

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAT. LORENZO UNTALASCO, JR. ALIAS “BOY” AND CONRADO UNTALASCO, DEFENDANTS-APPELLANTS.

G.R. No. 61105. October 25, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Court of First Instance of Pangasinan convicting Lorenzo Untalasco, Jr., and Conrado Untalasco of the crime of murder and sentencing each of them to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim Mario Lazaro in the amount of P12,000.00, to pay P10,000.00 as moral damages and to pay the costs.

The appellants are brothers. They were charged with committing the crime of murder as follows:

"That on or about December 30, 1980, in the evening, in the municipality of Sual, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, together with one John Doe whose identity has so far not been ascertained, conspiring and mutually helping one another, with intent to kill, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously shoot one Mario Lazaro, inflicting upon him gun shot wounds, which caused his death."

The facts established by the prosecution and found by the lower court to have established the guilt of the two accused beyond reasonable doubt are summarized in its decision as follows:

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"x x x On December 30, 1980, in the evening, Mario Lazaro and Earol Fernandez attended the vigil of the deceased Lourdes Sabado, at her house at Poblacion, Sual, Pangasinan. At about 8:30 P.M., they left for home, riding on a motorcycle. Mario was driving it, and Earol was riding at the back seat thereof. While travelling along Agbayani Street, on the way home, both accused Pat. Lorenzo Untalasco (a policeman of Sual) and his brother, accused Conrado Untalasco, who were each armed with short gun (revolver), fired at them (Mario and Earol) when they were just 3 meters away from accused, on the right side of the street, hitting Mario on the abdomen and causing him to slump on the motorcycle dying and causing said motorcycle to travel in a zigzag manner. Upon seeing Mario hit by the gunfire and blood was oozing from his body, Earol held his waist with his left hand, at the same time holding the handle bar of the motorcycle with his right hand, to guide it in the direction of the municipal hall. After firing the first time, both accused chased Mario and Earol and again fired at them several shots. Upon turning to the left towards the municipal hall of Sual, another person, fired at them again at the right side of the road (see Exhs. A and E).

"Upon reaching the house of Vicenta Cembrano, Earol stopped the motorcycle and brought down the wounded and dying Mario, and went to the house of Ernesto Galora to ask his help in bringing Mario to a hospital. Earol and Ernesto then loaded Mario on Ernesto's car and together with companions (Eduardo Rosas and Ricardo Zulueta) and they rushed Mario to the Nazareth General Hospital, in Dagupan City, arriving there at about 9:05 P.M., but he (Mario) expired even before arrival at said hospital.

"Earol Fernandez actually recognized both accused as the very persons who fired the shots at them (he and Mario), as their faces were illuminated by the headlight of the motorcycle just before they fired their guns about 3 meters away, on the right side of the road. He had known both accused for about 4 years prior to the incident, and they likewise know him well.

"Prior to the incident, or on December 11, 1980, to be precise, while Earol was watching a dance at the public plaza of Sual, accused Conrado Untalasco boxed him when he (Earol) went out of the dance hall, as one Celino Padilla boxed Conrado's companion (Quinio). When Conrado's companions arrived, together with his brother, accused Lorenzo Untalasco, they boxed him (Earol). Pat. Lorenzo Untalasco then held his left arm and pulled out his service pistol and hit him with its butt on the left eyebrow, whereupon Conrado Untalasco stabbed him with a knife, hitting him on the left arm and on the left thigh. He (Earol) then went to the house of Mario Lazaro (his cousin) and asked him to bring him to a hospital for treatment of his wounds. Mario loaded him on a jeep, but first stopped at a gasoline station at Poblacion, Sual, to load gasoline. At the gas station, when Mario's gangmates saw Conrado Untalasco, they mauled him. Mario alighted from the jeep to pacify the prota-gonists, but accused Lorenzo Untalasco was not agreeable, and told Mario that 'even we will be all fi-nished.' (41 tsn, September 7, 1981). He (Earol) stayed inside the jeep and urged Mario to bring him to the hospital as he was writhing in pain at the time (42 tsn, ibid). Mario brought him to the Western Pangasinan Provincial Hospital, at Alaminos, Pangasinan, where he was attended to by Dr. Alberto Guiang and where he was confined for 9 days. Dr. Guiang issued to him a medical certificate (Exh. F), which reads:

'February 14, 1980

"TO WHOM IT MAY CONCERN:

"This is to certify that Earol Fernandez, 20 years of age, male, single and a resident of Hilltop, Sual, Pangasinan, has been attended in this hospital, on December 11, 1980, at 11:00 A.M./P.M. for:

= Lacerated wound left eyebrow 1" long.

= Stab wound right shoulder anterior aspect, 1 ½" long 2" deep antero posteriorly.

= Stab wound;" long left thigh prox third 1 ½ " deep upwards and forwards.

= With Alcoholic breath.

x x x x x x x x x x x x x x

Patient was not/under observation/admitted in this hospital.

REMARKS: Patient is discharged as dispensary case.

In the opinion of the undersigned, the injuries will require medical attendance for a period of from Six (6) to Eight days (8) unless complication set in or manifestation due to internal injuries which were not apparent at the time of examination that may later appear.

Received by: / s / Alberto G. Guiang

/ t / ALBERTO G. GUIANG M.D.

Sr. Resident Physician"

The appellants denied any participation in the killing of Mario Lazaro. The two relied on alibi for their defense.

Patrolman Lorenzo Untalasco claimed that at the time of the shooting incident he was on duty manning a police checkpoint at the poblacion of Sual, Pangasinan about one kilometer away from the scene of the crime. His testimony was sum-marized by the court as follows:

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"x x x. Accused Pat. Lorenzo Untalasco, Jr.'s testimony is to this effect: On December 30, 1980, at about 8:30 P.M', he was temporarily assigned at the PC/INP Checkpoint, at Poblacion, Sual, Pangasinan, together with Pat. Dionisio Caburao, and M/Sgt. Herminio G. Rapelo (Station Commander of Sual) (Exh. 4). His detail or assignment at said Checkpoint was from Dec. 29, 1980 to January 4, 1981 (Exh. 4). From 8:00 A.M. to 8:30 P.M. of said date (December 30, 1980), he never left said checkpoint. He and Pat. Caburao played dama until 8:30 P.M. At about 8:30 P.M., Barrio Captain Abundio Agbayani, of Poblacion, Sual, went to the checkpoint and reported that Mario Lazaro was shot, and told him he wanted to talk to the Station Commander (Herminio Rapelo). He called for Rapelo, who was lying inside the room. Rapelo came out and he talked to Agbayani. He (Lorenzo Untalasco) asked Agbayani who shot Mario and Agbayani told him that Marcelo Valdez told him (Agbayani) that he was unable to identify Mario's assailant. Thereafter, Rapelo and Agbayani, and Patrolmen Dionisio Caburao and Maximo Zulueta went to the municipal hall of Sual. Rapelo told him (Lorenzo Untalasco) not to leave the checkpoint.

"It is not true that he (Lorenzo) shot Mario Lazaro. Earol Fernandez must have filed this complaint (for murder) against him and his brother, Conrado Untalasco, as he has a grudge against him, as he (Lorenzo) had filed a criminal complaint for assault upon an agent of a person in authority before this Court (Crim. Case No. L-2488, People vs. Earol Fernandez).

"On January 4, 1981, he and Pat Caburao were placed under technical arrest (custody) by PC Lt. Manuel Quevido, as suspects in connection with the death of Mario Lazaro (Exh. 5) and they were brought to the PC headquarters at Alaminos. Lt. Quevido interrogated him, but he told him, that he (Lorenzo) was on duty at the time of the alleged incident. He (Lorenzo) has nothing to do with the killing of Mario Lazaro. The crime scene is more than 1 kilometer to the checkpoint. The distance can be negotiated on foot in only 25 minutes, more or less. They have no jeep or vehicle in the checkpoint. On the night of the incident, he had a service revolver, caliber .38 with 5 rounds ammunitions. He does not know where his brother Conrado Untalasco was that night, as he lives in Barrio Baquioen, Sual, about 5 kilometers away from the crime scene, which is negotiable in 45 minutes on foot, or 15 minutes by jeep (28 tsn, January 25, 1982). His brother, Rudy Untalasco, has a jeep, but he (Lorenzo) does not know how to drive. He has known Marcelo Valdez for about 10 years prior to the incident and he is familiar to him (31 tsn, *ibid*). Marcelo's house is about 100 meters away from his house, and he knows his (Marcelo's) parents, Fred and Teofila Valdez (32 tsn, *ibid*). There is no misunderstanding between them (33 tsn, *ibid*). There was a time (on August 30, 1981) when Marcelo's mother (Teofila) came to him with Councilor Ragodos, and told him that said Marcelo Valdez was utilized as a witness in this case because he was paid (36 tsn, *ibid*). She told him that at the sari-sari store of Eugenio Doquinia. On September 1, 1981, Teofila Valdez again told him at the public plaza of Sual that 'she is going to talk to her son (Marcelo) to advise him not to testify in this case.' (40 tsn, *ibid*). He (Lorenzo) told her 'that's good if that is what your son will think of.' (40 tsn, *ibid*). He also told her that 'even though this Marcelo Valdez will testify against me, because I have not committed any crime.' (42 tsn, *ibid*)."

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The defense presented Abundio Agbayani, barrio captain of Sual, Pangasinan and three fellow police officers of Patrolman Untalasco to corroborate the above testimony.

The alibi of Conrado Untalasco places him at a salambao fishing craft about five kilometers from the poblacion at the time of the shooting. His testimony states:

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"On December 30, 1980, at about 8:00 to 9:00 P.M., he was at the 'salambao' (a fishing craft) owned by Loreto Caburao, at the sea, near Bo. Cabalitian, Sual, Pangasinan, with companions (Loreto Caburao, Alejandro Caburnay, Mario Singueo, Juanito Macatiag, and Rogelio Damacleng). He went to said 'salambao' at about

5:00 P.M., starting at Bo. Bacquioen, Sual, riding on a row boat with his said companions. The 'salambao' is located about 2 kilometers from seashore of Bo. Bacquioen and about 5 kilometers from Poblacion, Sual. At about 5:30 P.M. that day (December 30, 1980), they cast their nets at the 'salambao', then slept at 7:00 P.M. They pulled their nets at about 9:00 P.M. and cast it again, then ate their supper, then slept again and woke up at about 4:00 P.M. The following day, December 31, 1980. He left the salambao for Bo. Bacquioen, at about 4:20 A.M. (December 31, 1980). Upon arriving home, he gave his share of the catch to his wife, and at 10:00 A.M., he pastured his carabao in the hill. Then he took his lunch, and thereafter slept up to 2:00 P.M. Then he pastured his carabao again. At about 5:00 P.M., he left again with his companions bound for the 'salambao' at sea. He never left the 'salambao' on December 30, 1980, from 5:30 P.M. to 4:20 A.M. of December 31, 1980.

"He vehemently denied that he was one of those who fired a short gun at Mario Lazaro and Earol Fernandez, at Agbayani St., Poblacion, Sual, on December 30, 1980, at about 8:30 P.M. he was then at the 'salambao' when the shooting incident happened.

"On December 11, 1980 (19 days before the shooting incident), Mario Lazaro hit him at the public plaza of Sual, with an iron pipe, causing him to lose consciousness. When he regained consciousness, he found himself at the clinic of Dr. Benjamin Castillo, at Bugallon, Pangasinan. After discharge from said clinic, he reported the incident to the PC and gave a statement (Exh. 12) to M/Sgt. Francisco Rillera, on December 18, 1980, supported by the statement of witnesses Jose Caranay (Exh. 13) and Juanita Gacuray (Exh. 14). He had been residing in the Bo. Bacquioen since birth and he had known Loreto Caburao, et al. for about 4 years. Loreto invited him to join him fishing in his 'salambao' starting the first week of December, 1980 only. He learned that Mario Lazaro was shot only on January 1, 1980. He had known Mario for a long time, as they were studying in the same school. He had known Marcelo Valdez for about 10 years, prior to the incident. On December 30, 1980, he had no misunderstanding with Marcelo Valdez or his parents. He also knows his parents, Fred and Teofila Valdez. Marcelo Valdez testi-fied against him and implicated him in this case, as he was hired to testify (37 tsn, Feb. 17, 1982). Teofila visited him in the provincial jail and told him that Marcelo testified against me, as he was hired (37 tsn, *ibid*). He then told Teofila 'why did Marcelo Valdez do that, since I know for a fact that I have not committed any crime?' (38 tsn, *ibid*). Teofila also told him that she was looking for Marcelo, but 'she could not locate him, because they were hiding him'. (40 tsn, *ibid*). Due to his mauling by Mario Lazaro on December 11, 1980, he was hospitalized for 6 days (42 tsn, *ibid*)."

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The alibi was corroborated by Loreto Caburao, fisherman-owner of the salambao, and Mario Singueo, also a fisherman.

The lower court found treachery as qualifying the killing to murder. Evident premeditation was not clearly proved and was not considered as an aggravating circumstance.

The appellants allege that the lower court committed the following assigned errors when it convicted them of murder:

I

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF EAROL FERNANDEZ AND MARCELO VALDEZ THAT THEY RECOGNIZED THE DEFENDANTS-APPELLANTS AS THE ASSAILANTS WHO SHOT AND KILLED MARIO LAZARO.

II

THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONIES OF THE WITNESS OF THE DEFENSE.

III

THE LOWER COURT ERRED IN NOT GIVING CREDIT TO THE DEFENSE OF ALIBI.

IV

THE LOWER COURT ERRED IN NOT CONSIDERING THAT THE TESTIMONY AS WELL AS THE WRITTEN REPORT OF TEOFILO GAL-LANG, NBI AGENT (A LAWYER) DISCREDIT AS IT IMPEACHES THE TESTIMONY OF MARCELO VALDEZ.

V

THE LOWER COURT ERRED IN GIVING CREDIT TO THE TESTIMONY OF CELIA LAZARO, WIDOW OF THE DECEASED MARIO LAZARO AND IN NOT FINDING THAT THE TELEGRAMS EXHS. 'X' AND 'Y' OF SAID WITNESS TO MAJOR GEN. FIDEL V. RAMOS AND MINISTER JUAN ENRILE SHOW THAT THE MURDERERS WERE NOT REALLY IDENTIFIED.

VI

THE LOWER COURT ERRED IN NOT FINDING THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

The main issue presented by the assignments of errors is whether or not the eyewitnesses to the shooting positively identified the appellants as the perpetrators of the crime.

The records show positive identification. Marcelo Valdez was seated on a concrete bench at the junction of the national highway at Agbayani and Segundera Streets when he witnessed Patrolman Lorenzo Untalasco and Conrado Untalasco fire their short firearms at Mario Lazaro and Earol Fernandez who were riding on a motorcycle. After the first shot, the motorcycle zigzagged towards the bench where he was seated. The first shot was followed by several more shots at the victims. The motorcycle passed a bare to meters in front of Valdez. The witness was certain about the identities of the Untalascos because the two were illuminated by the headlights of a car coming from Alaminos. Valdez had known the accused for ten years.

The appellants ask why Valdez decided to hide behind the concrete bench instead of jumping into a nearby canal where he would have been safer. They also contend that if it is true that they were the assailants, they would have taken precautions to conceal their identity.

The decision of Valdez to duck behind the concrete bench was instinctive. Upon witnessing a shooting going on, he automatically hid behind the concrete bench upon which he had been seated. It did not occur to him to look for a safer place to hide. There is nothing unnatural or improbable about the action taken by the eyewitness.

The appellants misrepresent the facts when they state that according to the prosecution they did not take precautions to conceal their identity while committing such a serious crime. They committed the crime at night in a fairly dark place which they thought was deserted. Unfortunately for them, a passing car hit them squarely with its headlights thus enabling their clear and positive identification by an eyewitness seated on a concrete bench. There was similar identification by one of the intended victims whose motorcycle headlamps also illuminated them when they started shooting at the two riders. Furthermore, the policeman and his brother did not seem to pay much attention to people witnessing their violent acts. Earlier, during a dance at the public plaza, Earol Fernandez had been hit by Lorenzo Untalasco with the butt of his service pistol while Conrado Untalasco knifed him on the left arm and the left thigh.

The initial reluctance of Marcelo Valdez to be involved and the supposed discrepancies in his statements do not affect the probative value of his testimony. The decisive factor is that Marcelo Valdez positively identified both assailants. It is admitted that both assailants were known to Valdez for already ten years. Valdez could not have made a mistake in identifying the two appellants. Besides, the defense was not successful in establishing any motive of Valdez in testifying against them. As regards the supposed candid remark of Valdez' mother to the appellant that Valdez was hired to testify against both appellants, we concur with the lower court's observation that:

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"x x x This is hardly believable and inherently improbable. No mother will ever do such a thing to her own son, unless she is out of her mind, knowing that if her son perjures or gives false testimony, he will be held criminally answerable for it. No mother in this world, though how depraved or morally bankrupt, she maybe would do anything to send her own beloved son to jail."

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The unwillingness of Valdez to identify the two appellants when first questioned and even when the NBI agents interviewed the frightened people in the vicinity is not a sign that his later statements are false or concocted. As stated in *People v. Munoz* (107 SCRA 313) and *People v. Delfin* (2 SCRA 911) the initial reluctance of witnesses to volunteer information about a criminal case and their unwillingness to be involved in criminal investigations is common and has been declared as not affecting credibility.

One of the assailants was a police officer of the town where the crime was committed. It is understandable why a witness would not initially divulge the assailants' identities to the police authorities. The brutal slaying which Valdez witnessed plus the fact that the perpetrators were a police officer and his brother could have created a fear that he might be the next victim. As a matter of fact, the two appellants chased Valdez when they saw him running to the nearby house of Barangay Captain Abundio Agbayani. He looked back at the two and again clearly identified them.

The testimony of Earol Fernandez is similarly positive and convincing. He was riding on the motorcycle with Mario Lazaro. He saw the appellants fire their guns while their faces were illuminated by the headlight of the motorcycle. The guns were also pointed at him because he was riding tandem with Lazaro on the motorcycle. Fernandez and the two appellants knew one another quite well for about four years. Fernandez had a violent encounter with the two not long before the shooting.

The appellants ask why Celia Lazaro, widow of the victim, did not state the names of the appellants but merely mentioned that the suspects were policemen of Sual and relatives of the town mayor when she wired the Minister of National Defense and Major General Fidel V. Ramos, for an investigation into her husband's killing. There is no connection between Fernandez knowledge of the identity of the killers and Mrs. Lazaro's failure to name the suspects in her telegram. The victim's widow was asking for an investigation of a crime. It would have been rather imprudent for her to name the killers in a telegram and, thereby, anticipate the results of the requested investigation. It was enough to describe them and await the arrival of investigators to whom further details could be given.

Another factor raised by the appellants is the fact that the shells and slug recovered were of .45 caliber while the service firearm taken from appellant Lorenzo Untalasco was a .38 caliber revolver. The caliber of the gun is not conclusive proof that Lorenzo Untalasco could not have participated in the killing of Mario Lazaro. The appellants were both armed and they could have used firearms different from the revolver turned over by Patrolman Untalasco very much later. Considering that eyewitnesses Earol Fernandez and Marcelo Valdez

positively identified both appellants as the perpetrators of the crime, the defense of alibi presented by the appellants is unavailing. (People v. Lucero, 96 SCRA 694). It is not physically impossible for the appellants to have been seen in the places where the alibi located them and still commit the crime.

WHEREFORE, the judgment of the court a quo is hereby **AFFIRMED**.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

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