

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEJANDRO BANAYO, DEFENDANT-APPELLANT.

G.R. No. 64164. June 22, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from a judgment of the Regional Trial Court,[*] Branch LV, at Lucena City which convicted Alejandro Banayo of the crime of Murder and sentenced him to life imprisonment and to indemnify the heirs of the victim in the amount of Twelve Thousand (P12,000.00) Pesos.

Alejandro Banayo was charged together with Donato Banayo and Rosendo Villanueva, Jr., alias "Chito" of the crime of MURDER in an information which reads:

"That on or about the 13th day of September 1980, at Barangay Bungoy, Municipality of Dolores, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with a knife, conspiring and confederating together and mutually helping one another, with intent to kill, and with treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab several times with the said deadly weapon one Armando Abel, thereby inflicting upon the latter stab wounds on the different parts of the body which directly caused his death."

Only defendant-appellant Banayo was arrested and tried. His co-accused Rosendo Villanueva and Donato Alvero have remained at large.

After a careful consideration of the evidence for the prosecution and the defense, we find the facts of the case correctly summarized by the appellee as follows:

"At about 8:00 o'clock in the evening of September 13, 1980, Romualdo Cabrera and his cousin, Isidoro Cartena, were on their way home to Bungoy, Dolores, Quezon, when they encountered the group of Rosendo Villanueva alias 'Chito', Donato Alvero and appellant Alejandro Banayo, who were playing mahjong in front of the house of Hermilando Ventocilla. The two groups threw stones and bottles at each other (tsn., pp. 8-10, November 4, 1981; tsn., pp. 8-11, May 26, 1982; tsn., pp. 7-9, August 5, 1982). Romualdo Cabrera and Isidoro Cartena retreated. Cabrera was chased by Villanueva with a knife but was able to take refuge in the house of his uncle Peting Ventocilla.

"While Cabrera was in the house of Peting Ventocilla, the deceased Armando Abel passed by and went to the scene of the incident (tsn., pp. 13-15, November 4, 1981; tsn., pp. 14-20, May 26, 1982; tsn., pp. 9-12, August 5, 1981). Upon reaching the place of the incident, Armando Abel talked with Chito Villanueva. Suddenly, Villanueva stabbed Armando Abel from behind while appellant Alejandro Banayo and Donato Alvero held him by his two hands (tsn., pp. 16-21, November 4, 1981; tsn., pp. 20-27, September 9, 1981).

"Minutes later, Barangay Captain Godofredo Valle arrived. Chito Villanueva, Donato Alvero and appellant Alejandro Banayo ran away leaving Armando Abel bleeding at the side of the road (tsn., p. 14, August 12, 1981; tsn., p. 5, September 16, 1981). With the help of Alfredo Esguerra, Godofredo Valle loaded the victim in

a jeep and brought him to a hospital in San Pablo (tsn., pp. 15-16, August 12, 1981). Thereafter, Armandel Abel expired (tsn., p. 26, August 12, 1981).

"The autopsy conducted on the body of Armando Abel revealed that the victim died of internal hemorrhage due to several fatal wounds inflicted in different parts of the body (Exh. 'A', p. 112, Rec.; tsn., pp. 19-23, March 10, 1982)."

Defendant-appellant interposes the defense of alibi. He claims that more or less three minutes after the stone and bottle throwing incident between his group and Romualdo Cabrera, his uncle Rogelio Aurelio fetched him because his mother was sick at that time. He insists that he was no longer at the scene of the crime when Rosendo Villanueva, his co-accused, stabbed Armando Abel. As earlier stated, Villanueva is at large and was not tried.

On appeal, the defendant-appellant raises the following assignments of errors:

I

THAT THE TRIAL COURT ERRED IN GIVING WEIGHT TO THE TESTIMONY OF ROMUALDO CABRERA WHICH IS COMPLETELY FALSE, BIAS AND UNFOUNDED.

II

THAT THE TRIAL COURT ERRED IN GIVING WEIGHT TO THE TESTIMONY OF ALFREDO ESGUERRA WHICH IS TOTALLY UNCORROBORATED AS REGARDS TO THE ACTUAL STABBING DESPITE THE PRESENCE OF SO MANY WITNESSES IN THE PLACE WHERE THE INCIDENT TOOK PLACE.

III

THAT THE TRIAL COURT ERRED IN GIVING WEIGHT TO THE TESTIMONY OF GODOFREDO VALLE WHICH IS TOTALLY FALSE, UNCORROBORATED AND AGAINST COMMON EXPERIENCE.

IV

THAT THE TRIAL COURT ERRED IN NOT GIVING WEIGHT TO THE TESTIMONIES OF DEFENSE WITNESSES FELICISIMO VENTOCILLA, ARNEL VENTOCILLA, ROSAURO PALMA AND THE ACCUSED ALEJANDRO BANAYO.

V

THAT THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF MURDER WHICH IS TOTALLY WITHOUT BASIS IN LAW OR IN FACT ON WHICH THE DECISION MAY STAND.

VI

THAT THE TRIAL COURT ERRED IN FINDING THAT THERE EXISTED CONSPIRACY AMONG THE ACCUSED THERE BEING NO BASIS IN FACT OR IN LAW ON WHICH IT MAY STAND.

At the onset, this Court takes a rather dim view of the apparently indifferent attitude displayed by the trial court towards a murder case it has tried as shown by the rendition of a decision, the body of which contains only 63 Lines spread out over less than three typewritten pages, double spaced and wide margined. While brevity should characterize a court's decisions and the length of a decision is not necessarily determinative of its quality, the lower court in deciding this murder case nonetheless should have outlined in greater and more satisfactory detail

the evidence presented by both prosecution and defense, the facts as found by the trial judge based on the evidence on record and the jurisprudence and authorities supporting the court's conclusions.

This, the trial judge failed to do. There is not one single citation of authority in the decision. The issues raised by the appellant include allegations of concocted testimony, the nature of a dying declaration, premeditation, conspiracy, treachery, and superior strength. The issues raised are quite serious and they deserved better treatment from the trial court.

Fortunately, while the decision is compressed, the records are quite ample. To his credit, the trial judge allowed the prosecution and defense to fully develop their respective cases. Going over the records care-fully, we find sufficient evidence to sustain the judgment of conviction.

The main thrust of appellant's first, second, and third assignments of errors is against the credibility of the prosecution witnesses Romualdo Cabrera, Alfredo Esguerra, and Godofredo Valle.

Romualdo Cabrera testified categorically that he saw Chito Villanueva stab Armando Abel while the latter was being held by Donato Alvero and the defendant-appellant. This was fully corroborated by Alfredo Esguerra who was near the scene of the stabbing incident. On the other hand, Barangay Captain Godofredo Valle, who brought the victim to the hospital, asked the victim what happened to him. The victim who was dying answered that the group of Chito Villanueva ganged up on him.

In spite of the gruelling cross-examination conducted by the defense counsel, Romualdo Cabrera and Alfredo Esguerra stuck firmly to their testimonies. While there may have been inconsistencies in their testimonies, these were only on minor details and are of the same nature as those which have been held to be badges of truth for only the testimonies of rehearsed witnesses will tally on every point. (*People v. Paculba*, 124 SCRA 383).

The testimony of Godofredo Valle on the dying declaration is an exception to the hearsay rule. As held in *People v. Sagario* (14 SCRA 468) there are four (4) requisites which must concur in order that a dying declaration may be admissible, to wit: (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.

The first requisite is present in the ante mortem statement of the victim, Armando Abel. The statement made by him to Godofredo Valle while on the jeepney which was rushing him to the hospital concerned the cause or circumstance of the declarant's death. The declarant at the time he was giving the dying declaration was conscious of his impending death having suffered six (6) stab wounds at various parts of the body. In fact, he died before he could even reach the hospital. The dead body of Armando Abel was brought instead to the funeral parlor.

True, the statement of the victim before his death was rather vague and ambiguous. He referred to the "gang of Chito Villanueva" as the group that ganged up on him. Barangay Bungoy, Dolores, Quezon, however, is only a small community. The residents know who the friends of their neighbors are and the members of a particular group or gang. In this case, Barangay Captain Godofredo Valle knew who were referred to as the members of Chito Villanueva's gang. Valle named specifically, Donato Alvero and defendant-appellant as among the members of the gang. Taking Godofredo Valle's testimony together with those of Romualdo Cabrera and Alfredo Esguerra, the appellant and Donato Alvero together with Chito Villanueva were undeniably at the scene during the stabbing incident.

The defense of alibi of defendant-appellant cannot be taken seriously for the following reasons:

1. The defendant-appellant was positively identified by Romualdo Cabrera and Alfredo Esguerra as one of the

two persons who held the victim while the latter was being stabbed by Chito Villanueva;

2. The defense witnesses admitted that defendant-appellant was at the scene of the crime. They claim, however, that he was fetched by Rogelio Aurelio three or four minutes before the stabbing incident occurred;
3. Defendant-appellant's house was only a few meters away from the scene of the crime, a distance which could be traversed within minutes.

Well settled is the rule that alibi is a weak defense against the positive identification of the accused (*People v. Cervantes*, 125 SCRA 187; *People v. Elefaño, Jr.*, 125 SCRA 702). We also find no reason from the records why the prosecution witnesses should fabricate their testimonies and implicate the appellant in such a serious crime.

Moreover, the defense has not satisfactorily shown that it was impossible for the defendant-appellant to have been at the scene of the crime at the time of its commission. The claim of defendant-appellant that he went home before the stabbing incident took place because his mother was sick cannot be given any credence. In the first place, defendant-appellant testified that his mother was no longer feeling well and had a slight fever at around 5:00 o'clock in the afternoon of September 13, 1980. By 8:00 o'clock in the evening, the fever had worsened. At past 8:00 o'clock, he nevertheless left home and went to his uncle, Rogelio Aurelio. Thereafter, he proceeded to Hermilandro Ventocilla's house and watched the people there play mahjong. If he was overly concerned about his mother's health, he would not have left his sick mother alone in the first place.

Further in his testimony, the defendant-appellant stated that he went back home to his mother because he remembered his mother told him that it was Friday the 13th and that it was dangerous to go out on such date. He, however, admitted that he was not superstitious. We find the alibi of defendant-appellant puerile and incredulous.

With regard to the fifth assignment of error, the abbreviated method employed by the lower court in explaining its conclusions makes it difficult to ascertain exactly what led the lower court to convict the defendant-appellant for the crime of murder instead of homicide. A perusal of the information shows that treachery was alleged as the qualifying circumstance. No other modifying circumstance was alleged. The decision of the lower court held, however, that "the treachery alleged to be attendant to the killing of Armando Abel appears to the Court to be more of taking advantage by Villanueva and his group of their superior strength when he stabbed Armando Abel." (Decision, p. 3) Assuming that the lower court's vague statement is interpreted to mean that there was no treachery, it is difficult to follow the sudden jump to the dispositive portion defining the crime as murder. The circumstance of taking advantage of superior strength was not alleged in the information and could not therefore qualify the killing to Murder. It should have been considered as a mere aggravating circumstance.

But since this is an appeal from a criminal conviction, the entire records of the case are thrown wide open for review of this Court. In this regard, we find ample evidence to establish treachery. Treachery exists when the offender employs means, methods, or forms which tend directly and specially to insure the execution of the offense without risk to the accused arising from the defense which the offended party might make (Art. 14, Par. 16, Revised Penal Code). The concurrence of the two conditions necessary for treachery to exist are present in this case, namely: (1) the employment of means, methods, or manner of execution which would insure the offender's safety from any defensive or any retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate; and (2) such means, method, or manner of execution was deliberately or consciously chosen (*People v. Macariola*, 120 SCRA 92; *People v. Rhoda*, 122 SCRA 909).

The holding of the hands of the victim by Donato Alvero and the defendant-appellant insured the commission of the offense without risk to the accused. The victim was immobilized and prevented from parrying the knife thrusts of Chito Villanueva. The victim was in no position to retaliate.

Contrary to the contention of the defendant-appellant, 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)

One final point. Time and again, we have reminded lower courts to employ legal terminology in the imposition of penalties. In this case, the lower court used the term "life imprisonment". The correct term is "reclusion perpetua". The reason is obvious. The various penalties have their corresponding legal accessories and effects (*People v. Mobe*, 81 Phil. 58; See *People v. Sabater*, 81 SCRA 564).

WHEREFORE, the judgment appealed from is MODIFIED in that the appellant is found GUILTY of the crime of MURDER qualified by treachery and sentenced to reclusion perpetua with the accessory penalties of the law; to indemnify the heirs of the victim, Armando Abel in the sum of Thirty Thousand (P30,000.00) Pesos; and to pay the proportionate costs. SO ORDERED.

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

[*] Judge Fernando A. Santiago, Presiding.

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