

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VENANCIO ANDRES Y SEVILLA, ACCUSED-APPELLANT.

G.R. No. 75355. October 29, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal interposed by the accused Venancio Andres y Sevilla from the decision[*] of the Regional Trial Court of Manila, Branch XI in Criminal Case No. R-82-2987 finding him guilty of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua.

The dispositive portion of said decision reads:

"WHEREFORE, the Court finds the accused VENANCIO ANDRES Y SEVILLA guilty beyond reasonable doubt of murder as charged in the information and there being no other circumstance to appreciate either for or against said accused to reclusion perpetua to indemnify the heirs of the victim in the sum of P30,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs."

"SO ORDERED,"

It is undisputed that the victim Armando Andaya was killed in the early morning of March 8, 1980, at the corner of Francisco and Velasquez Streets, Tondo, Manila, as a result of the mortal wounds suffered by the victim in the head, neck and shoulder by means of hacking with the use of a relatively heavy, sharp instrument which are the collective causes of his death.

An information was filed by Assistant Fiscal Ruben C. Ayson at the Regional Trial Court of Manila, Branch XI on April 15, 1980 charging accused Venancio Andres y Sevilla with Murder, committed as follows;

"That on or about the 8[th] of March 1980, in the City of Manila, Philippines, the said accused, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one Armando Andaya y Alfonso by then and there hacking him twice with a bolo on the neck and on the right face from the right ear to nose, thereby inflicting upon the latter mortal wounds which were the direct and immediate causes of his death."

"CONTRARY TO LAW." (Rollo, p. 5)

As stated in the decision of the Regional Trial Court, said case is a reconstituted case, the trial having been held entirely prior to the fire which gutted the City Hall on November 19, 1981.

The facts of the case as found by the trial court are as follows:

x x x

x x x

X X X

"Summary of the Evidence —

Summary of the evidence of the prosecution and of defense is likewise given in the memorandum for the prosecution and is reproduced hereinunder as follows:

"Based on the evidence for the prosecution, accused hacked to death Armando Andaya while the latter was sleeping on top of a table in front of Imelda Variety Store, at the corner of Velasquez and Francisco Street, in Tondo, Manila.

"At the time of his death, Andaya was a member of the Philippine Constabulary, assigned in Camp Lucban. When found dead, a mission order No. 02-12, dated February 27, 1980 was found in his possession.

"Before he was hacked to death, or on March 7; 1980, Andaya was seen quarrelling with Gavino Andres, the father of the accused, when Andaya stopped the card game of Gavino. Andaya was seen having grabbed the collar of Gavino, and then pushed the table and tore the playing cards.

"In the morning of March 8, 1980, Armando was hacked to death. Accused was positively identified by Maximo Verzosa who witnessed the hacking incident, as the one who killed Armando Andaya.

"On the other hand, the defense tends to show that a certain Johnny Rodel was the one who hacked to death Armando Andaya. Defense witness Edgardo Cabahug testified that he met Johnny Rodel in an alley near Francisco St., in the early morning of March 8, 1980; that Johnny Rodel asked him to get a jungle bolo from the place of the Salvacion Army which is somewhere near Francisco and Velasquez Sts., that he took the jungle bolo, the latter hacked once Andaya who was then lying on a table outside Imelda's Store, which is located at the corner of Francisco and Velasquez Streets, Tondo, Manila.

"He also testified that prior to the hacking incident, Andaya had a quarrel with Johnny Rodel, with the former pulling out his gun while the latter pulling out his 29-inch balisong.

"On his part, accused testified that at the time of the hacking incident, he was sleeping in his residence at Francisco Varona Street, Tondo, Manila; that he arrived home from Carmona, Cavite at 6:00 p.m. of March 7, 1980; that, then, he went out for a while, and went back home at 9:00 p.m.; and that he had been sleeping in his residence from 9:00 p.m., of March 7, 1980 and woke up the following morning at 7:00 of March 8, 1980." (Rollo, pp. 31-32).

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During the trial the prosecution presented the following evidence: 1) the testimonies of, (a) Maximino Verzosa, an alleged eyewitness to the killing on March 8, 1980, who identified the accused in open court and when asked to, he even drew a sketch of the vicinity of the hacking incident, indicating the exact spot where he was standing and the spot where the accused hacked the victim. He claimed that as the guard assigned in the place of the incident, his tour of duty was from 11:00 p.m. to 8:00 a.m. of the following day, and that it was during that time that Manding Andaya was killed by accused Venancio Andres who hacked the victim twice by the use of a short, wide weapon, about one foot long on the neck and face, while the victim was sleeping; (b) Pat. Roberto Sales of the Manila Police District, Homicide Section, who took the statement of Maximino Verzosa and arrested accused Venancio Andres at Tugatog, Malabon. He testified that he investigated this case and took down the statement of

Maximino Verzosa; (c) Dr. Marcial Cenido, a medico legal officer of the WPD, who conducted the autopsy of the cadaver of the deceased, and identified the sketch of a human body (that of the victim) as Exhibit "H", the certificate of death as Exhibit "I", and the post-mortem report as Exhibit "J"; (d) PFC. Fernando Jolongbayan of the crimes against Persons Section, Investigation Division, WPD, who investigated the hacking of Armando Andaya and claimed that he prepared the report as Exhibit "L"; (e) CPL. Jose Frinez of the Homicide Section of the WPD who made the follow-up in the investigation of the hacking of Armando Andaya and identified his Progress Report as Exhibit "M"; (f) CPL. Pedro de Jesus, a police photographer of the Western Police District, Manila Police Force, who took the pictures of the cadaver of the deceased as Exhibits "N" and "O"; (g) Dominador Alfonso, who testified that he had witnessed the quarrel between Armando Andaya and Gavino Andres, the father of the accused, a few hours before the hacking incident; (h) Natalio Andaya, the father of the victim; and 2) documentary evidence consisting of: (a) statement of Maximino Verzosa (Original Exhibit, p. 32); (b) Sworn Statement of Maximino Verzosa dated April 2, 1980 (Ibid., p. 34); (c) Booking Information Sheet (Ibid., p. 35); (d) Identification of the body of the deceased (Ibid., p. 36); (e) Certificate of Death of Armando Andaya and Post Mortem Findings (Ibid., pp. 37 and 38); (f) Sketch of Human Body and of human head of the deceased (Ibid., pp. 40 to 41); (g) Mission Order of Armando Andaya (Ibid., p. 41); (h) Advance Information Report of Pfc. Fernando Jolongbayan (Ibid., p. 42); (i) Pictures of the half and of the whole body of deceased (Ibid., pp. 43 and 44); (j) Pay-slip of Armando Andaya (Ibid., p. 45).

On the other hand, the accused vehemently denied the accusation against him and claimed instead that it is impossible for him to be the culprit because during the time of the hacking incident he was sleeping. He also alleged that he went to sleep at around 9:00 o'clock p.m. on March 7, 1980 and woke up more or less around 7:00 o'clock the following day (TSN, PP- 8-9, June 11, 1981) and learned of the hacking incident on the said morning of March 8, 1980 from his neighbors (TSN, P- 65, June 11, 1981).

The defense also presented Edgardo Cabahug, a 13-year old out of school youth, who testified that on March 7, 1980 at around 10:00 in the evening while he was in their house, he saw Johnny Rodel and Manding (deceased) quarrelling at the billiard hall (TSN, pp. 10-13, February 3, 1981). He claimed that he saw Johnny again at 12:00 midnight or early morning, who asked him to get the jungle bolo in the Salvation Army, which was used in hacking the victim while he was lying on a table outside Imelda's Store. He then immediately ran away from the scene of the crime (TSN, pp. 14-18, February 3, 1981).

Another witness was presented by the defense, Romeo Fernandez, a fisherman who testified that he saw Maximino Verzosa and the father of the victim who was trying to get the former as a witness in the said case (TSN, pp. 5-6, April 28, 1981).

The trial court giving more weight to the testimony of Maximino Verzosa, and finding that the accused Venancio Andres;y Sevilla is guilty as charged with the aggravating circumstance of treachery, sentenced him to suffer the penalty of reclusion perpetua.

Hence, this appeal.

In this brief, appellant raised this sole assignment of error:

"THAT THE TRIAL COURT ERRED IN CONVICTING ACCUSED APPELLANT OF THE CRIME CHARGED DESPITE GROSS INSUFFICIENCY OF EVIDENCE AND PROOF BEYOND REASONABLE DOUBT AS TO HIS GUILT."

The only issue in this case is whether or not the accused was the one who hacked the victim to death.

The case of the prosecution rests solely on the testimony of an alleged eyewitness Maximino Verzosa. The

records show that said witness positively identified the accused twice as the one who hacked the victim: (a) in the police-line up and (b) in open court. It was also shown that he was a guard assigned to the place of the incident, whose tour of duty covered the time of the incident, a fact confirmed by the accused himself and by his witness Romeo Fernandez. Thus, under the circumstances, as correctly observed by the trial court, said guard could not have missed seeing the hacking incident (Rollo, pp. 33-34).

But appellant argues that the trial court erred in convicting him on the basis of the testimony of the lone eye-witness for the prosecution who remained silent from March 8, 1980 up to April 2, 1980 or for a period of twenty-six (26) days before he came forward to divulge to the authorities what he saw on that fatal night.

As to the delay in reporting the matter to the police, Verzosa explained that he was afraid that he might meet the same fate. In fact he was induced to testify only because he was bothered by his conscience. He testified as follows:

COURT:

Q. Did you have remorse of conscience because you failed to help a man who was killed, or his family?

A. Because I might be hacked also. It is hard to be involved or to interfere in this case.

ATTY. JIMENEZ:

Q. Are we made to understand now that your giving your statement on April 2 was only because you were bothered by your conscience?

COURT:

Q. Or was it because of your son?

A. I have been bothered by my conscience, sir.

Q. When did you feel bothered for the the first time?

A. On that same night, sir.

Q. So, for more than twenty-five (25) days, you have been bothered by your conscience because you failed to

report the matter to the police and yet you did not do anything about it until April 2, 1980?

A. Yes, Your Honor.

Q. Did you sleep well during those twenty-five (25) days of your silence?

A. I could not sleep well, and one thing more, I was afraid, (Hearing, August 11, 1980, TSN, pp. 93-95).

It will be observed that the testimony of subject witness is clear, direct and spontaneous with no hint of prevarication. More than that he testified on facts that show the normal reaction of people under the circumstances, cited and explained by the prosecution, such as: the gruesome manner by which the victim was killed from which it could be assumed that the killer is a man of violent character who would not hesitate to take the life of a person; the incident occurred in Tondo; the accused is a Tondo boy with gangmates and the father is a man who maintained card games. Taken together, they constitute legitimate reasons for this witness or for any person for that matter, to pause and carefully consider the odds before coming out openly to reveal the identity of the accused.

Moreover, it is well-settled in this jurisdiction that delay of witnesses in informing others of what they know about a criminal offense will not affect their credibility, where delay is satisfactorily explained (*People v. Salcedo*, 122 SCRA 54 [1983]; *People v. Pacabes*, 137 SCRA 158 [1985]; *People v. Cruz*, 142 SCRA 576 [1986]). In the case of *People v. Pacabes*, (supra) the Court held that it is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case. Indeed, the natural reticence of most people to get involved in a criminal case is of judicial notice (*People v. Realon*, 9 SCRA 427; *People v. Pacabes*, supra; *People v. Cruz*, supra).

On the appellant's contention that Maximino Verzosa had reasons to falsely testify against him, because the accused used to tease him as *guardiang tulog* is not sufficient to discredit the testimony of the witness. It is incredible for the witness to impute the serious charge of murder against the appellant simply because he resented such name-calling. In the case of *People v. Tatlonghari*, 27 SCRA 726 [1969], the Court ruled: "We find the allegation not worthy of belief. The reasons for the alleged individual grudges of the witnesses against appellant being so flimsy and uncertain, it is incredible that they could constitute a sufficient motive for an average individual to conjure up a serious charge as murder and thereby send an otherwise innocent man to a long stretch of prison term. At any rate, the prosecution witnesses were subjected to cross-examination by counsel for the defense, and the falsity of their declarations, if indeed there were, could have been ferreted out and exposed." Further, motive is important only when the identity of the culprit is in doubt and not when he is positively identified by a credible witness (*People v. Perante, Jr.*, 143 SCRA 56 [1986]) and the commission of the crime is clearly proven as in this case.

Finally, as regards the contention of the appellant, that at the time of the killing of Manding Andaya, he was then sleeping at his house (Rollo, p. 76), the Court, in the case of *People v. Abigan*, 144 SCRA 130 [1986] wherein the appellant similarly tried to exculpate himself by stating that he was asleep at home at the time of the stabbing, ruled that:

"It is well-settled that alibi cannot prevail over the positive testimony of prosecution witnesses and their clear identification of the accused as the perpetrator of the crime. (*People v. Garcia*, 141 SCRA 336; *People v. De*

las Pinas, supra; People v. Valentino, supra; People v. Cabanit, 139 SCRA 94). This is so because alibi is a defense that is inherently weak as it can easily be fabricated or contrived (People v. Juela, 127 SCRA 860; People v. Pagasa, 127 SCRA 574)."

Likewise settled is the rule that to establish an alibi, the accused must show that it is impossible for him to have been at the place where the crime was committed (People v. Abigan, supra).

In the case at bar, the accused by his own admission, testified that his residence where he was sleeping is about five (5) minutes walking distance to the place of the hacking incident (TSN, PP- 32-33, July 11, 1981).

There was no evidence to show that it was physically impossible for accused to be at the scene of the crime on that fatal morning. Such absence of evidence is fatal to his defense (People v. De las Pinas, supra).

There appears to be no question that the killing is qualified by treachery. It has been repeatedly held by the Supreme Court that there exists the qualifying circumstance of treachery when one takes the life of a person who is asleep. (People v. Perante, Jr., 143 SCRA 56 [1986] citing People v. Dequina, 60 Phil. 279 [1934]; People v. Miranda, et al, 90 Phil. 91 [1951]).

The testimony of the 13-year old child Edgardo Cabahug is by itself uncorroborated. No proof exists regarding the personal and other circumstances of the man whom this witness alleged to be the culprit, a certain Johnny Rodel. Rodel was never questioned by the police nor was there any attempt to arrest him. We sincerely doubt the credibility of this witness. Upon the other hand, We see no material relevance of Romeo Hernandez' testimony.

Considering that the crime has been qualified by treachery without any mitigating circumstance attending the offense, the judgment of the lower court is **AFFIRMED**, with the modification that the accused is sentenced to an indeterminate penalty of 10 years and 1 day of prision mayor (as minimum) to 17 years 4 months and 1 day of reclusion temporal (as maximum).

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

[1] Penned by Judge Conrado T. Limcaoco.

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