

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISIDRO CLORES, EDMUNDO CLORES, AND GAVINO CLORES, DEFENDANTS-APPELLANTS.

G.R. No. 61408. October 12, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Isidro Clores and his two sons, Edmundo and Gavino, and daughter Cynthia were charged with murder before the then Circuit Criminal Court of Tuguegarao, Cagayan in Criminal Case No. 412. After trial, the court found Isidro, Edmundo and Gavino guilty as charged and sentenced them to reclusion perpetua, to indemnify the heirs of the victim, Victorio Barcarse, Jr. in the sum of P12,000.00 and to pay the costs. Cynthia Clores, for lack of evidence, was acquitted.

Isidro, Edmundo and Gavino Clores appealed to Us from the judgment of the trial court.

The people's evidence shows that on April 11, 1970, Felisa Barcarse and her son Victorio Barcarse, Jr. went to the house of appellant Isidro Clores in Carinsan Sur, Tuguegarao, Cagayan to ask for the hand of his daughter, Salome. They were warmly received but discussion on the arrangement of the forthcoming wedding of Victorio and Salome was postponed until appellant Edmundo and an elder brother arrives from Manila.

About noon of April 24, 1970, Cynthia Clores, the 14 year old daughter of Isidro, came to the house of Felisa Barcarse to fetch Victorio saying that her father, Isidro, wanted to continue their talk about the proposed marriage with Salome. When Victorio did not return home that evening of the 24th, Felisa Barcarse went to Isidro to ask him about her son. The latter disclaimed knowledge of the whereabouts of Victorio because he had been away from home and had just returned from Cauayan, Isabela. However, he said that since his wife and Salome had gone to Manila, it was possible that Victorio had joined them.

When Victorio did not come home, and Felisa on April 30, 1970, heard news that a dead body tied to a sack of sand had been carried away by strong current before it could be retrieved, she reported the disappearance of her son to the constabulary command in Cagayan. Philippine Constabulary Investigator Eustaquio Mellilin took charge of the investigation. He was assisted by the National Bureau of Investigation Office in Ilagan, Isabela but they failed to make a case against anyone for the disappearance of Victorio.

In June 1975, after five (5) years, the new Chief of Police of Iguig, Tomas Rey, revived the case when an eyewitness, Morel Callueng, claimed to have seen Victorio killed. This allegedly took place on April 24, 1970 in Iguig.

Morel Callueng, then only 8 years old testified that he was on his way to school at about two o'clock in the afternoon when he heard someone moan from the direction of Isidro's house. Out of curiosity, he scaled the concrete fence of the Clores' residence and saw Gavino Clores sitting on top of Victorio who lay prone on the ground. Using his left hand, Gavino gagged Victorio's mouth and, using the other hand, Gavino pinned down

Victorio's arms to his chest. Meanwhile, Edmundo Clores came and using the butt of a .22 caliber rifle clubbed Victorio's head a number of times. While this was going on, Isidro was in the balcony telling Edmundo to finish him. Isidro then ordered his two sons to carry the victim's body at the back of the house.

Callueng jumped into the yard to see what would happen next but Isidro drove him off with a threat against his life if he would tell the incident to anyone.

Defense evidence is denial and alibi. Appellants claim there was no reason to kill Victorio considering their close affinity with his family. Besides, they contend being elsewhere when the alleged slaying of Victorio took place. Edmundo Clores testified that when he left his house in 1963 he did not return to Cagayan until 1975 when the case against him was filed. In April 1970, he was in Quezon City, working for a certain Virginia Tan in connection with a contract for the remodeling of her house.

Isidro Clores declared that on April 19, 1970, he took a bus for Manila and was taken ill with gastro-enteritis on the way. He had to spend the night in the Albano Clinic in Cauayan, Isabela. The following day, April 20, 1970, he took a PAL plane for Manila and returned to Iguig, Cagayan in the morning of April 28, 1970.

Gavino Clores testified that on April 24, 1970 he was at the Municipal Treasurer's Office of Iguig where he was employed. It was a Friday and he was preparing reports of the previous day collections.

In pronouncing appellants guilty of murder, the court a quo rationalized its conclusion -

"x x x The witness knew all the accused. The time of the commission of the crime was at daytime leaving no room for mistake or uncertainty in the identification of all the accused. Thus the defense of alibi cannot prevail over the positive identification of the witness Morel Callueng. The identification made by Morel Callueng which is direct and positive must prevail over and above the individual defenses of alibi invoked by the accused.

"All the accused insist on their denial that they did not commit the offense. That the investigation conducted by the authorities does not warrant ample evidence for the filing of a case against them due to the doubtful identity and description of the victim. Notwithstanding however the barefaced denial of all the accused, their individual alibi and denial cannot be sustained.

"The other point raised by the defense was the non-presentation of the sack and nylon rope by the prosecution, and two witnesses for the prosecution, Mr. Yadan and Sgt. Mellilin. To the mind of the court, the non-presentation of the prosecution of the sack and nylon rope, as well as the two witnesses for the prosecution does not enfeeble or weaken the evidence of the prosecution, there being ample and convincing evidence to prove that the accused were responsible for the mauling of the victim.

"Another point to be considered is the motive as proven by the defense. The defense contend that the filing of this case was politically inspired and motivated by Ex-Mayor Trinidad of Iguig, Cagayan, and also due to a land dispute between Luz Magalad, a close kin of Morel Callueng. Nonetheless, well settled is the rule that when an accused was positively identified to have committed the felony and was noticed and pointed to during the trial as the malefactor, motive necessarily becomes inconsequential and deserves scant consideration. To the mind of the court, proof of motive is unimportant and trivial when there is positive identification of the accused." (pp. 53-54, Decision)

There is merit in this appeal.

The Solicitor General, instead of filing his brief sustaining the trial court's pronouncement of guilt as is usual in many cases, submitted a manifestation and motion that "the decision of the court a quo be set aside and a judgment of acquittal be entered for all the appellants."

Callueng's testimony, according to the Solicitor General, cannot be relied upon, thus -

"1. He has indulged in inconsistencies of substance. For instance, he testified on direct examination that it was the sound of someone moaning inside the Clores compound that arrested his attention. Callueng further testified that he climbed the concrete fence in front of the house to see what went on in the yard. Thus --

'Q Why did you stop at the place of Isidro Clores?

A I heard a person moaning, sir.

Q When you heard some moaning at the house of the accused Isidro Clores, what did you do, if any?

A I went on top of a hollow block in the fence of Isidro Clores.' (tsn., Nov. 17, 1976, p. 78.)

"However, Callueng swore during the preliminary investigation conducted by the district state prosecutor that he became curious not because of moans coming from the Clores house but because of shouts from it. And, Callueng did not scale the fence. He merely peeped behind it.

". . . upon passing the house of Isidro Clores, I heard persons shouting and upon hearing the shouts, I immediately posted myself close to the hollow block fence of Isidro Clores and peeped inside his compound to look what was going on and to my surprise I saw Edmundo Clores together with his brother Gavino Clores who were actually assaulting and hitting a male person...'

-- Id., p. 162.

"It is a curious thing that, during cross-examination, Callueng further varied his testimony. He claimed that he heard the moaning sound while inside the house (probably, the yard) of the Clores residence.

"Q Now, you said that you were walking at the national highway towards the direction of the school, how far were you when you first heard that moaning which you said you heard?

"A I was already inside the house of Isidro, Clores.

Q Will you tell to the Court how loud is that alleged moaning, Mr. witness?

A Umm, Ummm. The moaning is like that, sir, for twice, sir. (Witness imitated how the victim moans.)'

-- Id., pp. 112-113.

"Furthermore, on direct testimony, Callueng testified that as soon as he looked into the Clores yard, he saw appellant Gavino turning the victim over as he lay on the ground.

"Q In front of the house and a hollow block in the enclosure of the house of Isidro Clores, what did you see?

"A I saw than overturning a person."

-- Id., p. 79; see also pp. 87, 90.

"On cross-examination, however, Callueng modified his testimony. He stated that Victorio was still on his feet when he (Callueng) looked into the Clores yard.

"Q Mr. Witness, you stated a while ago on direct examination that when you first saw the incident, they were only at the ground of the premises of Mr. Clores, is that what you want to say?

A They were near the stairs, sir.

Q And the alleged victim, Victorio Barcarse, Jr. was already lying flat on his back when you saw the incident after hearing the moaning?

A Not yet, sir.

C He was still standing at that time?

A Yes, sir.'

--Id., p. 150.

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"There is another item in Callueng's testimony that mars his credibility. He testified that other persons had joined him at the fence to watch the spectacle in the yard. (Id., p. 102) On cross, he explained that, although he was aware of the presence of these other persons (some adults and others, children), he failed to recognize any of them.

'Q You were ... are there other persons outside the compound of Mr. Clores?

A There are, sir.

Q How many persons more or less were there?

A Plenty, sir.

Q Could it be around ten or twenty persons?

A Around ten, sir.

"Q You tell to the Court who were those persons if you were able to recognize any?

A I cannot remember, sir.

Q You said you were in that place for forty minutes, you fail to recognize anyone of them?

A I am not looking at them. I am looking on what was actually happening."

--Id., pp. 148-150.

"2. That is not all. In many places, Callueng's testimony does not pass the test of common experience. At the time of the alleged killing, he was only a child of 8 years. It would not have been likely that, given the gruesome character of the slaying -- Edmundo bashing the victim's head with a rifle's butt -- Callueng would remain perched atop the fence and stare at it for long. His natural reaction should have been to get away either out of revulsion or fear. Instead, he did a strange thing. He went down into the yard after the killing to follow Edmundo and Gavino to where they brought their victim.

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"3. From the time the killing allegedly took place up to the time Callueng testified in court more than 6 years have passed. For a boy of 8 years with still developing mental faculties, Callueng's ability to observe and recall the minutest details of the incident -- Victorio's haircut, the color of his skin, the shirt he wore, the shade of his pants, the quality of his shoes, the precise movement of every foot or hand of the victim and his aggressors -- is too extraordinary to be true. Callueng even recalled seeing Victorio thrice before near the house of Isidro, including the name of the buses he boarded, although admittedly there was nothing remarkable about those occasions.

"More, Callueng's reaction after the alleged killing was much unlike that of a boy of 8 years. Other boys would have spoken about the incident to his classmates, friends or teachers as soon as they reached school. There was nothing secret about it since, according to Callueng, ten other persons saw what happened. But, strangely, Callueng testified that he kept the matter to himself and told only his father about it.

"4. This brings us to the 6-year delay Callueng incurred before reporting what he saw to the police. Callueng testified that his fear of Isidro and what the latter would do to him deterred him from immediately coming forward to testify. But this proffered excuse suffers from weakness. Firstly, as Callueng admitted, Isidro did not have a reputation for violence and he never threatened to harm Callueng after the alleged incident. (Transcript, November 17, 1976, p. 172) Secondly, there is no evidence that Isidro or any of his children held positions of power or influence in the community as to be able to manipulate police investigation of the matter. Thirdly, in 1972 shortly after martial law was proclaimed, the investigation of the case was re-newed and the military placed Isidro under detention for about a month. Callueng could have come forward then since the person he feared could no longer harm him. Yet, Callueng remained silent. His sudden emergence 6 years after the incident is accordingly suspect.

"5. Callueng's testimony has an aftermath. He executed a sworn state-ment on April 8, 1979 (Exhibit 2) retracting his testimony in court and blaming the Chief of Police, Tomas Rey, for coaxing him into testifying falsely. The municipal circuit judge of Amulung and Iguig identified the statement and testified that Callueng swore to it freely. (Transcript, Oct. 6, 1981, pp. 55-57; Jan. 22, 1982, pp. 3-4) Callueng testified anew later, branding his retraction as a product of fear of Isidro who accompanied him before the municipal judge. However, Callueng was unable to state that Isidro then in-timidated or coerced him. Isidro tes-tified on rebuttal that it was Callueng, accompanied by a certain Romeo Yadan, who came to see him offering to retract his previous testimony. Consequently, Isidro brought them to the municipal judge.

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"Because the prosecution's key witness, Callueng, is unreliable and because no other significant evidence links appellants to the disappearance of Victorio, the latter are entitled to an acquittal." (pp. 146-149, 150--152, 155-156, 157, 159, Manifestation of Solicitor General)

Appellants have in their favor the presumption of innocence as guaranteed by the Constitution. Proof against them must survive the test of reason. Every circumstances against guilt and in favor of innocence must be considered. Suspicion no matter how strong should not sway judgment, for well-established is the rule that the prosecution must rely on the strength of its evidence and not on the weakness of the defense; that appellants need not prove their innocence because that is presumed; that the presumption of innocence is a conclusion of law in favor of the accused, whereby his innocence is not only established by continues until sufficient evidence is introduced to overcome the proof which the law has created - that is, his innocence; "that conscience must be satisfied that defendant has been proven guilty of the offense charged. Only by proof beyond reasonable doubt which requires moral certainty, 'a certainty that convinces and satisfies the reason and conscience of those who are to act upon it' may the presumption of innocence be overcome." (People vs. Inguito, 117 SCRA 641, 649)

Indeed, the Court finds the evidence in the case at bar not sufficient to sustain a verdict of guilt. There is much to be desired in the People's evidence that this Court cannot view the matter in the same way the lower court did. The state of moral certainty relative to the guilt of appellants was not attained.

Defense evidence of alibi is known to be the weakest of all the defenses for it is easy to concoct. However, where the evidence of the prosecution is weak, the defense of alibi assumes importance and bears looking into.

The testimony of Edmundo Clores that he was in Manila on April 24, 1970 was corroborated by a businesswoman, Atty. Virginia Tan, who came all the way from Manila to Cagayan and declared that she contracted with said appellant on April 20, 1970 to carry out renovation work at her residence in Quezon City. She even produced a copy of the contract and receipt issued by Edmundo Clores on April 24, 1970 - the date of the alleged killing, acknowledging full payment of the contract price.

The alibi of Isidro Clores that on April 19, 1970 he was taken ill could have been verified at the Albano Clinic

where he claimed to have stayed. And, his having taken the plane to Manila on April 20, 1970 could have been easily checked also at the passenger's manifest.

Likewise, the claim of Gavino Clores that he was working at the Municipal Treasurer's Office at the time the alleged killing of Victorio took place could have been ascertained in said office. This was not done by the prosecution.

In the case of *People vs. Fraga, et al.*, 109 Phil. 241, this Court held that "[a]n accused can not be convicted on the basis of evidence which, independently of his alibi, is weak, uncorroborated and inconclusive. The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong."

WHEREFORE, on reasonable doubt, the decision of the lower court under review imposing the penalty of reclusion perpetua on appellants Isidro Clores, Edmundo Clores and Gavino Clores is REVERSED and they are hereby ACQUITTED of the charge against them. With costs de officio.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Abad Santos, Plana, and Escolin, JJ., concur.

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