

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FEDERICO CAPINPIN, JR., HENRY CAPINPIN, DANILO CAPINPIN, BERNARDO BALTAZAR AND ROMEO BALTAZAR, ACCUSED, FEDERICO CAPINPIN, JR....

G.R. No. 67785. October 04, 1988

Ponente: CORTES, J.

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CORTES, J.:

Among five (5) persons accused of murder, only Federico Capinpin, Jr. was convicted as principal and sentenced to suffer the penalty of reclusion perpetua. Two (2) of the accused were convicted merely as accessories and the other two (2) acquitted.

Brothers Federico Capinpin, Jr., Henry Capinpin and Danilo Capinpin and their friends Bernardo Baltazar and Romeo Baltazar, also brothers, were charged with the crime of murder, under the following information:

That on or about November 15, 1977, in the municipality of Tuao, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Federico Capinpin, Jr., Henry Capinpin, Danilo Capinpin, Bernardo Baltazar and Romeo Baltazar @ Romy, armed with pointed bolos, conspiring together and helping one another, with intent to kill, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab one Jaime Benzon, inflicting upon him several wounds, which caused his death.

That in the commission of the crime, the aggravating circumstances of (1) abuse of superior strength and (2) nighttime, were present.

Contrary to law. [Rollo, p. 4.]

Upon arraignment, they pleaded "not guilty" [Rollo, p. 17.] After trial, the court a quo rendered judgment as follows:

- Finding the accused FEDERICO CAPINPIN, JR., GUILTY beyond reasonable doubt as principal of the crime of MURDER under Article 248 of the Revised Penal Code, sentencing him to suffer the penalty of Reclusion Perpetua with the accessory penalties provided by law;
- Finding the accused HENRY CAPINPIN and DANILO CAPINPIN, GUILTY beyond reasonable doubt as accessories to the crime of MURDER and sentencing each of them to suffer an indeterminate penalty of FOUR (4) years, FOUR (4) months and ONE (1) day of Prision Correccional as minimum to SIX (6) years and ONE (1) day of Prision Mayor as maximum, with the accessory penalties provided by law;
- Ordering all the accused FEDERICO CAPINPIN, JR., HENRY CAPINPIN and DANILO CAPINPIN, to pay jointly and severally and proportionately, the heirs of the late Jaime Benzon the sum of P12,000.00 as indemnity plus P25,000.00 Philippine Currency as moral damages taking into consideration that the deceased was a student at the time he was killed by the accused without subsidiary imprisonment in case of insolvency

under Republic Act 5465 and to pay the costs.

- The accused BERNARDO BALTAZAR and ROMEO BALTAZAR are hereby acquitted on reasonable doubt for insufficiency of evidence. [Rollo, p. 15.]

Only Federico Capinpin, Jr. appealed from the trial court's decision. In his appeal, the accused-appellant assigned the following errors:

I

THE LOWER COURT ERRED IN GIVING SO MUCH WEIGHT AND CREDENCE TO THE BIASED AND UNCORROBORATED TESTIMONY OF VIRIATO MALANOT.

II

THE LOWER COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT FEDERICO CAPINPIN, JR. [Rollo, p. 42.]

The question, therefore, as far as the appeal of Federico Capinpin, Jr. is concerned, boils down to the credibility of the witness Viriato Malanot. It may be noted that even in the proceedings before the trial court, this had been the focal point. Thus, in its decision, the trial court made the observation that "the conviction and acquittal of the accused depends or hinges on the testimony of the witness Viriato Malanot who is the principal and lone witness[*] of the prosecution." [Rollo, p. 9.]

The testimony of Malanot was summarized by the trial court as follows:

Viriato Malanot lone witness of the prosecution testified that at around 8:00 o'clock in the evening of November 15, 1977 he was in the store of Telesforo Bermillo in Barangay Sto. Tomas, Tuao, Cagayan, together with Boy Gonzales, Eduardo Monterio and a certain Boni drinking San Miguel wine. While there, Jaime Benzon dropped by the store to buy cigarettes and at the same time borrowed his Flashlight. Jaime Benzon borrowed the Flashlight of Viriato Malanot to light his way in going to the house of Precy Capinpin, a young lady and sister of the Capinpin brothers whom he was then courting. After borrowing the Flashlight of Viriato Malanot, Jaime Benzon proceeded to the house of Precy Capinpin. Jaime Benzon did not return anymore. So Viriato Malanot decided to follow Jaime Benzon to the house of Precy Capinpin to get back his flashlight. But Viriato Malanot was not able to reach the house of Precy Capinpin anymore because on his way he heard a voice of a person moaning in pain. Curious, Viriato Malanot went near the place where the voice came from at the same time hiding himself to avoid being noticed and he saw at a near distance [of] three (3) meters more or less, the accused Federico Capinpin, Jr., Henry Capinpin, Danilo Capinpin, Bernardo Baltazar, Romeo Baltazar and also another person lying down on the ground whom he identified to be Jaime Benzon. Federico Capinpin, Jr. was hacking Jaime Benzon while his companions were standing behind him. Then he heard the accused Federico Capinpin, Jr. told (sic) his companions to hide the body of the victim and all of them carried Jaime Benzon away from the road. It was Henry Capinpin and Danilo Capinpin who held the feet of Jaime Benzon. Romeo Baltazar and Bernardo Baltazar held the hands of the deceased while Federico Capinpin, Jr. held the head and they carried away the body of Jaime Benzon. After that, he (Viriato Malanot) went home to the house of his landlord Rodolfo Ballacro, in Sto. Tomas, Tuao, Cagayan.

The following morning, November 16 or 17, 1977, Viriato Malanot reported the incident to Elias Blanza, Barangay Captain of Sto. Tomas, Tuao, Cagayan. He also informed Lazaro Benzon, father of the victim what happened. Thereupon, the Barangay Captain, Lazaro Benzon and others went to the scene of the crime pointed to by Viriato Malanot and there they saw and recovered the cadaver of the deceased Jaime Benzon . . . [Rollo, p. 8.]

In contrast to the positive testimony of Malanot, the defense of the accused was alibi. The Capinpin brothers

testified that they were at their respective homes when the crime was committed. The trial court, however, found that their residences and the scene of the crime were all in the same barangay and hence rejected their defense as it was not physically impossible for them to have been at the scene of the crime at the time of its commission. On the other hand, the Baltazar brothers testified that they were in their place of employment in Villalaida, Tuao, Cagayan, some ten (10) and more kilometers away from the place the crime was committed, on the night of November 15, 1977. Their testimonies were corroborated by security guards of their employer, who testified on their behalf. In view of the corroborative testimonies and the fact that there was no road from Villalaida to the scene of the crime, the trial court expressed grave doubts as to the Baltazar brothers' participation in the crime.

After thoroughly reviewing the records, the Court is convinced that the accused-appellant's responsibility for the death of Jaime Benzon has been established.

The witness Viriato Malanot, although handicapped by lack of formal education and difficulty in expressing himself in Ilocano, the major dialect of the region [TSN, January 21, 1980, pp. 19-21], just the same positively identified the accused-appellant Federico Capinpin, Jr. as the victim's assailant and described in detail how the crime was committed and how the body of the victim was carried away and hidden [TSN, September 24, 1979, pp. 62-69.]

The inconsistencies in his testimony pointed out by the accused-appellant concern minor details and do not affect the veracity of his testimony on the material points. Likewise, the seeming contradictions between his sworn statement taken by the police on December 12, 1977 [Record, p. 3] and his testimony can be explained by the fact that since the statement which he was made to sign was in English, a language he did not understand, and, more importantly, that he did not know how to read [TSN, September 25, 1979, p. 125], he was prevented from reviewing the statement and determining if it was accurate.

On the other hand, as against Malanot's positive testimony, the accused-appellant, like the other accused, interposed the defense of alibi. Well-settled is the rule that the defense of alibi is unavailing where the accused has been positively identified as the perpetrator of the crime especially where it was not physically impossible for him to have been at the scene of the crime or at the immediate vicinity thereof at the time of its commission [People v. Detuya, G.R. No. L-39300, September 30, 1987, 154 SCRA 410; People v. Pecato, G.R. No. L-41008, June 18, 1987, 151 SCRA 14, citing People v. Trawon, G.R. No. 51387, February 24, 1981, 103 SCRA 170, People v. Canamo, G.R. No. 62043, August 13, 1985, 138 SCRA 141 and People v. Gani, G.R. Nos. 54181-82, October 15, 1985, 139 SCRA 301.] But as the trial court found that the scene of the crime and the residences of the accused Capinpin brothers, where they were supposed to have been at the time of the commission of the offense, were all within a short distance of each other, being within the same barangay [Rollo, p. 11], the defense of alibi is unavailing.

The Court, however, while convinced that the accused-appellant was indeed responsible for the death of the victim, finds that the crime committed was only homicide, not murder. Although the qualifying circumstances of evident premeditation and treachery were alleged in the information, they have not been duly proven. In fact, the trial court chose to appreciate another circumstance, nocturnity, to qualify the crime to murder.

Nocturnity, however, is not one of the circumstances that would qualify the killing of a person to murder [See Art. 248, Revised Penal Code, as amended.] It is an ordinary aggravating circumstance [Art. 14(6), Id.] But, then, even as an aggravating circumstance, the Court finds that nocturnity could not be appreciated. By and of itself, nocturnity is not an aggravating circumstance. It must be shown that it was especially sought by the accused or that he had taken advantage thereof in order to facilitate the commission of the crime or to ensure his escape [People v. Matbagon, 60 Phil. 893 (1934); People v. Aduhan, Jr., G.R. No. L-19491, August 30, 1968, 24 SCRA

800.] As stated by the Court in *People v. Boyles* (G.R. No. L-15308, May 29, 1964, 11 SCRA 88], “in default of any showing or evidence that the peculiar advantages of nighttime was purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain nocturnidad. It must concur with the intent or design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night.” [Id. at 94.] In the instant case, there is nothing on the record that would show such an intent or design on the part of the accused.

The penalty for homicide under the Revised Penal Code is reclusion temporal. In the absence of any mitigating or aggravating circumstances, the imposable penalty is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, the maximum term shall be seventeen (17) years and four (4) months of reclusion temporal while the minimum term shall be within the range of the penalty next lower to that prescribed by the Code, i.e. prision mayor. In the exercise of its discretion, the Court fixes the minimum term at nine (9) years and six (6) months of prision mayor.

WHEREFORE, in view of the foregoing, the decision of the trial court is hereby MODIFIED as follows:

(1) the accused-appellant Federico Capinpin, Jr. is found guilty beyond reasonable doubt of the crime of homicide, without any mitigating or aggravating circumstances, and sentenced to an indeterminate penalty of from NINE (9) YEARS and SIX (6) MONTHS of prision mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal, as maximum, with the accessory penalties provided by law; and,

(2) the indemnity to be paid to heirs of Jaime Benzon is increased to THIRTY THOUSAND PESOS (P30,000.00).

The decision of the trial court is AFFIRMED as to all other respects.

SO ORDERED.

Fernan, C.J., Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., on leave.

[*] Perhaps what the trial court really meant was that Viriato Malanot was the only witness to the actual commission of the crime, not the only prosecution witness. There were other witnesses for the prosecution who testified on minor points, namely: Dr. Wilson Puyaoen, who conducted the autopsy on the victim, identified his medical report and explained his findings [TSN, September 24, 1979, pp. 3-54]; Lazaro Benzon, the victim's father, who testified on the recovery of the victim's body from the scene of the crime, the expenses incurred for the burial of the victim and the basis for the award of moral damages [TSN, January 21, 1980, pp. 22-47]; Telesforo Bermillo, who corroborated Malanot's testimony that victim borrowed the latter's flashlight and that Malanot followed the victim when he did not return [TSN, July 28, 1980 pp. 3-34]; and Monica Lana, a house-maid of the Capinpins, who testified that she overheard Henry Capinpin telling the accused-appellant to follow the victim when the latter leaves [TSN, February 9, 1981, pp. 2-37.]

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