

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO MACABENTA Y AGOTE, ALIAS MANDING, DEFENDANT-APPELLANT.

G.R. No. 72476. February 14, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Under review is decision of the Court of First Instance (CFI) of Manila, Sixth Judicial District, Branch 30, dated September 29, 1981, convicting accused Armando Macabenta y Agote alias "Manding" of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the offended party, Jose Loaton, Jr., in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs.

The operative facts and circumstances surrounding the commission of the crime as gleaned from the evidence on record follow.

November 11, 1980 appeared to be just another day for Jose Loaton, Jr., who was walking with Hermogenes Doroja, Jr. along Marcos Bridge, Magsaysay Village, Tondo, Manila at around 6:00 o'clock in the evening. Suddenly, appellant Macabenta stabbed Loaton. Macabenta's companion, Wilfredo Asis alias "Boboy Batang City Jail" followed with another thrust at the chest of Loaton.[1] Doroja ran away upon seeing the stabbing. Stunned by the unexpected assault on his person, Loaton fled. Macabenta and Asis attempted to chase the victim but they eventually gave up. Loaton reached the police outpost at Marcos Road near the Marcos Prefab building where he told the policemen on duty that he had been stabbed. All preceding events were witnessed by a certain Tito de Alagdon who was about six (6) arms length behind the victim when the stabbing incident occurred.

Sergeant Eliorete Ladines of the Western Police District, Metropolitan Police Force, was at the outpost at Marcos Road. Loaton went to him for help. Ladines hailed an oncoming passenger jeep and ordered its driver to rush the victim to Mary Johnston Hospital while Ladines and his personnel immediately proceeded to the scene of the crime to investigate. At the corner of Maguinoo Street and Marcos Road, they were told that the suspects had fled to an alley along Maguinoo Street towards Roxas Street.

The police officers went about looking for the suspects among some debris on a vacant lot along Roxas Street. They found one of the suspects, the appellant Macabenta, hiding in a pile of discarded wooden material. A double bladed knife stained with blood was in his possession. Macabenta was then wearing a T-shirt with white and blue stripes as described by some people who were in the vicinity of the scene of the crime.

After apprehending Macabenta and taking him to the outpost at Marcos Road, Sgt. Ladines called the Homicide Investigation Unit. Pfc. Juanito Yang responded and Sgt. Ladines turned over to the former said appellant as well as the double-bladed weapon and T-shirt.

Earlier, Pfc. Yang, received a call from the security guard of Mary Johnston Hospital who informed him that Loaton was dead on arrival. Yang went to the hospital and found the cadaver of the victim in the morgue with a

stab wound on the left side of the chest. From the hospital, Yang proceeded to the scene of the crime at the north approach of Marcos Road where he received word that one of the suspects had already been apprehended by the operatives of police station No. 1.

As earlier recounted, Yang went to police station No. 1 where appellant and the exhibits were turned over to him. Yang then brought appellant and Doroja, who had earlier arrived at the outpost, to the Homicide Section of the Western Police District. He took down in writing the statement of appellant, who, without the presence of counsel, admitted participation but pointed to Wilfredo Asis alias "Boboy" as the one who delivered the fatal blow, Doroja also gave a written account of the stabbing incident. Appellant was thus charged with murder in the CFI of Manila. During the pendency of the case, Wilfredo Asis was eventually arrested. He executed an extrajudicial confession admitting that he and Macabenta took turns in stabbing the victim.

Dr. Marcial G. Ceñido, medico-legal officer of the Western Police District, Metropolitan Police Force, prepared the autopsy of the body of the victim. He found that the victim sustained a stab wound on the chest perforating the upper lobe of the left lung and stab wounds on the dorsum of the right hand and on the dorsum of the left first finger. The one inflicted on the chest proved to be fatal. All the wounds were caused by a bladed pointed instrument, probably a double bladed weapon.

Accordingly, appellant was tried in court and convicted on the basis of the evidence presented including the testimony of eyewitness Tito de Alagdon.

Accused-appellant now ascribes the following errors to the trial court:

"I

THE LOWER COURT ERRED IN ADMITTING IN EVIDENCE THE EXTRAJUDICIAL CONFESSION OF WILFREDO ASIS AND IN USING IT TO PIN GUILT ON APPELLANT ON ACCOUNT OF CONSPIRACY.

II

THE LOWER COURT ERRED IN GIVING UNDUE CREDENCE TO THE STATEMENT OF THE SUPPOSED EYEWITNESS TO THE CRIME.

III

THE LOWER COURT ERRED IN FAILING TO APPRECIATE THE CONTRADICTORY STATEMENTS OF THE POLICEMEN WHO SUFFER FROM CREDIBILITY AND WHICH RUN COUNTER TO THE ORDINARY COURSE OF THINGS.

IV

THE TRIAL COURT ERRED IN NOT FINDING THAT THE PROSECUTION FAILED TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT."[2]

The main issue raised in these assigned errors is whether or not the trial court erred in its appreciation of the evidence presented.

Anent the first assignment of error, appellant argues that the admission of the statement of Wilfredo Asis as evidence to prove conspiracy on the part of the appellant is reversible error. The appellant also asserts that while the statement established the guilt of Asis in the killing of the victim, the same could not be utilized to prove that the appellant conspired with him in killing Loaton. Appellant alleges that the mere statement of Asis that the appellant conspired with him in killing the victim is not sufficient to establish conspiracy particularly because Asis was not presented in court to enable the defense to cross-examine him.

Contrary to the contention of appellant, the trial court found conspiracy on the basis of the declaration of

eyewitness Tito de Alagdon and not on the basis of the extrajudicial confession of Wilfredo Asis. De Alagdon was an eyewitness to the entire incident. The trial court's observation is as follows:

"The Court finds no reason to doubt the testimony of prosecution witness Tito de Alagdon that it was the accused who first stabbed Jose Loaton, followed by his companion Wilfredo Asis alias Boboy, and afterwards chased him as he was fleeing wounded, which is evidence of conspiracy and unity of purpose, that in turn renders them guilty as co-principals in killing the victim, a conclusion that is strengthened by the extrajudicial statement of his co-conspirator Wilfredo Asis alias Boboy (Exhibit E), that the accused Macabenta had also stabbed the victim. x x x.[3] (Underscoring supplied.)

An examination of the testimony of witness Alagdon clearly reveals the almost simultaneous assaults carried out by appellant and Wilfredo Asis against their victim unmistakably indicating that the assailants were impelled by common design or unity of purpose.[4]

Apropos the second assignment of error, appellant points out that Doroja was the only companion of the victim at the time of the incident. Yet he was not presented as witness in court and his statement was not utilized by the prosecution which shows that his testimony was suppressed because it will be adverse to the prosecution if presented. Furthermore, appellant stresses that the supposed eyewitness de Alagdon should not be given credence inasmuch as he testified in court only on August 2, 1981 or after four months and that his name was not even listed in the information as a witness.

The Court finds the testimony of de Alagdon worthy of credence. He saw the stabbing incident from a distance of six (6) arms length. In *People vs. Bocasas*,^[5] this Court held that the distance of about two and one-half meters between the witness and the scene of the crime was sufficient to exclude any doubt in the identification of the assailants.

As to the contention that de Alagdon should not be believed as he did not reveal what he knew earlier, said witness stated:

"FISCAL:

Please enlighten this Court and tell why it is only now that you have divulged the information that you have seen this incident (sic)?

A. Because in our place it is very dangerous matter to testify in any case like this (sic). I might be the object of the ire of those foolish people.

Q. Why is it now you are giving us this information (sic).

A. Because my cousins will not allow me to keep something that I know."[6]

xxx xxx xxx

This also explains why the name of this witness was not listed in the information.

As to the claim that the victim's companion, Hermogenes Doroja, Jr. should have been presented, the trial court correctly dispensed with the same since it was merely corroborative of the testimony of eyewitness de Alagdon.[7]

Under the third assignment of error, appellant contends that the testimony of Pfc. Yang and Sgt. Ladines to the effect that appellant hid and the knife was found in a pile of wood, and that appellant and Wilfredo Asis appear to have exchanged their clothes, runs counter to the ordinary course of things.

The claim is untenable. Indeed, the testimony of the policemen that the culprit hid after the commission of the

crime and that appellant and Asis exchanged clothes with each other to avoid immediate detection is natural and credible.

It must be stressed that the findings of fact of the trial court are entitled to great weight and respect and the same will not be disturbed on appeal save under certain exceptions such as when the trial court has clearly overlooked certain facts of substance and value that if properly considered would affect the result of the case.[8] We find no reason to overturn the findings of the trial court in this case.

Appellant Macabenta denies having anything to do with the death of Loaton and he claims that he affixed his signature to his extrajudicial confession because he was administered the water cure and was mauled by the policemen who arrested him. Appellant also avers that on November 11, 1980, from 5:30 to 6:30 in the evening, he was at home at 19-C Maguinoo Street, Magsaysay Village, Tondo, taking care of his nephew and that he was asleep from 2:00 to 4:00 in the afternoon. The appellant's mother Catalina and sister Josila corroborated his testimony.

Appellant's defense does not inspire belief. Consistently, and in a long line of decisions, this Court has ruled that alibi is the weakest defense more so when it was not physically impossible for the accused to be at the scene of the crime at the time of its commission. In the present case, the Marcos Bridge, where the stabbing incident took place, and Maguinoo Street, where appellant resided, are both in Magsaysay Village, Tondo, Manila.

Moreover, the defense of alibi cannot prevail over the positive identification of appellant by credible witnesses pointing to him as the perpetrator of the crime.

The alibi advanced by appellant Macabenta is even more dubious because of the attempt to buttress the same through his mother and sister and not by third persons "who would, in the natural order of things, be best to support the tendered alibi." [9]

In *People vs. Romero*, [10] this Court ruled that the testimony of a mother corroborating the alibi of her son scarcely merits any probative value. It is undeniably tainted with bias for it springs from the natural desire of a mother to exculpate her son from criminal liability. [11] Further, alibi is at best a weak defense and easy of fabrication especially between parents and children, relatives, and even those not so related. [12] For such defense to prosper, it must be shown by clear and convincing evidence, and not by the mere testimony of witnesses who bear close ties of relationship to the accused. [13]

This Court finds no reason to overrule the finding of the trial court that it was the accused-appellant Macabenta who first stabbed Jose Loaton, Jr., that his companion Wilfredo Asis also stabbed the victim, that the victim fled from them, and that they tried to chase him. These findings confirm that there was conspiracy and unity of purpose, and that appellant is a co-principal in the murder of Loaton. This is borne by the evidence on record even without considering the extrajudicial confession of appellant.

Furthermore, between the positive declaration of the prosecution witness and the negative statements of the accused-appellant, the former deserves more credence. While indeed, the prosecution has the onus probandi of establishing the guilt of the accused beyond reasonable doubt and the weakness of the defense does not relieve it of its duty, in the case at bar, this Court is convinced that the prosecution has fully established the guilt of appellant beyond reasonable doubt.

The suddenness of the assault on the unsuspecting victim made it impossible for him to avoid the stab blows. The mode of attack adopted by appellant insured the accomplishment of his purpose without risk to himself arising from the defense which the person attacked might put up.

After a thorough review of all the evidence on record, We are constrained to affirm, as We hereby affirm, the judgment of the trial court. The characterization of the crime as murder is apt considering that treachery attended the commission of the crime. There is no question as to the corpus delicti. The evidence on record supports the foregoing conclusion. There being no mitigating nor aggravating circumstances, reclusion perpetua was correctly meted out as penalty to the defendant-appellant.

WHEREFORE, the decision appealed from finding the defendant-appellant Arturo Macabenta guilty of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua is hereby **AFFIRMED** with the modification, however, that the corresponding indemnity adjudged therein to be paid to the heirs of the deceased should be increased to P30,000.00, with costs against accused-appellant.

SO ORDERED.

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

[1] TSN., April 2, 1981, pages 6 to 8.

[2] Page 33, et seq., Rollo.

[3] Page 5, Decision of the Court of First Instance.

[4] TSN., April 2, 1981, pages 6 to 9, *People vs. Beltran*, 138 SCRA 521 (1985); *People vs. Mahusay*, 138 SCRA 452 (1985); *People vs. Bocasas*, 137 SCRA 531(1,985); *People vs. Manalo*, 133 SCRA 626 (1984).

[5] *Supra*.

[6] TSN., April 2, 1981, page 15.

[7] *People vs. Escalante*, 131 SCRA 237 (1984).

[8] *People vs. Largo*, 46 SCRA 597 (1972).

[9] *People vs. Cabanit*, 139 SCRA 94 (1985), citing *People vs. Cariño*, 55 SCRA 516 (1974) and *People vs. Brioso*, 37 SCRA 336 (1971).

[10] 119 SCRA 234 (1982).

[11] *Ibid*, at 242.

[12] *People vs. Cabanit*, *supra*, citing *People vs. Bulawin*, 29 SCRA 710 (1969); *People vs. Pelagio*, 20 SCRA 153 (1967) and *People vs. Lumantas*, 5 SCRA 157 (1962).

[13] *People vs. Condemena*, 23 SCRA 910 (1968).

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