

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR OCAYA, ACCUSED-APPELLANT.

G.R. No. 75074. September 15, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Elevated to this Tribunal for final determination is this criminal case appealed to respondent Appellate Court, which resolved that the penalty of reclusion perpetua should be imposed and not the indeterminate sentence meted out by the Trial Court.

This case originated from the Regional Trial Court, Branch XII, in Oroquieta City, wherein accused-appellant Oscar Ocaya was sentenced "to suffer an indeterminate penalty of from fourteen (14) years, eight (8) months and one (1) day, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum; to indemnify the heirs of the victim Mario Origines, the sum of P30,000.00; to pay the sum of P3,000.00 representing expenses incurred for the death of Mario Origines; to suffer the accessory penalties provided for by law, and to pay the costs."

On June 10, 1986, respondent Appellate Court, through its Second Criminal Cases Division[1] affirmed the judgment of conviction but modified the penalty as follows:

"We are more than convinced of appellant's guilt beyond reasonable doubt but the penalty imposed by the trial court except for the indemnity award and the expenses incurred by the death of the victim, needs modification. The crime of murder under Article 248 of the Revised Penal Code is penalized by reclusion temporal in its maximum period to death. There being no aggravating or mitigating circumstances attendant to the commission of the crime the proper penalty should be imposed in its medium period which is reclusion perpetua. The indeterminate sentence law is not applicable (*People vs. Cuevas*, 97 Phil. 963).

"WHEREFORE, pursuant to Section 2, Article I of the Provisional Constitution (Proclamation No. 3) promulgated on March 25, 1986 adopting Article X (The Judiciary) of the 1973 Constitution as amended which provides that the Supreme Court shall have, among others, the power to review and revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and decrees of inferior courts in 'all criminal cases in which the penalty imposed is death or life imprisonment'; and Section 12, Rule 124 of the Rules of Court which states that-

'Whenever in any criminal case submitted to a division the said division should be of the opinion that the penalty of death or life imprisonment should be imposed, the said court shall refrain from entering judgment thereon and shall forthwith certify the case to the Supreme Court for final determination, as if the case had been brought before it on appeal'.

this case is hereby certified to the Supreme Court for final determination.

"SO ORDERED." [2]

The case was accordingly certified to this Court, and in a Resolution of July 14, 1986, the same was ordered accepted and docketed.

We are in accord with the findings of fact, the analysis of the evidence, and the discussion of the law involved in the Decision of respondent Appellate Court, reading in part as follows:

"Appealing from the decision (of the Trial Court), accused raised as errors of the court below in holding (1) that there was positive identification of the accused-appellant as the culprit; (2) in declaring that the principal witnesses for the prosecution had no motive to falsify the truth; (3) that the court had the opportunity of observing the demeanor of the prosecution witnesses; (4) in not giving credence to the police report that the culprit was unknown; and (5) in disregarding the evidence of the accused-appellant.

"The facts as found by the trial court are amply supported by the evidence on record, to wit:

'The case of the people as testified to by the witnesses of the prosecution showed that at about 9:00 o'clock in the evening of March 7, 1982 in Barangay Lawa-an, Aloran, Misamis Occidental, while the inmates in the household of Bonifacia Varquez composed of Mario Origines, Julita Origines Bulaga, German Origines, Jr. and Rufina Bagalanon were retiring for the night, somebody, a man, called for 'Boning' - referring to Bonifacia Varquez, 'the owner of the house - informing her that Nonoy Velasco, a close relative, met an accident in Talairon, Oroquieta City. Asked who he was, the caller informed her that he was Ronnie, the driver of the motorcab of Doming, the husband of Ibyang-Nene.

'Because of this information, the occupants switched on the lights. Mario Origines opened the door and immediately and suddenly he was stabbed by a man wearing a raincoat with a hood covering the head, by the use of a long bolo locally known as 'Diwit-diwit'. Mario Origines fought back. He struggled and grappled with his attacker. In the scuffle, the hood of the raincoat was pulled down and the face of the assailant was displayed. Julita Bulaga and German Origines, Jr., saw the face and identified the assailant as the accused Oscar Ocaya @ Cocoy.

'During the struggle, Mario Origines shouted to his younger brother, German Origines, Jr., for help. German Origines, Jr., went to help but the accused held him by the hair. He struggle to free himself. Once free he ran out of the house and shouted for help from their neighbors. When German Origines, Jr. and the neighbors arrived, Oscar Ocaya was no longer there. Mario Origines was left bloodied and dead. At that time also the house was stoned by unknown persons.

'The version of the defense is that the accused was not the one who stabbed and killed Mario Origines. In fact, in the investigation conducted by the police authorities in the house of the victim that evening not one of the occupants could identify the culprit or culprits.

'Dr. Rogelio R. Roa, Municipal Health Officer and Officer-in-Charge of North Oroquieta Rural Health Unit, Oroquieta City, conducted the autopsy on the dead body of the victim. His post mortem findings dated March 8, 1982 (Exhibit 'B') are as follows:

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'CAUSE OF DEATH: SHOCK DUE TO PROFUSE INTERNAL AND EXTERNAL HEMORRHAGE DUE TO STAB WOUNDS.'

The cause of death of the victim was due to shock due to profuse internal and external hemorrhage due to stab wounds. According to Dr. Roa any of the stab wounds is fatal and sufficient to cause death. The matter, therefore, as to the cause of death of Mario Origines is settled.' (pp. 2-3, Decision)

"It is appellant's position that the testimonies of prosecution witnesses Julita Bulaga and German Origines

could not be relied upon as credible as they never mentioned the name of appellant as the culprit before the investigating police officers immediately after the incident in question on that fateful night. In fact, according to appellant, they 'could have been easily persuaded to pervert the truth, once they were made to believe that the accused-appellant was the culprit, on account of their close blood relationship with the deceased.'

"We find no merit in appellant's allegation.

"Prosecution eye-witnesses Julita Bulaga and German Origines were in a state of shock and fear after seeing the brutal and senseless killing of the victim before their very eyes. To their young minds, to denounce appellant as the killer before the responding police officers, would be signing their own death warrants as he is still at large. It was only three days later or on March 10, 1982, after they had conferred with the victim's mother, Agustina Origines, who arrived from Vitali, Zamboanga del Sur, that they gathered enough courage to inform the police that appellant Oscar Ocaya is the assailant. This is the reason why at the beginning, the police reports of March 7 and 8, 1982 noted that the culprit was unknown but the case was 'under rigid follow up' (Exhibits 'H' and 'I').

"That said eye-witnesses saw the actual stabbing and hacking of the victim by the appellant cannot be disputed as they were very near them when the incident in question happened.

Thus, prosecution witness Julita Bulaga testified as follows:

'Q.

What happened to Mario Origines when he opened the door to allow the person who was calling to get inside?

'A.

When Mario Origines opened the door he was met by this person who stabbed him.

'Q.

How far were you at that time from Mario Origines?

'A.

About one fathom.

'Q.

Will you please demonstrate to the Court the distance of one fathom?

'A.

(Witness indicated the distance of about one fathom).' (TSN, p. 3, April 21, 1983).

"The testimony of German Origines, Jr. on this point is as follows:

'Q.

What happened when Mario Origines had opened the door?

'A.

When he opened the door he was immediately stabbed.

'Q.

And did you see the person stabbing your brother?

'A.

I saw.

'Q.

What was he wearing?

'A.

His gray raincoat.

'Q.

Was your brother hit?

'A.

Yes, he was hit.

'Q.

Where was he hit?

'A.

At his abdomen.

'Q.

How far were you at the time of the first stabbing?

'A.

About two (2) fathoms away.' (TSN, p. 3, December 22, 1982).

"These testimonies of Julita Bulaga and German Orignes were considered vital by the court below in pointing to the guilt of the appellant. Said the court:

"This distance of these eyewitnesses to the two, Mario Orignes and the accused, was never destroyed by the defense. There is no reason why they could not identify the criminal. Although the thrust of accused's defense is non-identification of the culprit or culprits because none of the occupants of the house named or revealed the identity when the police investigated them some hours after the incident happened, cannot overthrow the positive identification by Julita Bulaga and German Orignes, Jr. of the accused. Not only did they positively identify the accused because of the bright illumination of the place where the deceased struggled and scuffled with his assailant but also to the fact that both knew the accused because they live in the same barrio for quite a number of years. How these witnesses identified the accused is explained in their respective testimonies.

"The testimony of German Orignes, Jr., is as follows:

'Fiscal Siton (on direct)

'Q. -

Did you see his face?

'A. -

Yes, sir.

'Q. -

Who was this person?

'A. -

Cocoy Ocaya.

'Q. -

Do you know him personally?

'A. -

Yes, I know but I cannot tell his real name.

'Q. -

How long have you known him before that time?

'A. -

About six (6) years already.

'Q. -

If he is in court, can you point to him?

'A. -

(The witness pointed to a person who when asked his name answered, Oscar Ocaya).

'Q. -

This Oscar Ocaya whom you identified, is he the same fellow you referred to as Cocoy Ocaya?

'A. -

Yes, sir.

'Q. -

Was he the same fellow who stabbed your brother whom you identified as Cocoy Ocaya who was wearing gray raincoat which was lowered and having seen his face clearly?

'A. -

Yes, sir.' (TSN, p. 4, December 22, 1982)

'Whereas, the testimony of Julita Bulaga is as follows:

'Fiscal Siton (on direct)

'Q. -

Do you know Cocoy Ocaya personally?

'A. -

Yes, I know him.

'Q. -

How long had you known Cocoy Ocaya before March 7, 1982?

'A. -

About four years already.' (TSN, pp. 4-5, April 21, 1983)

'Even accused himself admitted that German Orignes, Jr. and Julita Bulaga know him. He also knew these witnesses. Here is accused's testimony on this point.

'Atty. Acosta (on direct)

'Q. -

Do you know Bonifacia Abarquez?

'A. -

Yes, sir.

'Q. -

How about German Orignes and Julieta Orignes?

'A. -

Yes, sir.

'Q. -

Do these persons know you?

'A. -

Yes, sir.

'Q. -

How come?

'A. -

Because we are neighbors.' (TSN, p. 1, June 21, 1984).

'On cross-examination, accused declared:

'Fiscal Siton (on cross)

'Q. -

This German Orignes know you very well?

'A. -

Yes, sir.' (TSN, p. 5, June 21, 1984).

'From accused's own admission that these witnesses know him, there is hardly any doubt that he could be mistakenly pointed out as the culprit who stabbed and killed Mario Orignes. Much more so because the place where the stabbing occurred, which was in the sala of the house of Bonifacia Varquez, was well lighted by a 40-watt fluorescent lamp and in the course of the struggle between Oscar Ocaya and Mario Orignes the hood of the raincoat covering the head of the attacker was detached and pulled down thereby exposing clearly the face of the accused. German Orignes, Jr. could not be mistaken in the identification of the accused because when his brother called for him for help and he went to his brother, the accused prevented German Orignes, Jr. by holding his hair and the hood was detached or lowered thereby displaying clearly to German Orignes, Jr., the face of Oscar Ocaya.

'The evidence does not show that Julita Bulaga or German Orignes, Jr. had any reason or motive to testify falsely to impute a grave offense against accused. Both had no misunderstanding with him. The accused himself admitted that neither Julita Bulaga nor German Orignes, Jr., has any grudge or differences with him. So, it is highly improbable and against human nature and common experience that a person will just be pointed out to be the culprit if he did not commit a crime unless the witnesses are motivated by malice, spite or revenge. That is why the Court scrutinized carefully and painstakingly the testimonies of witnesses more particularly that of Julita Bulaga and German Orignes, Jr. in order to find bias or prejudice especially since both are relatives of the deceased. However, a thorough examination of their testimonies as well as their demeanor 'and manner while testifying did not reveal any infirmity to consider their declarations unworthy of credence and belief. This, the Court must do in order to avoid miscarriage of justice and to be certain that only the guilty party is punished rather than send a wrong man to jail for a crime he did not commit.' (pp. 4-6, Decision)

"The allegation that the lower court could not have observed the demeanor of the prosecution witnesses for when the latter testified the presiding judge of said court was Judge Melecio Genato who has since retired, deserves scant consideration. Judge Garison G. Mabelin who penned the decision in the case now under review had observed the demeanor of said witnesses and the manner they testified when they were recalled to the witness stand as rebuttal witnesses, and found them credible.

"On the claim that the lower court disregarded his defense simply because it is one of alibi has no leg to stand on. The court considered his defense of alibi but found it wanting for the following reasons:

'x x x His claim that he was elsewhere at or about the time the crime was committed is too loose to be true and could not prevail over the positive identification of accused by eyewitnesses Julita Bulaga and German Orignes, Jr. Granting that accused did sleep at the house of Bernardo Sanchez, yet it is not physically impossible for him to be at the scene because the distance from the house of Bernardo Sanchez to the house of Bonifacia Varquez is

only about 100 meters and with a good road. Even if it is true, as claimed by accused, that he went to sleep at 8:00 o'clock, still he could have woke up any time after that and be at the scene because the crime was committed at 9:20 in the evening.

'Although an accused cannot be convicted by reason of his weak alibi (PPI vs. Dayag, 56 SCRA 439), yet to establish it 'he must show that he was in another place for such a period of time that it was impossible for him to be at the place where the crime was committed at the time of its commission' (PPI vs. Resayaga, 54 SCRA 350; PPI vs. Page, 77 SCRA 354). One who alleges alibi 'must establish it by full, clear and satisfactory evidence' (PPI vs. Repilion, 79 Phil. 404) or by probable evidence which reasonably satisfies the court of the truth of such defense (PPI vs. de Guzman, 70 Phil. 23; PPI vs. Dizon, 76 Phil. 265) because being weak it can rarely be given credence (PPI vs. Medina, 71 Phil. 390) and cannot prevail if there is a direct testimony of an eyewitness duly corroborated by another (US vs. Hudieres, 27 Phil. 45). Unless these requirements are met, alibi as a defense will fail. Moreover, the distance of 100 meters in this case is not so far as 'to preclude the possibility of accused's presence at the locus criminis.' (p. 8, Decision)

There can be no question regarding the positive identification of Appellant by prosecution witnesses. While it is true that the police reports indicated that the culprit was unknown, this is understandable as when the policemen arrived at the scene of the crime to investigate, the teenage witnesses, German Origines, Jr., brother of the victim, and Julita Balaga were still in a state of shock after having witnessed the merciless and brutal killing of the victim. Appellant was then still at large and that realization was sufficient to deter them from revealing his identity for fear of their lives. Nonetheless, after conferring with the victim's mother, who arrived three days after the incident from Zamboanga del Sur, said witnesses executed their respective sworn statements pinpointing Appellant as the culprit. The criminal complaint was filed by the police the day after. Besides, there is nothing in the records which discloses any motive on the part of the eyewitnesses to testify falsely against Appellant. As both said witnesses and Appellant himself declared, there was no misunderstanding between them, nor did the Trial Court observe any bias or prejudice on the part of witnesses German and Julita despite their close relationship to the victim. As this Court has held, any delay or vacillation in making a criminal accusation when adequately explained does not necessarily impair the credibility of witnesses.[3]

Nor has there been any disregard by the Trial Court of the defense of alibi put up by the defense. We agree with both the Trial Court and respondent Appellate Court that Appellant has not proven that he was in some other place for such a period of time that it was impossible for him to have been at the scene of the crime at the time of its commission. Actually, he was only at a distance of 100 meters away from the locus of the crime. Aside from the fact that Appellant has failed to satisfy the Court as to the truthfulness of his alibi, that defense cannot prevail over the positive identification made by the direct and corroborative testimonies of eyewitnesses, who could not have been mistaken since they and Appellant, as the latter himself admitted, were acquainted with one another.

WHEREFORE, we affirm the judgment of conviction of Oscar Ocaya, for the crime of Murder, as charged, and we sentence him to suffer the penalty of reclusion perpetua; to indemnify the heirs of the victim in the sum of P30,000.00; to pay them the amount of P3,000.00 representing actual expenses incurred for the victim's death; and to pay the costs.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, and Feliciano, JJ., concur.

[1] Per Nocon, J., with Alfonso, Jr. and Lising, JJ., concur-ring.

[2] Decision pp. 12-13.

[3] *People vs. Cabanit*, 139 SCRA 94 (1985); *People vs. Yurong*, 133 SCRA 26 (1984); *People vs. Rosario*, 134 SCRA 496 (1985).

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