

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANITO INTINO, DEFENDANT-APPELLANT.

G.R. No. 69934. September 26, 1988

Ponente: PARAS, J.

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PARAS, J.:

Appellant Marianito Intino alias "Marian" was charged before the lower court with the crime of Murder in an Information quoted hereunder:

"That on or about the 17th day of September, 1976, in the Municipality of Babatngon, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the decided intent to kill and by means of treachery did, then and there willfully, unlawfully and feloniously attack, assault and wound one Bienvenido Caluser with a bolo which he purposely provided himself, thereby hitting and inflicting upon the said Bienvenido Caluser with wounds on the different parts of his body which caused his death shortly thereafter.

"Contrary to Article 248 of the Revised Penal Code. (p. 1, Rollo)

After due trial, judgment[1] was rendered by the trial court on October 3, 1984, its dispositive portion reading as follows:

"WHEREFORE, finding the accused Marianito Intino guilty beyond reasonable doubt of the crime of Murder, there being no mitigating nor aggravating circumstance, this Court hereby renders judgment sentencing the accused to suffer the penalty of reclusion perpetua, with all the accessory penalties provided for by law, and to pay the costs.

"In the service of his sentence, the accused shall be entitled to the full time during which he was under preventive imprisonment.

"The accused is hereby directed to pay to the heirs of the late Bienvenido Caluser, as compensation, the amount of P12,000.00, without subsidiary imprisonment in case of insolvency.

"SO ORDERED." (p. 7, Decision; p. 25 Rollo)

Hence, the appeal interposed by the accused with the following:

ASSIGNMENTS OF ERROR

I

THE LOWER COURT ERRED WHEN IT FAILED TO CONSIDER, APPRECIATE OR GIVE DUE WEIGHT TO THE DYING DECLARATION OF THE DECEASED BIENVENIDO CALUSER WHEN THE EVIDENCE THEREOF IS CLEAR, SUFFICIENT, STRAIGHTFORWARD AND UNIMPEACHED, THUS RESULTING IN GRAVE INJUSTICE TO THE ACCUSED APPELLANT.

II

THE LOWER COURT ERRED IN FINDING THE APPELLANT GUILTY OF MURDER BEYOND REASONABLE DOUBT ON THE BASIS OF THE EVIDENCE ON RECORD.

III

THE LOWER COURT ERRED IN FINDING THAT TREACHERY ATTENDED THE COMMISSION OF THE CRIME.

Briefly, the evidence for the prosecution tends to show that the appellant Marianito Intino is a farmer who had been hired as a coconut picker by the victim Bienvenido Caluser.

On September 17, 1976 at about 3:00 o'clock in the afternoon, appellant and the victim went to the house of the latter's girl friend, Norma Calipayan, who served them tuba. While they were drinking, they invited Benny Raliente, a passerby to join them in their drinking spree. The latter accepted their invitation but after drinking about two or three glasses of tuba, he left Marianito and Bienvenido who continued with their drinking until about 6:00 o'clock p.m. Thereafter, Bienvenido Caluser joined Norma, Rosario, her mother and Luciano, her father in their supper. Marianito Intino seated himself at the porch approximately four meters away from the dining table, while Primo Calipayan, a brother of Norma was lying on a bench beside Marianito. After eating Rosario went inside the bedroom to breastfeed her one-year old child, while her husband went outside the house. Norma was left with Bienvenido at the dining table. While they were conversing, Norma saw Marianito suddenly rise from his seat, then approach Bienvenido from behind him since Bienvenido was seated with his back facing the door leading to the porch. Norma was seated on another bench at the right side of Bienvenido, sideways to the door leading to the porch so that she was able to see the action of Marianito. (Exh. E-3, p. 18, Record). After hearing Bienvenido say "I am wounded" in the vernacular, Norma stood up as Bienvenido held on to her. As Bienvenido tried to glance at his assailant, appellant again stabbed him with his bolo which prompted witness Norma to utter "Marian husto na". Then Norma's mother, Rosario, who rushed out of the room upon hearing somebody cry that he was wounded, saw Marianito who was still attacking Bienvenido, who was already wounded. Rosario pushed Marianito aside as she took the bolo from him to prevent him from further attacking Bienvenido Caluser. Marianito ran away. When Luciano Calipayan arrived, upon seeing Bienvenido Caluser bathed in his own blood with intestines protruding from his abdomen, he immediately sought the help of Punay de San Miguel and Peping de San Miguel and their other neighbors. They placed Bienvenido Caluser on a hammock and boarded him on a baby bus enroute to the Daniel Z. Romualdez Memorial Hospital in Tacloban City, where he died about midnight of that same day.

On the other hand, the evidence for the defense consists of the testimonies of witnesses Marianito Intino (appellant), Segundina C. Delda and Alejo D. Ripalda. Appellant denied that he stabbed and killed the victim. He identified the assailant as Benedicto Relente^[2] or "Pare Benny" (of the victim). According to the testimonies of Segundina C. Delda, sister of the victim, and Alejo D. Ripalda, the victim made a dying declaration to Segundina while inside the baby bus, (he repeated such declaration to Fernando San Miguel while inside the intensive care unit of the hospital) that his attacker was "Pare Benny" referring to Benedicto Relente of Villa Magsaysay. These two separate dying statements were allegedly heard by witness Alejo Ripalda who was then present on both instances.

The appeal is meritless. After a careful perusal of the evidence on record, We entertain no doubt that appellant was positively identified by the prosecution's witnesses Norma and Rosario Calipayan both in their sworn statements given before NBI agents Reynaldo C. Manzanero on January 21, 1977 and March 14, 1977, respectively and in their oral testimonies in open court. Witness Norma Calipayan in her sworn statement admitted that she did not see appellant stab Bienvenido Caluser the first time even if she was there with

Bienvenido although she saw appellant approach the victim from behind, not knowing that Marianito harbored any bad intention towards the victim. Norma and Rosario Calipayan also declared that they do not know of any ill-feelings or bad blood between the victim and the appellant except during that instance when the victim told the appellant jokingly that he would box appellant because he was from Pagsulhugan. When Rosario heard such conversation she cut in by asking Bienvenido what this talk was all about. The latter simply answered that he was only joking.

The discrepancies in their testimonies (cited by appellant) are not serious enough to cast real doubt on their credibility. Witnesses Calipayan had no motive to implicate appellant who is their close relative being the son of the first cousin of Rosario Calipayan as admitted by appellant himself in his testimony (tsn-Anota, May 14, 1982, p. 12). There is no witness aside from the appellant who can testify that “Pare Benny” or Benedicto Relente mentioned in the dying statement of the victim, actually stabbed the victim. But as against appellant Marianito Intino, both Norma Calipayan and her mother Rosario positively saw appellant stab the victim after the first blow and all the attending circumstances point to him as the one who killed the deceased. It is true that appellant pointed to Benny Relente as the one who allegedly stabbed the victim, as shown in his testimony in court, to wit:

“Q. Will you tell the court the sitting position of the persons drinking?

A. Bienvenido Caluser and Benny were facing each other and Rosario was behind Luciano Calipayan, sir.

Q. How do you know that?

A. Because I could see them from the porch.

Q. What was illuminating them?

A. A kerosene lamp, sir.

Q. Now while these persons were drinking at around 8:00 o'clock what happened?

A. Bienvenido Caluser was stabbed by a person called Benny.

Q. What did Benny do to Caluser?

A. Benny held the shoulder of Bienvenido Caluser and then stabbed him, sir.

Q. Was Bienvenido Caluser hit?

A. Yes, sir.

Q. Where?

A. He was hit in the abdomen.

xx xx xx

Q. What did Benny use in stabbing Bienvenido Caluser?

A. A bolo, sir.

Q.

Where did he get this bolo used in stabbing Caluser?

A. He got it from the wall, sir, behind him.” (tsn-Anota, May 14, 1982, p. 4)

However, from the above testimony, the logical conclusion is that the assailant Benny was facing the victim as he delivered the stabbing blow in the abdomen of the victim, as the witness would want the court to believe. However, this is belied by the medical certificate (Exh. “A” or Exh. “E-7”, p. 10, Records) issued by the attending physician, Dr. Sherlito T. Siao and confirmed by Dr. Alden Tabao who testified on this in court that the fatal wound (that is, the one inflicted in the abdomen) was described as:

“Operative Findings: Wound stab, thru and thru wound of entrance right posterior lumbar, wound of exit epigastric, penetrating perforating Kidney Right #1, Liver #1, Transverse Colon #2, Misocolon, Severe hemorrhage.” (see also Exh. “B”. A sketch of a human body showing the entrance and exit of the fatal wounds of the victim, p. 142, Records)

The testimony of Norma Calipayan that the assailant approached the victim from behind is strengthened by the victim's medical certificate which was never disputed by the parties and Exh. E-3 (p. 18, Records) which is a sketch demonstrating the seating arrangement or the positions of those persons present in the house of the Calipayans that fateful night.

Furthermore, We have also considered the fact that appellant was nowhere to be found immediately after the incident while Benny Relente never left the place to escape being investigated in connection with the death of Bienvenido Caluser. Likewise, the National Bureau of Investigation thru NBI agent Reynaldo C. Manzanero in coordination with the PC investigating arm, conducted polygraph tests (lie-detector tests) on the suspect Benny or Benedicto Relente who denied authorship of the killing and on Rosario Calipayan who firmly asserted having actually seen respondent Marianito Intino deliver hacking blows on Bienvenido Caluser which caused his death. Both successfully hurdled the NBI polygraph tests.

We do not question the credibility of witness Segundina Delda in declaring that her brother, Bienvenido Caluser, made a dying statement inside the bus that Pare Benny wounded him. While there may be such statement made since that was the belief of the deceased Bienvenido Caluser, We cannot give it probative value. As already shown earlier, Bienvenido Caluser was not in a position to identify his assailant as he was stabbed from behind and when he, already wounded, bloodied and weak from his wounds, took a look at his assailant, Bienvenido Caluser was again stabbed several times by the appellant giving him no opportunity to fully identify his attacker. Maybe because of the fact that Bienvenido Caluser and Marianito Intino had no quarrel or misunderstanding in the past the former never thought of the latter as his attacker, thus he uttered someone else's name who was their drinking guest earlier as his attacker.

We now come to the issue of treachery raised by appellant. There is no question that there was treachery as the attack that came from behind was so sudden and unexpected leaving the poor victim helpless to defend himself.

With the abolition of the death penalty, the penalty now imposed by law for the crime of murder is reclusion temporal in its maximum period to reclusion perpetua.

Considering the provisions of the Indeterminate Sentence Law, the maximum imposable penalty in the case at bar is the medium period of the aforementioned period (that is, the higher half of reclusion temporal maximum) and the minimum is one degree lower than the prescribed penalty now[3] of reclusion temporal maximum to reclusion perpetua.

WHEREFORE, the accused is hereby sentenced to suffer imprisonment from 12 years of prision mayor, as minimum to 18 years and 9 months of reclusion temporal as maximum; to suffer the accessory penalties and to pay an indemnity of P30,000.00 to heirs of the victim, and costs. In all other respects, the judgment appealed from is AFFIRMED.

SO ORDERED.

Melencio-Herrera, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Judge Filomeno D. Arteche, Jr.

[2] Raliente and Relente are used interchangeably in the records.

[3] With the abolition of the death penalty, the penalty for murder is now reclusion temporal maximum to reclusion perpetua (with 3 periods – lower half of reclusion temporal maximum, higher half of reclusion temporal maximum, and reclusion perpetua).

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