

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUEL MELICOR, ACCUSED APPELLANT.

G.R. No. 68733. April 15, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the then Court of First Instance of Bohol, 14th Judicial District finding accused Rogelio Melicor guilty of the crime of murder and sentencing him to reclusion perpetua, together with the accessory penalties, to pay the costs and to indemnify the heirs of the deceased Domingo Makiling compensatory damages in the amount of P12,000.00, moral damages in the amount of P6,000.00, and actual damages in the amount of P2,970.00.

Accused-appellant Ruel Melicor was charged with the crime of murder allegedly committed as follows:

"That on or about the 24th day of August, 1982, at Sitio Suba, barangay Katipunan, municipality of Carmen, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Ric Montenegro, William Doe, Carding Doe and Mendez Doe (whose real names of these three accused are not yet known) and who are still at large and against whom their cases are still pending preliminary investigation before the Municipal Circuit Court of Carmen, Bohol, conspiring, confederating together and mutually helping with one another, with the intent to kill, evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously shoot with the use of a firearm of unknown make and caliber one Dominador Maquiling, thereby inflicting upon the vital parts of his body gunshot wounds, to wit: "Wound, gunshot (entrance), roughly oval in shape, 2.5 x 1.0 cm., with contusion collar, 0.5 cm. in width, almost evenly distributed around the gunshot wound, located at the anterior chest wall, about 2.5 cm. medial to the left nipple, with powder burns within 4 inches radius. The wound was directed posteriorly, penetrating the subcutaneous tissues, muscles, blasting the heart into pieces, with only 1/3 of the heart organ intact in its place, perforating the left lung, and with its exit, 3 x 2 cm. in size below the inferior angle of the scapula, left, about 8 cm. from the thoracic vertabrae. There was massive hemothorax;

which injuries, according to the opinion of the attending physician, directly caused the death of said Domingo Maquiling; to the damage and prejudice of the heirs of the deceased in the amount to be proved during the trial of the case.

"Acts committed contrary to the provisions of Article 248 of the Revised Penal Code, in relation to Article 14 of the same code, with the qualifying aggravating circumstances of treachery and evident premeditation." (pp. 7-8, Rollo)

The prosecution's evidence which attributed the killing of Domingo Makiling to herein appellant and established his guilt was summarized by the trial court as follows:

"At about 9:00 o'clock in the evening of August 24, 1982, Domingo Makiling, 44 years, farmer-carpenter, with a wife and 5 children (from 11 to 21 years of age), was gunned down dead inside his dwelling at Katipunan, Carmen, Bohol.

"The surviving wife, Josefa, declared that it was the accused that shot her husband; the accused denied and put up an alibi that at the time of the killing he was not at the victim's house but sleeping at his grandfather's house some 2 kilometers away from the scene of the crime.

"The morning following the shooting, the victim's body was autopsied and in the afternoon he was buried. The following day, or on August 26, 1982, the INP Station commander of Carmen, Bohol, took the sworn statement of the victim's widow (Exh. A, A-1, also Exh. 1. B, B-1), which she swore to on the same date before Carmen Municipal Judge Antonio H. Bautista. Therein the following are stressed:

"1)

She and her husband were awakened by someone calling out her husband's name. They did not respond immediately. Momentarily, she recognized the voice to be the accused's. She told her husband the voice was the accused's.

"2)

The victim stood, went towards the main door, opened it and the victim acknowledged the call and the caller by saying: 'Oh, Ruel'. Then suddenly 3 shots rang out and the victim fell down the opened door.

"3)

The victim's wife and their 3 younger children, now awakened by the gun explosion, did not say anything fearing they would be shot next.

"4)

The group, now determined by the victim's wife to consist of about 5 men, lingered for about an hour or so around the victim's yard before they departed.

"5)

The victim's wife identified the accused by his voice.

"On August 31, 1982, when the preliminary examination of Josefa Makiling was taken by Judge Bautista (page 2, Records) she declared that the accused shot her husband to death with the help of Ric Montenegro, William, Carding and Mendez. When asked by the inquest Judge why she did not reveal the names of these companions of the accused when her sworn statement was taken on August 25, 1982, she said she did not do so out of fear.

"On September 10, 1982, the accused herein waived his right to submit evidence in the second stage of the preliminary investigation (pages 25-26, Records).

"When Josefa Makiling, the victim's wife testified before this Court on March 1, 1983, she declared in the direct examination as follows: She has known the accused since 1981 as he is a neighbor and was her husband's friend and 'barkada'. Prior to August 24, 1982, when the incident happened, the accused in company with others who were not residents of the barrio, had gone twice to her house asking her husband to attend their seminar. That evening of August 24, 1982, while she, her husband, and 3 of their 5 children were asleep she awoke as she heard the accused called out for her husband. She thus awakened her husband telling him that the accused was calling for him. Her husband stood up and opened the door saying, 'Oh, Ruel' (the accused's

name). Immediately there were 3 successive shots and her husband slumped. Before her husband had stood up to open the door, she alighted a kerosene lamp and then followed him to the door. She was right behind him when the shots fired with the kerosene lamp in her left hand. She thus recognized the accused, with the light from the lamp and the moonlight getting in through the opened door, as the only person who went upstairs carrying a long firearm while the other persons were waiting at the yard. The accused and his companions lingered for an hour or so in the vicinity of the house and after they departed she covered her dead husband's body and waited for daylight. Her children advised her not to call the neighbors for help as they might all be liquidated by the perpetrators. The following morning she told the municipal judge, who came with the police, and who asked her who killed her husband that she recognized the killer but did not give the name of the accused as she was afraid for the accused was still at large. The judge came to her house at about 6:00 o'clock in the morning and stayed thereat for about 30 minutes.

"In the cross-examination, she admitted that upon being queried by the municipal judge she did not reveal any name of the killer.

"In the re-direct examination, she also admitted that she did not divulge to INP station commander Flores the name of the killers of her husband as she was afraid the relatives of the accused might her (sic) and then the assailants would come back and kill her and the children." (pp. 9-11, Rollo)

The appellant denied the charge against him. He testified that at the time of the commission of the crime he was asleep in his grandfather's house located 2 kilometers away from the incident.

The alibi of the accused-appellant was not given credence by the trial court.

The appellant now raises the following assignment of errors:

"ERROR 1. THE HONORABLE TRIAL COURT ERRED IN TOTALLY DISREGARDING THE TESTIMONIES OF THE WITNESSES FOR THE DEFENSE, THE VITAL PART OF WHICH IS EVEN CORROBORATED BY THE SURVIVING WIFE OF THE DECEASED; AND

"ERROR 2. THE HONORABLE TRIAL COURT LIKEWISE ERRED IN CONVICTING ACCUSED NOTWITHSTANDING THE PAUCITY OF EVIDENCE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT." (p. 1, Brief for the Accused-Appellant)

The issue raised in the two assigned errors is whether or not the trial court erred in determining the value and credibility of the evidence presented.

The appellant assails the credibility of lone prosecution witness Josefa Makiling, the wife of the deceased Domingo Makiling by stating "This testimony of Josefa Makiling admitting the fact that she did not reveal the identity of the accused herein as the alleged assailant at the time she was asked by the Municipal Judge Antonio Bautista and the police officers, as well as by her neighbor Maximo Paje, which testimony was noticeably observed by this Honorable Trial Court, creates a serious doubt as to the person of the accused as the author of the crime." The appellant also opines that the "fear" reason adduced by Josefa Makiling is naive. He argues "This fear reason would have been impressive if her house is kilometers distant from the poblacion of Carmen town and no single town official, like the Municipal Judge, or peace officers like Station Commander Bonifacio Flores and PC Sgt. Dominador Tubalado and many others were in her house at the time she was being investigated by both the Municipal Judge and Station Commander. Her disclosure of the name of the accused in an affidavit executed on August 26, 1982 or two (2) days after the shooting, is a clear manifestation of an after-wit."

Delay or vacillation in making a criminal accusation when adequately explained does not necessarily impair the credibility of a witness (People v. Roxas, 73 SCRA 583; People v. Lao Wan Sing, 18 SCRA 1076; People v. Cabanit, 139 SCRA 94).

In the instant case, the crime was committed on August 24, 1982 at about 9:00 o'clock in the evening. Two days after, or on August 26, 1982, Josefa Makiling positively identified the appellant as the killer of her husband when formally interrogated by the police authorities. This delay in the naming of the appellant was not long enough to be significant (See *People v. Cabanit*, supra.). Moreover, Josefa Makiling adequately explained why she could not divulge immediately the identity of the assailant of her husband, to wit:

"1) Although it is true that eye witness Josefa Makiling did not reveal the names of the killers of her husband, including that of the accused, when the municipal judge and INP station commander informally interrogated her in her house in the morning following the killing, nevertheless she gave a good reason for doing so; the accused at that time was not yet arrested and Maximo Paje, the father of the accused's common law wife, was then in her house together with some neighbors, and the accused, who belonged to the NPA group, could still have some companions around who could have her and her children liquidated for squealing. When, however, she was formally investigated by the police on August 26, 1982 (Exh. A, also Exh. 1), she identified the accused by the latter's voice as the one who called on and then shot her husband. The identification was positive and clear." (p. 11, Rollo)

Hence, it can be seen clearly that her fear of reprisal from the appellant or even from the appellant's group is not unfounded. If they could assassinate her husband for refusing to attend a seminar or teach-in, they could more easily liquidate her and the children.

The appellant next raises the hypothetical question: "Josefa Makiling told the Honorable Court that accused Ruel Melicor is a good neighbor and that he and her husband are 'barkada'. What then should be the motive of accused in gunning to death Domingo Makiling that fateful evening of August 24, 1982?" The appellant then implies that he did not have any motive to kill Domingo Makiling.

In the earlier case of *People v. Cabanit*, supra, this same issue was raised. We said:

"The accused appellant submits that it was never established that there was enmity between him and the two victims and thus there was no motive for him to shoot at the offended parties. But upon the same consideration it may also be said that absent any indication of ill-will against the accused being harbored by the prosecution witnesses then what they did testify about may rightfully be considered as the untarnished truth as it would be illogical for them to impute so serious an offense on someone other than the one who had actually done wrong to their family. It is difficult to accept that Elisa Gazmen would be disposed to falsely impute the killing of her father and her cousin to the herein accused Nestor Cabanit because by doing so, this would then leave the real culprit footloose and free. The same consideration may be said as regards the declarations of Rosalia Daus. It is highly improbable that both Elisa Gazmen and Rosalia Daus would deliberately desire to make a mockery of justice and leave the death of their relatives unpunished on account of their own deliberate fabrications."

In the same manner, Josefa Makiling had no reason to falsely impute a heinous crime as murder against the appellant. As the appellant concedes, he was a neighbor and "barkada" of the deceased Domingo Makiling.

Proof to establish motive for the killing of Domingo Makiling is immaterial considering that the appellant was clearly shown to be the perpetrator of the crime. At any rate, there was a motive - The refusal to join the appellant's group.

The evidence on record shows that Melicor was positively identified by Josefa Makiling. She initially identified him by his voice. She was familiar with the voice of the appellant because she had known him for almost one year before the incident besides being her neighbor, friend, and "barkada" of her late husband. The appellant used to go to her house and on two occasions in July and August 1982, he went to her house together with some NPA members to convince the victim to attend seminars.

Later, Josefa identified him from a kerosene lamp which she lighted and the moonlight getting through the opened

door when she followed her husband who after hearing the appellant's voice stood up and opened the door. Josefa was right behind him with the kerosene lamp in her left hand when the shots were fired by the appellant who was then carrying a long firearm. The appellant and his group did not leave the premises of the crime immediately.

We see no error in the lower court's finding that the crime committed was murder because treachery attended its commission. As the trial court stated:

"The crime committed by the accused is murder as treachery attended the commission thereof in the sense that he employed means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the victim might make; the accused suddenly fired 3 successive shots with a long firearm at the unsuspecting victim as the latter, just awakened from sleep opened the door to talk to or to let the accused come in." (p. 12, Rollo)

The testimony of the lone prosecution witness, Josefa Makiling is credible and positive. There is proof beyond reasonable doubt that the appellant was guilty as charged.

The alibi of the appellant that he was in his grandfather's house at the time of the incident was correctly rejected by the trial court. We agree with the trial court, to wit:

"x x x This is considered a weak alibi and not credible. In *People v. Dereje*, 56 SCRA 554, and *People v. Tamani*, 55 SCRA 153, where the accused testified that he was two (2) kilometers from the scene of the crime at the time of its commission, the Supreme Court held that this is a weak alibi. In *People v. Manangan*, 59 SCRA 31, the defense of alibi was not believed where the accused was 8 kilometers from the scene which can be traversed by walking 1 1/2 hours. This is so as it is the settled rule that alibi to prosper, it is not enough to prove that the accused was somewhere when the crime was committed but that he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime (*People v. Diaz*, 55 SCRA 178; *People v. Cortez*, 57 SCRA 308)." (p. 12, Rollo)

The appellant was found guilty of the crime of murder and in the absence of aggravating and mitigating circumstances was sentenced to the penalty of reclusion perpetua.

However, the penalty imposed on the appellant must be modified in consonance with our ruling in *People v. Masangkay* (G.R. NO. 73462, January 25, 1988) and other related cases.

We ruled:

"Pursuant to Article 248 of the Revised Penal Code, the imposable penalty should be reclusion perpetua, as imposed by the Trial Court. However, with the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal in its maximum period to reclusion perpetua. In the absence of any modifying circumstances, the penalty is imposable in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years."

"For purposes of the Indeterminate Sentence Law, the range of the penalty next lower to that prescribed by the offense is prision mayor in its maximum period to reclusion temporal in its medium period, or, from ten (10) years and one (1) day to seventeen (17) years and four (4) months."

WHEREFORE, the judgment appealed from is hereby MODIFIED in that the appellant Ruel Melicor is sentenced to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum, to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum; and to pay an increased indemnity of THIRTY THOUSAND PESOS (P30,000.00).

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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