, 1986, 144 SCRA 364; *People v. Cabanit*, G.R. No. 62030-31, October 4, 1985, 139 SCRA 94). The trial court, in the instant case, observed that:

. . . The Court's attention was focused more particularly on Jesus Rebistual on the box to determine and assess his credibility. His demeanor and manner of testifying did not escape the Court's attention (for) he never wavered nor was he rattled inspite (sic) of the spirited and rigid cross-examination for almost two (2) hours by counsel for the accused (Decision, pp. 22-23).

The second assigned error relates to the defense of alibi.

For alibi to be considered, it must be established that it was physically impossible for the accused to be at the scene of the crime at the same time (*People v. Magdueno*, G.R. No. 68699, September 22, 1986, 144 SCRA 210; *People v. Catipon*, No. L-49264-66, October 9, 1985, 139 SCRA 192; *People v. Urgel*, L-34851, February 25, 1985, 134 SCRA 483).

In the case of Mario Ornoza, granting that he was really in the house of Agapito Frago from 5:00 o'clock in the afternoon on September 10, 1977 and stayed there for the night, We cannot disregard the possibility that he could have been physically present at the scene of the crime. It is not improbable for Mario Ornoza to have left the house and perpetrate the crime inasmuch as the scene of the crime is in the same barangay as the house of Agapito Frago. We consider also the distance between Agapito Frago's house and the house of Mario Ornoza's parents where he was staying which is only one (1) kilometer (TSN, June 24, 1980, p. 219) and the trial court's observation that:

. . . there is no reason at all that would warrant that he (Mario Ornoza) should sleep there on September 10, 1977, instead of in his own house in the same barrio which is not far, when their only business on the following day was to haul coconuts. (Decision, p. 3: Rollo, p. 27)

In the same wise, the evidence presented by Ruben Ornoza does not show that it was physically impossible for him to be at the scene of the crime on the fatal evening. Ruben Ornoza himself admitted on cross-examination that the distance between the house of Ernesto Bati, where the deceased and Rebistual came from, to the house of Wilfredo Ornoza, was about two hundred (200) meters (TSN, March 13, 1980, p. 207). The distance from the

house of Ernesto Bati to the scene of the crime is about three hundred (300) meters (TSN, February 27, 1981, p. 3). It was established that Ruben Ornoza was in the house of Wilfredo Ornoza that night of September 10, 1977 but gauging from the distances as shown above, it was not impossible for him to have left the birthday party.

The accused-appellants' failure to prove that they could not have been at the scene of the crime is fatal to their defense (*People v. Abigan*, *supra*).

Furthermore, it is well-settled that alibi cannot prevail over the positive testimony of prosecution witnesses and their clear identification of the accused as the perpetrator of the crime (*People v. Magdueno*, *supra*; *People v. Ocaya*, G.R. No. 75074, September 15, 1986, 144 SCRA 165). Alibi is not credible in the face of the direct and positive testimony of the prosecution witness on how the assault on the victim was perpetrated (*People v. Pacada*, L-44444-45, July 7, 1986, 142 SCRA 127; *People v. Rosario*, L-46161, February 25, 1985, 134 SCRA 496). In the instant case, the trial court established that:

. . . there is that clear and convincing evidence of identification which could not be disbelieved and that is the testimony of prosecution witness, Jesus Rebistual, that Ruben Ornoza beat with a hard object Virgilio Bayanin, and his brother, Mario Ornoza stabbed him on the area of the left breast.

It is noteworthy to point out that while the accused-appellants were stabbing and beating the deceased, the latter uttered these words: "Ano бага ang pagkakasala ko sa inyo, Mario, Ruben, bakit ninyo ako ginaganito?" (TSN, February 27, 1981, p. 4). This statement was made by the deceased under a state of nervous excitement and thus may be considered as part of the *res gestae* and admissible to establish the identity of the assailants. Moreover, the defense failed to show any motive on the part of the prosecution witnesses, especially Jesus Rebistual, to falsely accuse the appellants as having committed the crime. Therefore, their testimonies are entitled to full faith and credit.

The trial court did not fail to note that the accused were not immediately arrested because they left the town of Candelaria, Quezon at once and were obviously in hiding. As we have previously held, flight is an indication of a guilty mind (*People v. Bocasas*, G.R. No. *People v. Hecto*, G.R. No. 52787, February 28, 1985).

The accused-appellants had a motive to inflict harm on Virgilio Bayanin. As testified to by Jesus Rebistual, Virgilio Bayanin was suspected of killing the appellants' father, Federico Ornoza. He was convicted and he served his prison term (TSN, February 27, 1981, pp. 7-8). It appears that the accused-appellants could not rest in peace until they have vindicated the death of their father.

WHEREFORE, the appealed judgment is AFFIRMED with the modification that the civil indemnity to be paid the heirs of the deceased Virgilio Bayanin is increased from TWELVE THOUSAND PESOS (P12,000.00) to THIRTY THOUSAND PESOS (P30,000.00).

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Paras, Padilla, and Bidin, JJ., concur.

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