

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNULFO LISTON ALIAS “DODONG” AND HENRY “BOY” BEBANCO, ACCUSED-APPELLANTS.

G.R. No. 63396. November 15, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The single gunshot pierced the victim's heart and killed him on the spot. It also placed the accused-appellants in the shadow of the electric chair and before this Court in a plea for their lives.

The killing took place in the victim's house in San Isidro, San Francisco, Cebu, on February 8, 1982, at about eight o'clock in the evening. As the trial court found, Clotelido Batidor was having supper with his family, which was seated on the floor around the common fare. The house was illuminated with two kerosene lamps hanging from the walls and another one on the floor. Hearing someone at the door and thinking it was their married son Recoleta, Lorenza Batidor called to him to come and join them. There was no answer. Clotelido then told his son Nelson to see who it was. Nelson rose to obey but before he could open the door, it was flung open and two men carrying handguns barged in. One shouted, "This is a robbery!" while the other stayed behind him. The first one was subsequently identified as Arnulfo Liston and his companion as Henry Bebanco. It was Liston who confronted Clotelido while the latter was still seated and without much ado shot him point-blank on the chest. Clotelido slumped dead. Liston then kicked the kerosene lamp on the floor and fled. Bebanco followed, the announced robbery apparently forgotten. Samuel Batidor pursued them in vain until they disappeared in the darkness of the nearby cassava plantation.[1]

The killing was immediately reported to the police, who came that same night to investigate. The accused-appellants were named by Lorenza Batidor and her son Samuel. The following morning, Liston and Bebanco were arrested just before they were to leave for Cebu City in a pump boat. They were subsequently charged with murder, to which they both pleaded not guilty.

At the trial, Liston and Bebanco were positively identified by Lorenza Batidor and her son Samuel. Mother and son swore they knew both Liston and Bebanco and that they readily recognized the two when they intruded into their home that fatal night. It was these witnesses who related in detail the killing of Clotelido Batidor.[2] The gunshot wound was described by Dr. Jose O. Bardenas, the municipal health officer who examined the corpse soon after the incident.[3] The fourth prosecution witness was P/Sgt. Damiano L. Rocacurva, who testified on his investigation of the case and the arrest of the accused-appellants.[4]

The defense of the two accused-appellants was alibi, both claiming they were nowhere at the scene of the crime when it was committed. On the contrary, they said, they were at that time in Bebanco's house, where they slept, awaking at about 3 to 4 o'clock the following morning to go to the pump boat for their trip to Cebu City.[5] It was shortly afterwards, before they could board, that they were both arrested for the killing of Clotelido Batidor. Both denied any involvement in the offense. Liston claimed he did not know the Batidor family and could not say why

they should implicate him.[6] Bebanco said he knew the Batidors but saw no reason why they should point to him as one of the culprits.[7]

The other three witnesses for the defense did not do much for the accused-appellants. Antonio Porcare, the barangay captain to whom they were brought after their arrest, merely testified that they were searched in his house by the police officers, who found nothing.[8] Ner Cartagena simply declared that Liston and Bebanco went to his house in the evening of February 8, 1982, to tell him they were going to ride in the pump boat of which he was a crew member. He said they left at about seven o'clock.[9] Obaldo Cartagena, for his part, stated that Bebanco had indeed borrowed P300.00 from him and that at about eight o'clock of February 8, 1982, he heard the two talking about the trip they were taking at dawn the following day. They were then buying some things at his store, which they left shortly thereafter.[10]

Disbelieving the defense, Judge Regino Hermosisima, Jr. of the then Circuit Criminal Court of Cebu City, rendered the appealed judgment,[11] the dispositive portion of which reads as follows:

WHEREFORE, the Court finds the accused Arnulfo Liston and Henry "Boy" Bebanco guilty beyond reasonable doubt of the crime of MURDER described in the aforequoted information. Upon the finding of the following aggravating circumstances: (1) dwelling; (2) nighttime; (3) abuse of superior strength; (4) disregard of the respect due the age of the deceased; and (5) use of an unlicensed firearm in the killing of the offended party, the said circumstances not having been offset by any mitigating circumstances adduced and proven by the accused, the accused should be, as they each are, hereby sentenced to the extreme penalty of death, with the accessory penalties of the law; to indemnify the heirs of the deceased Cloteldo Batidor in the sum of P12,000.00; and to pay the costs.

The basic issue involved in this case is the credibility of the witnesses, which is left primarily to the trial judge to assess in view of his advantage in observing their demeanor on the stand. The appellate court can go only by the records, without the opportunity of seeing for itself how the persons testifying react to the questions put to them and noting those little gestures and telltale signs that can limn the line between fact and fabrication. These are not found in the transcript and so may not be fully appreciated on appeal. But the trial judge can see all these. Hence, the rule is that his findings on this matter are accorded much respect, if not indeed conclusive effect, save only in those exceptional instances where they are clearly shown to be arbitrary.

When therefore the defense now argues that the trial judge erred in giving credence to the testimony of Lorenza Batidor on how her husband was killed by Liston and Bebanco, the averment must be received with not a little misgiving. Lorenza knew both of the accused-appellants and could easily recognize them by the light of the three kerosene lamps in the room. So too could Samuel Batidor, who out of unreasoning rage pursued his father's killers although he was unarmed and only fourteen years old.

Both Liston and Bebanco testified that there was no grudge between them and the Batidors, which made their identification by these witnesses more believable. There was no reason for them to implicate the accused-appellants except the simple fact that they saw Liston and Bebanco force their way into their house and kill Cloteldo. It is not likely that these witnesses, who hardly knew the accused-appellants, would denounce them without cause, knowing that the penalty then for the offense of murder could be death.

The claim of the defense that the crime was pinned on the accused-appellants simply because of the happenstance that they were leaving together for Cebu City is not acceptable. That was not the cause of their arrest. The reason they were arrested was the positive identification made of them by Lorenza Batidor and her son Samuel, who were both present when Cloteldo Batidor was killed.

In fact, the intended trip in the pump boat was not really a happenstance but was evidently timed deliberately as

part of the plot Liston and Bebanco had conceived. The crime was to be committed in the evening of February 8, 1982, and they were to make their escape to Cebu City the following early morning in the pump boat. The trip was indeed "pre-arranged," as the defense insists, but not for the innocent purpose it suggests.

What must have happened was that after forcibly entering Cloteldo's house with the intention of robbing him, Liston suddenly panicked or lost his nerve or otherwise forgot their original intention and mindlessly shot Cloteldo. There was actually no reason for this as none of the members of the household had offered any resistance. Having slain Cloteldo, Liston must have realized the gravity of his act and, seized by a sudden fear, kicked the kerosene lamp on the floor and took frightened flight. Bebanco followed the leader and also escaped.

The accused-appellants' defense of alibi is less than convincing since they simply corroborated each other with their respective self-serving allegations. Obaldo Cartagena's testimony is no more persuasive. The distance between his store and the Batidor's house is, as he said, only more than one kilometer. It is therefore not impossible that the two left his store at the hour he indicated and still had time to kill Cloteldo a little later. After all, there is no averment that the crime was committed at exactly eight o'clock that night.

Liston stresses that he demanded a paraffin test upon his arrest but was not given one and was thus prevented from proving that he had not fired the fatal gun.[12] Perhaps so, although the result of such test would not be necessarily conclusive in the light of his positive identification by Lorenza and Samuel Batidor. It may also be that he was bluffing the police then, but we shall give him the benefit of the doubt as is his due. We may even concede that, lacking the assistance of counsel at that time, he could not have insisted on the test nor could he have sought the assistance of the National Bureau of Investigation as he was already in custody.

There is no question that the police was remiss in not applying such test for a more thorough investigation of the case. Nevertheless, the Court does not believe that the acquittal of the accused-appellants can be pronounced on the basis alone of such negligence, in disregard of the other evidence of the prosecution.

We agree that the killing of Cloteldo Batidor was attended with treachery that qualified the crime to murder. The victim was completely taken by surprise. Liston insured the commission of the crime without risk to himself by preventing Cloteldo from taking measures to defend himself against the sudden attack that was made upon him. The astonished Cloteldo could not even rise from where he was seated. One moment he was peacefully eating with his family and the next he was dead with a bullet in his heart.

The fact that he was shot face to face did not make the attack any less treacherous. The important thing is that he was totally taken aback and rendered completely defenseless when they shot him dead. As we have held:

There is treachery although the shooting was frontal, when the attack was so sudden and unexpected that the victim was not in a position to offer an effective defense, or when there was a deliberate surprise attack upon an unarmed victim, or when the attack was unexpected, without warning, and without giving the victim the chance to defend himself or repel the initial attack.[13]

The trial court erred, however, in considering the aggravating circumstances of nighttime and abuse of superior strength as these are absorbed in alevosia because they facilitated the commission of the crime. Neither should it have considered disregard of the respect due to age, no evidence having been introduced to establish this aggravating circumstance. And while P.D. No. 1866 prescribes the penalty of death if the killing is committed with an unlicensed firearm, there is no evidence either that the firearm used by Liston was unlicensed.

Dwelling was correctly considered a generic aggravating circumstance as the victim was murdered in his own house. This increased the penalty to the maximum period, but since death is now no longer allowed under the present Constitution, it must now be reduced to reclusion perpetua. This would be in accordance with Article III,

Section 19(1) of the Constitution and our ruling in the case of *People v. Muñoz*[14] on the effect of the non-imposition of the death penalty.

The Court notes that at the time of the commission of the crime Liston was only 21 years of age and Bebanco was not yet 25. Their victim was 53 years old and left a widow and several children of minor age who must now fend for themselves. It is hoped that they will manage somehow even without the guidance and help of the head of the house. As for the accused-appellants, although they face a bleak if deserved future, they may still atone for their act and become useful members of society.

Meantime, as co-conspirators equally responsible for the killing of Cloteldo Batidor, Liston and Bebanco must serve their term in prison and are solidarily liable to the victim's heirs for the civil indemnity, which is increased to P30,000.00. This latter penalty is practically ineffective, unfortunately, as the accused-appellants are practically penniless and cannot improve their fortunes within the prison walls.

WHEREFORE, the appealed judgment as above modified is AFFIRMED. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] TSN, July 20, 1982, pp. 3-7; TSN, July 22, 1982, p. 14.

[2] TSN, July 20, 1982, pp. 6-8; TSN, July 22, 1982, pp. 6-7.

[3] TSN, September 6, 1982, p. 3.

[4] TSN, August 20, 1982, pp. 2-7.

[5] TSN, October 1, 1982, pp. 10 & 12; TSN, September 7, 1982, p. 4.

[6] *Ibid.*, pp. 8-9.

[7] TSN, October 1, 1982, p. 9.

[8] TSN, October 4, 1982, p. 3.

[9] *Ibid.*, p. 7.

[10] *Id.*, pp. 8 & 9.

[11] Rollo, pp. 7-15.

[12] TSN, September 7, 1982, p. 7.

[13] *People v. Intermediate Appellate Court*, 147 SCRA 219.

[14] G.R. Nos. L-38968-70, February 9, 1989.

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