

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUANITO JUTIE, ACCUSED-APPELLANT.

G.R. No. 72975. March 31, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

For the killing of Elpidio Nepuscua on December 13, 1982, Pedro Aboy y Paris and Juanito Jutie were charged with the crime of murder in Criminal Case No. 2753 of the Regional Trial Court, Branch 38, at Lingayen, Pangasinan, under an information which reads as follows:

"That on or about the 13th day of December, 1982, in the afternoon, at Barangay Longos, Municipality of Calasiao, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Pedro Aboy y Paris, together with Juanito Jutie who is still at large, conspiring, confederating, and mutually helping one another, armed with a gun (caliber .30), with intent to kill, and with evident premeditation, and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Elpidio Nepuscua y Joves, thereby inflicting upon him several gunshot wounds which caused his death.

"Contrary to Article 248 of the Revised Penal Code." (p. 28, Records)

Aboy was arrested on the day following the incident and was arraigned and tried separately since Jutie was at large. On August 15, 1983, the trial court rendered its decision convicting Aboy of the offense charged and sentencing him to suffer the penalty of reclusion perpetua. Aboy did not appeal.

Jutie, on the other hand, was arrested only on October 16, 1983. Upon being arraigned, he entered the plea of not guilty to the offense charged. After trial on the merits, the trial court, on September 24, 1985, rendered its decision convicting Jutie, the dispositive portion of which reads:

"ACCORDINGLY, in view of all the foregoing considerations, the Court finds and holds accused, JUANITO JUTIE, guilty beyond reasonable doubt of the crime of MURDER defined and penalized under the provisions of Article 248 of the Revised Penal Code, and conformable thereto, hereby sentences said accused to suffer the penalty of RECLUSION PERPETUA and to pay the costs of the proceedings.

"The Court further orders the accused to indemnify jointly and severally with his co-accused Pedro Aboy the heirs of the deceased Elpidio Nepuscua, the sum of TWELVE THOUSAND (P12,000.00) PESOS, as moral damages, plus TWO THOUSAND (P2,000.00) PESOS as actual damages, without subsidiary imprisonment in case of insolvency.

"SO ORDERED." (Decision, pp. 82-83, Rollo)

Not satisfied with the decision, Jutie appealed and assigned the following errors:

"1.

THE TRIAL COURT ERRED IN CONVICTING APPELLANT JUANITO JUTIE DESPITE THE INSUFFICIENCY OF EVIDENCE AGAINST HIM.

“2.

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE CONTRADICTING TESTIMONY OF PROSECUTION WITNESS ROBERTO JOVES.

“3.

TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF DR. JUAN T. ZABALA THAT THE WOUNDS WERE PRODUCED BY TWO (2) WEAPONS." (p. 112, Rollo)

The evidence on record shows that at about four o'clock in the afternoon of December 13, 1982, Roberto Joves, a 14-year old boy, and his younger brother, Romel, went to a field in Longos, Calasiao, Pangasinan, to gather "dangla" leaves for their sick sister. On their way home, they met Elpidio Nepuscua who was then running and followed by Pedro Aboy and Juanito Jutie. Aboy later caught up with Nepuscua and pointed his gun at the latter. Nepuscua in turn raised both his hands and cried. Nepuscua also moved backwards and stopped upon reaching a small dike (pilapil), after which he knelt on the ground. Thereupon, Aboy shot Nepuscua, with his .30 caliber carbine. After Aboy shot Nepuscua, Juti also fired at the latter with a 10-inch long firearm. Frightened by the incident, Roberto and Rommel ran home and reported the matter to their mother.

The incident was later reported to the police authorities at Calasiao. The police investigators who went to the scene of the incident found the deceased, Nepuscua, covered with rice hay. They also found thereat three (3) empty shells of a .30 caliber carbine.

The cadaver of Nepuscua was autopsied by Dr. Juan Zabala, Municipal Health Officer of Calasiao, Pangasinan. His testimony on his findings was summarized by the trial court, to wit:

"A gunshot wound with entrance harrowing frontal bone located on the right temple making exit wound at the forehead (Exhs. D-1 and D-2), gunshot wound with entrance on the chin grazing the frontal facial bone making exit wound in front of the left ear (Exhs. D-3 & D-4), trajectory of bullet, backward and upward laterally; gunshot wound with entrance located sub-scapular which is on back (right) grazing the muscle of right arm making an exit wound on the right arm medial side (Exhs. D-5 & D-6), trajectory of bullet - forward downward and since arm is movable, it is not possible to determine whether laterally or medially; gunshot wound with entrance penetrating the abdomen with exit on the right side bringing out part of the small intestines (Exhs. D-7 & D-8), trajectory of the bullet is from left side of the victim more or less horizontal making exit wound on the right side of the body, gunshot wound with entrance on the left forearm making exit on the front forearm which appears incised wound due to splatter of the bone (Exhs. D-9 & D-10), trajectory of bullet, backward-forward in medially anatomical position; gunshot wound with entrance located on back of left ring finger with exit in front palm surface of left ring finger (Exhs. D-11 & D-12); gunshot wound located in the lateral side of left leg with an exit wound just below the knee cap of leg (Exhs. D-13 & D-14), trajectory of bullet, upward medially; that wounds marked as Exhibits "D-1" and "D-3" are fatal wounds because gunshot wound marked Exhibit D-1 caused damage on the head which is a sensitive organ of the body and wound Exhibit "D-3" is likewise fatal, because it is near to the brain; that the seven (7) gunshot wounds found on the body of the victim based on their sizes were inflicted and caused by two (2) kinds of firearms and that wounds Exhibit D-1 and D-3 were caused by one firearm while the other five (5) wounds were caused by one firearm while the other five (5) wounds were caused by another kind of firearm; that the cause of death of the victim was cardio-respiratory arrest due to brain damage due to gunshot wounds resulting in the stopping of the heart to function due to destruction of the motor center which is the brain; that wounds designated as Exhibits "D-1 and D-3" were inflicted frontally while wounds marked Exhibits D-7, D-9 and D-13 were inflicted from the left side. Wound Exhibit D-5 was inflicted from the back while Exhibit D-11 could not be determined from

what side due to the movements of the arm when raised up, lowered down or stretched forward; that no slug was found in the body of the victim and that the police were not able to find any firearm in the place of the incident; that the gunshot wounds caused by smaller caliber gun, the relative position of the assailant to the victim is that the victim was lower than the assailant, but with respect to the fatal gunshot wounds, the relative position of the assailant and the victim, is that they are at the same level; that gunshot wound marked Exhibit D-9 does not actually an incised wound because there is an entrance wound and it appears to be incised because of the bones splinters cutting some muscles." (pp. 2-3, Decision)

Accused Juanita Jutie, upon the other hand, denied participation in the commission of the crime. According to him, he was by the window of their house resting when he saw Pedro Aboy holding a gun and chasing somebody; that he went down from their house and ran after Aboy; that at a distance of fifteen meters, he saw Aboy pointing his gun at the victim whom he did not recognize at once because of the victim's hat; that Jutie wanted to help the victim but he was prevented by Aboy who warned him not to report the incident to anybody otherwise he would kill him; that out of fear, he immediately went to his aunt's house in Barangay Nancamaliran, Urdaneta, Pangasinan; that he stayed there until he learned that Aboy was already sentenced and sent to the National Penitentiary in Muntinlupa; that he did not think of surrendering to the police authorities because he has not committed any crime; that he is not related to Aboy; and that he came to know Aboy only as a buyer of scrap iron.

Anent his first and second assigned errors, appellant submits that the trial court should have not relied on the testimony of the prosecution witness Roberto Joves in view of the glaring contradictions found in his sworn statement before the police authorities and the Municipal Judge as against his testimony in open court. He claims that at the witness stand, Joves stated that appellant was equipped with a short firearm and fired at the victim whereas his sworn statement made no mention of this fact. Appellant concludes that Joves' failure to report such a vital information to the police makes his testimony in court a mere fabrication. (pp. 121-126, Rollo)

With regard to his third assigned error, appellant asserts that Dr. Zabala's testimony that two firearms were used is doubtful considering that the same is not supported by proof and it was not shown that the doctor is a ballistics expert. He points out that the firearm that was allegedly used was not presented in evidence; that no slug was found in the body of the victim and that the distance between the alleged assailant and the victim was not established. (pp. 121-126, Rollo)

The appeal is devoid of merit.

The alleged variance in Joves' sworn statement and his testimony in open court was satisfactorily explained by the witness himself during the cross-examination. He testified:

"Atty. Teodoro Regino, counsel for the accused.

"Q:

And the shooting by Pedro Aboy was followed by the shooting by the accused Juanito Jutie, is that what you mean?

"A:

Yes, Sir.

"Q:

This is the first time that you revealed this incident is it not?

"A:

Yes, Sir.

"Q:

You did not tell that incident to the police authorities in the evening of December 13 when you were investigated?

"Fiscal Milo:

May I make of record that question was not asked by the police.

"Court: Answer

"Witness:

"A:

They did not ask me, Sir.

"Atty. Regino:

"Q:

You did not also tell the alleged shooting of Juanito Jutie, to the PC Investigator and Linayen when you gave your supplemental statement?

"A: They did not also ask me, Sir.

"Q: In fact you kept it to yourself what you saw. Jutie did to the allegedly did to Nepuscua, [sic], is it not?

"Fiscal Milo:

Calling for an opinion, Your Honor.

"Court: Answer

"Witness: I did not tell to anybody, Sir.

"Atty. Regino: May I invite the attention of the Honorable Court to the medical autopsy report.

"Atty Regino: I think that would be all, Your Honor.

"Court: Did not the PC or the police tell you to tell everything what you know in the shooting? They did not ask you that?

"A: No Sir." (pp. 44-46, TSN, March 6, 1984)

It is to be recalled that during the investigation of this case before the police authorities and before the Municipal Judge for preliminary investigation, only Pedro Aboy was arrested since appellant Jutie remained at large. Thus, it may be inferred that the investigation was only limited to the participation of Aboy as there was hardly any question asked as to the appellant's role in the commission of the crime. Joves could not be expected to offer information to the authorities if he was not being asked. Besides, he was only 14 years old when he witnessed the

violent death of his grandfather. The resultant shock and nervousness could have led to his inability to recount everything he had seen to the police authorities and the Municipal Judge. We have held that such memory lapse due to a traumatic experience of being a witness to the killing of the victim is understandable and does not impair the intrinsic credibility of the witness (see *People vs. Santos*, L-60055, April 28, 1983, 121 SCRA 833). Moreover, affidavits are usually deficient. Being taken ex-parte, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject (*Moore on Facts*, 1094-1095, cited in *People vs. Alcantara*, L-26867, June 30, 1970, 33 SCRA 812; *People vs. Pacala*, L-26647, August 15, 1974, 58 SCRA 370; *People vs. Gonzales*, September 11, 1980, 99 SCRA 697; *People vs. Andaya*, G.R. No. 63862, July 31, 1987, 52 SCRA 570). Prosecution witness Joves positively identified the appellant as one of the perpetrators of the crime (pp. 12, 38-39, TSN, March 6, 1984). The records do not disclose any ill-motive on his part to falsely accuse appellant of an atrocious crime. The absence of evidence as to an improper motive actuating the principal witness for the prosecution strongly tends to sustain the conclusion that no such improper motive existed, and that, his testimony is worthy of full faith and credit (*People vs. Sawah*, L-15333, June 29, 1962, 5 SCRA 385). On the other hand, appellant's reason for his disappearance for several months is unconvincing. It was duly established during the trial that, contrary to the claim of appellant, Aboy is his uncle as well as his constant companion and that the latter stayed at appellant's house for days whenever he comes to buy scrap iron from them. It is improbable, then, that appellant did not know of Aboy's arrest and detention considering his close relationship with him and the fact that he also hid in a relative's house which is situated in a place not too distant as to foreclose any news regarding the incident. We have ruled, time and again, that flight is inconsistent with innocence.

Appellant further assails the veracity of the testimony of Dr. Juan T. Zabala that the wounds were produced by two weapons considering that the doctor's testimony was not supported by proof and that he is not a ballistics expert. This argument is untenable. Dr. Zabala's expertise as a medico-legal can not be gainsaid. Having examined the body of the victim, he was more than competent to testify on the nature of wounds, location and the means used to cause the injuries. It is significant to note, too, that Dr. Zabala's testimony is in accord not only with the physical evidence which showed that the entrance of the gunshot wounds in the victim's body were of different sizes but also with the positive testimony of Joves that he saw appellant shoot the victim with a short firearm. Even the defense witness, Dr. Benigno Parayno admitted that it was possible to conclude that two different kinds of guns were used as there were two kinds of gun-shot wounds (p. 178, TSN, February 6, 1985). Thus, the trial court was correct in giving weight to Dr. Zabala's testimony.

We find that the totality of the circumstances obtaining in this case justifies a finding of conspiracy. We deem it sufficient to quote from the decision of the trial court:

"x x x (T)here was conspiracy on the part of Pedro Aboy and Juanito Jutie to snuff the life of Elpidio Nepuscua and this is evidently established by the fact that both accused were seen by Roberto Joves chasing the victim before the shooting happened; that both were seen to be armed with guns, Pedro Aboy with a long firearm (carbine caliber .30) while Juanita Jutie with a short one; both shot the victim not only once but several times as eloquently shown by the several gunshot wounds of different sizes inflicted upon the body of the deceased implying that there was more than one gun used in the shooting of the deceased. If indeed Pedro Aboy alone shot the victim, it is rather extraordinary and unnatural that the gun-shot wounds suffered by the deceased are of different sizes. Evidence to be believed must be credible by itself and in conformity to reason, knowledge and common sense. Likewise, the accused having admitted to be in the scene crime at the time of the killing, the latter have a lot of explanation to do in convincing the court that he never participated to what happened to the victim. Naturally, the bald denial of accused of the accusation imputed against him will not be sufficient to

refute and destroy the overwhelming evidence adduced by the prosecution proving and pointing that he also shot the deceased." (p. 322, Records)

Likewise, We agree with the trial court that treachery was present in this case. The victim was unarmed and had raised his hands crying and pleading for his life when he was shot by Aboy and the appellant. Obviously, the stand taken by the victim posed no risk to the assailants. We have previously held that treachery is present where the victim was shot while his hands were raised pleading for his life (*People vs. Lebumfacil*, L-32910, March 28, 1980; 96 SCRA 573; *People vs. Lasafin*, L-5874, February 11, 1953; 92 Phil. 668).

The crime committed is murder qualified by treachery and the same is penalized by reclusion temporal in its maximum period to death under Article 248 of Revised Penal Code. Since there is no aggravating or mitigating circumstance, the aforesaid penalty should be imposed in its medium period. The court a quo correctly imposed the penalty of reclusion perpetua. The actual damages in the amount of P2,000.00 is increased to P30,000.00 (see *People vs. Daniel*, L-66551, April 25, 1985; 136 SCRA 92). Such modification will no longer be imposed on his co--conspirator Aboy whose conviction under a separate trial had long become final and executory. In pursuing this appeal, appellant assumed the risk of having the judgment under review affirmed, reversed or modified only insofar as his culpability is concerned. Thus, he should pay an indemnity of P30,000.00 but with the right to demand contribution from his co-accused in the sum of P1,000.00 (see *People vs. Lumantas*, L-28355, July 17, 1969; 28 SCRA 764).

ACCORDINGLY, the judgment of the lower court is modified in that appellant is sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased the amount of P30,000.00 but with the right to demand contribution from his co-accused Pedro Aboy in the sum of P1,000.00.

Costs against the accused-appellant.

SO ORDERED.

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

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