

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIUS MAHUSAY ALIAS ALOT, ACCUSED-APPELLANT.

G.R. No. 60470. September 09, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from a judgment of the Circuit Criminal Court of Cebu City which convicted Julius Mahusay of the crime of Murder and sentenced him to 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 proportionate costs.

Jaime Cinco and Julius Mahusay were charged with the crime of MURDER in an information which reads:

"That on or about the 25th day of January, 1981, at about 9:45 o'clock in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, armed with a hunting knife, with treachery and evident premeditation, with deliberate intent, and with intent to kill, did then and there suddenly and unexpectedly attack, assault and stab one Armando Baculi on the vital parts of his body with said hunting knife, thereby inflicting upon him the following injuries:

"CARDIC — RESPIRATORY ARREST; HYPOVOLIMIC SHOCK; STAB WOUND LEFT HYPOCHONDRIAC; PENETRATING PERFORATING.'

and as a consequence of which said Armando Baculi died a few days later."

Only accused-appellant Julius Mahusay was arrested and tried. His co-accused Jaime Cinco remains at large.

The evidence for the prosecution shows that on January 25, 1981 at about 9:45 in the evening, Joseph Gamboa and Gary Parba were on their way back to sitio Mangga, Cebu City, after buying an electric light bulb in Barangay Tiza when they saw Jaime Cinco and Armando Baculi, walking on the same path about 15 meters ahead of them. Jaime had an arm around the shoulder of Armando Baculi while Baculi was struggling to free himself. Jaime made his hold "firm and strong." Suddenly Julius Mahusay appeared from the dark holding a knife and without warning, stabbed Armando on the left side of his body. Joseph and Gary shouted at Jaime and Julius who immediately ran away. They left Armando who slumped down to the ground bleeding.

Gary and Joseph approached Baculi who seemed to be seriously injured so they carried and brought him to the road. The two loaded him in a passenger jeepney and brought him to the Cebu Medical Center. On their way to the hospital, they tried to ask him questions like "why did it happen to you?" and "do you have any differences against them?" but he was incoherent. He kept on saying "Why did you do this to me, Jimmy?"

At around 10:30 in the evening of the same day, Davide Villanueva, a member of the Cebu City police force received an order to investigate the incident. Villanueva, after making an ocular inspection of the place of the incident, proceeded to the hospital. He was able to interview Baculi who was then lying at the emergency room of

the hospital. Baculi identified Julius Mahusay as the one who stabbed him. He narrated that he was walking at Sitio Mangga, along a small pathway when Jimmy Cinco who was walking abreast with him put his left arm on his shoulder; that when he noticed that Jimmy's hold was getting different, he tried to struggle but the former held him tight; and that while they were walking, Julius Mahusay suddenly appeared and without any warning stabbed him. During the interview, Villanueva asked Baculi if he believed that he would die as a result of the wound. Baculi answered "Yes."

Armando Baculi died the following day, January 26, 1981 at 9:50 in the evening. He was attended to by Dr. Paul Abello, a resident physician of the Cebu Medical Center. According to the medical certificate issued by Dr. Abella, the cause of death was:

"CARDIC: Respiratory Arrest; Hypovolimic shock; Stab wound left hypochondriac penetrating perforating."

Julius Mahusay denied any participation in the killing of Armando Baculi. He admitted that he was at the scene of the crime and in fact saw the incident. According to him, he together with two companions, Carol Fernandez and Marife Villarin, were on their way to a dance party at Sitio Mangga when they saw ahead of them, Jaime Cinco and Armando Baculi. His narration of the incident varies from that of the prosecution. He stated that it was Jaime Cinco who stabbed Armando Baculi. Mahusay stated that he wanted to go near them but was "ashamed" to leave his two women companions; that he heard Armando shout "help, I was stabbed" before falling down; that his two women companions were afraid and wanted to run but he told them "don't run anyway we have nothing to do with it"; and that after the incident some people gathered around Armando Baculi and carried him while he together with his companions proceeded to the dance hall.

The court did not give credence to Mahusay's version of the incident and found him guilty of the crime charged.

In this appeal, the appellant alleges that the trial court committed the following errors:

I

THE TRIAL COURT ERRED IN FINDING THAT JULIUS MAHUSAY, AND NOT JAIME CINCO, STABBED ARMANDO BACULI, AND THAT THEY ACTED 'PURSUANT TO A PREVIOUS AGREEMENT.'

II

THE TRIAL COURT ERRED IN FINDING THAT THE KILLING WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III

THE TRIAL COURT ERRED IN NOT ACQUITTING JULIUS MAHUSAY.

All the assigned errors dispute the trial court's findings on the credibility of witnesses. The appellant impugns the credibility of the prosecution's witnesses, particularly Gary Parba and Joseph Gamboa by citing: (1) that Gary and Joseph, could not have established the identity of Armando Baculi's assailant because the scene of the incident was a dimly lighted footpath capable only of accommodating two persons and surrounded only by a few houses and a number of trees and shrubs and that they were quite a distance from where the place of the stabbing incident took place and could not actually see the weapon used by the assailant; and (2) that Gary and Joseph gave inconsistent testimonies as regards the place from where the appellant emerged immediately before he allegedly stabbed Baculi.

The evidence on record establishes that the scene of the incident was well-lighted. The ocular inspection by Patrolman Davide Villanueva of the Cebu City police force conducted about one hour after the incident indicated that there was a lighted fluorescent bulb on an electric post around five meters away from the scene of the

incident. Even the appellant and Marife Villarin, defense witness, testified that the scene of the incident was well-lighted. In effect, their testimonies bolster Gary's and Joseph's statements that the stabbing incident happened in a well lighted place.

The appellant's contention that the eyewitnesses did not see the weapon used is inaccurate. Joseph Gamboa testified:

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"Q.

Please tell this Honorable Court what was that incident?

"A. Jimmy was having his arm around the shoulder of Armando Baculi and Armando Baculi was struggling at that time as I saw and Jimmy made his hold firm and strong. Then, later, I saw that Julius Alot emerged bringing a knife and with the knife he stabbed Armando Baculi with it. (Underscoring supplied, TSN., October 14, 1981, p. 4)

The conflicting statements attributed to Gary Parba and Joseph Gamboa insofar as the place from where the appellant emerged to stab Armando Baculi stem from the former's testimony that the appellant appeared from behind Armando Baculi while the latter testified that the appellant walked from in front of Baculi and then stabbed him. These apparently conflicting statements do not weaken the probative value of the prosecution's evidence.

The identity of the appellant as the assailant has been clearly established by the evidence on record. Gary Parba and Joseph Gamboa, whose presence at the time the stabbing incident happened is unrebutted, positively identified the appellant as the assailant. Gary Parba testified that the appellant was a close friend while Joseph Gamboa testified that he had known the assailant for about four (4) months before the incident. All three of them played basketball although under different basketball teams. That these two eyewitnesses recognized the appellant as the one who stabbed Armando Baculi is clearly seen on record. Under cross-examination, Gary Parba stated:

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"Q-

How did you recognize that he was Alot?

"A-

Because I really know him even, if I see his back.

"Q-

In spite of the fact that the place was dark?

"A-

But the place where he went out to was lighted and I can see very well, I can very well see him, sir."

(TSN., Sept. 17, 1981, p. 11)

while Joseph Gamboa stated:

"Q

How were you able to recognize him?

"A

The place was lighted.

"Q.

Were you able to see his face frontally?

"A

Yes.

"Q

Or was it only the side view of that person who stabbed a Armando Baculi?

"A

We can very well recognize him, Sir, because not only that I recognized the way he moved but I saw his face."

(TSN., October 14, 1981, p. 10)

Both witnesses indicated that Mahusay emerged from the dark, meaning from the side of the footpath. The victim and Jaime Cinco were then walking when Mahusay suddenly stabbed Baculi.

The defense did not establish any motive of Gary Parba and Joseph Gamboa in testifying against the appellant.

Moreover, Armando Baculi aside from narrating some details on how the stabbing incident happened, declared to Patrolman Davide Villanueva, the police investigator assigned to the case, that it was the appellant who stabbed him. Armando Baculi was interviewed by Villanueva at around 10:30 p.m., on the same night (January 25, 1981) after the incident happened while the former was lying at the emergency room of the Cebu Medical Center where he was brought by Gary Parba and Joseph Gamboa. At the time of the interview, and while Baculi was being readied for an operation, Villanueva asked Baculi if he believed that he was going to die to which Baculi answered "Yes." The statement on the expectation of impending death is worthy of belief considering that Dr. Paul Abella who attended to Baculi testified that "x x x the patient shocky (sic) already that means he has lost much blood." (TSN., October 14, 1981, p. 8).

The testimony of Patrolman Davide Villanueva on the dying declaration is an exception to the hearsay rule. *People v. Banayo* (129 SCRA 725) citing the earlier case of *People v. Sagorio* (14 SCRA 468) states that the four (4) requisites which must concur in order that a dying declaration may be admissible are:

"a) it must concern the crime and surrounding circumstances of the declarant's death; (b) at the time it was made, the declarant was under a consciousness of an impending death; (c) the declarant was competent as a witness; and (d) the declaration is offered in a criminal case for homicide, murder or parricide in which the declarant was the victim."

All the foregoing requisites are present in the ante mortem statement of the victim, Armando Baculi.

Another point raised by the appellant to impugn the court's findings, centers around the trajectory of the stab wound. The appellant capitalizes on the alleged inconsistent statements of Joseph Gamboa and Dr. Paul Abella in relation to the trajectory of the stab wound. According to this argument, although Gamboa demonstrated in court that the appellant thrust the knife from his waist level upward towards the upper left side of Baculi, Dr. Abella stated that the trajectory of the wound "was going downward, slightly downward." (TSN., November 18, 1981, p. 7). This argument is devoid of merit. As the Solicitor General observed — "It is too common that the resultant wound varies from the manner in which it was inflicted." Besides, the incident happened in a wooded area along a narrow and unpaved footpath.

It is to be noted that the appellant did not only deny any participation in the killing of Baculi but he also pointed to his co-accused Jaime Cinco as the one who stabbed Baculi. His defense that he saw his co-accused Jaime Cinco stab Armando Baculi, corroborated by Marife Villarin who was allegedly with him on their way to a dance party, cannot stand against the positive identification made by the prosecution witnesses and the dying declaration of the victim himself. The statement of Armando Baculi in the passenger jeep on the way to the hospital, "Why did you do this to me Jimmy?" repeated many times, according to Gary Parba and Joseph Gamboa, does not refer exclusively to Jaime Cinco as argued by the appellant. The statement made in the Visayan dialect was "NGANO MAN JIMMY NGA GI-INGON MAN AKO NINYO NI-INI" (underscoring supplied — Exhibit A). In its Visayan context, "You" (NINYO) is in the plural form and not in the singular form. Thus, the "You" in Armando Baculi's statement referred to both Jimmy and a companion. That companion was the appellant.

It is clear from the records that Jaime Cinco and the appellant participated in the killing of Armando Baculi. The manner of executing the crime clearly shows that the two assailants conspired to commit it. We ruled in *People v. Banayo*, supra:

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"x x x conspiracy may be inferred though no actual meeting of the minds among the accused was proven (*People v. Velez*, 58 SCRA 21). Proof of publicly observable mutual agreement is not indispensable to establish conspiracy. Hence, there is conspiracy where two of the accused held the victim's hands and the third stabbed the victim from behind (*People v. Rhoda*, supra). Each of the offenders performed with such closeness and coordination indicating a common purpose or design. (*People v. Geronimo*, 53 SCRA 246)."

Contrary to the contention of the appellant, treachery was present in the commission of the crime. The manner of its execution was such that the accused Jaime Cinco and the appellant deliberately and consciously adopted means and ways of committing the crime and insured its execution without risk to themselves arising from any defense their victim might make. These are the conditions necessary in order that treachery can be considered an attendant circumstance in the commission of a crime. (*People v. Macariola*, 120 SCRA 92; *People v. Rhoda*, 122 SCRA 909).

From the moment Armando Baculi was approached and held by Jaime Cinco, it was evident that the assailants deliberately and consciously adopted means and ways of committing the crime without risk to themselves. Jaime placed his arm on the shoulder of Armando Baculi holding him "firm and strong" which rendered the latter helpless. At this juncture, the appellant suddenly emerged from the dark and without warning stabbed Baculi on the left side of his body. The lone stab wound caused Baculi to slump to the ground. There was no defense that

Armando Baculi could make.

WHEREFORE, with the modification that the indemnity to be paid to the heirs of the victim should be raised to THIRTY THOUSAND PESOS (P30,000.00) the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, De La Fuente, and Patajo, JJ., concur.

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