

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GAVINO AGUINALDO, ACCUSED-APPELLANT.

G.R. No. 75816. September 26, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the decision of the Regional Trial Court,[*] Branch VIII of Aparri, Cagayan finding the appellant Gavino Aguinaldo guilty beyond reasonable doubt of Murder, the dispositive portion of which reads:

"WHEREFORE, premises considered, this Court finds accused Gavino Aguinaldo guilty beyond reasonable doubt of the crime of murder prescribed and penalized under Article 248 of the Revised Penal Code and hereby sentences said accused to suffer the penalty of Reclusion Perpetua. Accused Gavino Aguinaldo is hereby ordered to pay to the heirs of deceased Marcelo Bueno the sum of TWO THOUSAND EIGHT HUNDRED (P2,800.00) PESOS by way of actual expenses sand the sum of THIRTY THOUSAND (P30,000.00) PESOS representing moral damages and to pay the costs of this suit. x x x" (Decision, p. 9)

According to the victim's sister, Silveria Pasion, at about 1:00 o'clock in the afternoon of May 20, 1982, the appellant arrived with two unidentified companions, all armed with long guns, in their house at Tagumpay, Gattaran, Cagayan. Her brother, Marcelo, was then seated while she was beside him coddling her eight month-old child. A cousin of theirs, Gabriel Malunao, was also present at the time but the latter failed to testify in court because he had gone abroad.

The appellant and his companions invited Marcelo to visit a barrio lass but Marcelo declined. Peeved with Marcelo's rejection of the invitation, the three changed the subject of the conversation to revolution. Meanwhile, Silveria observed that her daughter was asleep, thus, she brought the child upstairs and put her on the bed which was near the window fronting the place where Marcelo and the appellant's group were talking. An unpleasant conversation ensued between them. Then, she heard one of the companions of the appellant charge Marcelo with being a "CI", which means a civilian informer of the authorities of the movements of members of the New Peoples' Army (NPA). Immediately thereafter, she saw the accuser shoot Marcelo in the head, causing him to lie prostrate on the ground. Then, the appellant and his other companion went near Marcelo and successively fired at him. Before leaving, the appellant and his companions warned her and Gabriel Malunao not to report the matter to the police or they will have the same fate as Marcelo.

Despite such threat, Silveria reported the death of her brother to Barangay Captain Ceferino Vicente, who accompanied her to the military detachment at Barangay Cumao to request for soldiers to secure their place.

Because of fear for their lives, Silveria and her family evacuated to Sarrat, Ilocos Norte after Marcelo's burial. Silveria returned to Gattaran only after three months to report the matter to the police, upon learning that the appellant had already been apprehended. (pp. 18-45, tsn, Ausugt 27, 1984)

At the trial, Dr. Alejandro Jacob, who conducted the post-mortem examination of the cadaver of Marcelo, testified: that the cause of death of the victim was profuse hemmorrhage due to multiple gunshot wounds; that two

or three of the gunshot wounds were at the thorax cavity or chest wall; that one or more persons could have inflicted these gunshot wounds; and that the firearms used were armalite rifles. (pp. 6-10, tsn, August 27, 1984)

As his defense, the appellant admitted his presence at the scene of the crime but denied participation in the shooting of Marcelo. The appellant testified that on May 20, 1982, after taking his lunch with his parents and sister, four armed unidentified men went to their house and inquired if he knew where Marcelo Bueno lived. Suspecting that the callers are members of the NPA, his mother advised him to accompany them for fear that he might be harmed. On their way to Marcelo's place which was less than a kilometer away, the appellant inquired from the armed men why they were looking for Marcelo. They answered that they were going to tell him something. At a distance of about fifteen meters, he pointed to the house where Marcelo lived. The four armed men left him behind, then they called for Marcelo who responded to the call and joined the armed men outside. Together with Silveria, they stayed in the yard and engaged in conversation. All of a sudden, the four armed men one after another shot Marcelo. (pp. 5-15, tsn, Sept. 17, 1985)

The issue in this case, therefore, rests on credibility. In convicting the appellant, the trial court relied heavily on the testimony of Silveria.

After a careful review of the evidence on record, We find no plausible reason to hold otherwise. Indeed, the appellant's mere denial of participation in the crime cannot prevail over the positive testimony of Silveria that the appellant was one of the assailants who shot her brother while the latter was already lying prostrate on the ground. (People vs. Chavez, et al., 117 SCRA 221)

Silveria's failure to identify the appellant as one of the assailants of her brother at the earliest opportunity to the authorities does not affect her credibility. She explained that her silence was due to her fear for her life and those of her family. The appellant threatened her with death should she report the matter to the police. While it may be true that Silveria did not initially identify the appellant as one of the malefactors when she reported the matter to the barangay captain and to the army major at Cumao, We find Silveria's action of requesting for security at that moment natural and entirely in accord with human experience. Records of the case readily disclose that Barangay Tagumay was then a critical area, heavily infested with members of the NPA. Thus, on cross-examination, she testified:

"Q. So you requested the Brgy. Captain to accompany you to Cumao purposely to ask security in your place, is that correct?

A. Yes sir, because the peace and order condition there was deteriorating. x x x

Q.

The Brgy. Captain informed the army Major that Marcelo Bueno was killed, please give us some of your men to secure the area, was that all the Brgy. Captain requested of the army Major?

A. He said that the Major should send some of his men to guard the place because there are dissidents roaming around the same.

Q.

Since we were very much aggrieved because of the death of your brother, did you not deem it wise to go to the police department and right then and there execute an affidavit stating what you had seen?

A. No more sir, because of fear. We left immediately.

Q.

Didn't you know that you would be very much secure if you went to the Municipal Building of Gattaran where you freely could execute your affidavits?

A.

No more sir, because after the death of my brother, they threatened us that if we will report they will kill us. x x x" (p. 31, tsn, August 27, 1984)

In *People vs. Rosario*, 134 SCRA 496, We held that the initial reluctance of witnesses to volunteer information about a criminal case and their unwillingness to be involved in criminal investigations is common and has been judicially declared not to affect credibility.

The appellant submits that the testimony of Silveria should be discredited in the light of her declaration that her brother was shot in the head and ear (p. 45, tsn, Aug. 27, 1984) when Dr. Jacob testified that the victim's wound's were on the thorax cavity or chest wall (p. 8, tsn, Aug. 27, 1984). The inconsistency pointed out, however, refers to minor details which even Dr. Jacob cannot distinctly remember because he was apprehensive at the time he conducted the post-mortem examination. Dr. Jacob testified to the effect, thus,

"Q. You said that you found multiple gunshot wounds. Where were those multiple gunshot wounds located in the body of the deceased?

A. On different portions of his body.

Q. More or less can you remember the number of gunshot wounds you found on the body of Marcelo Bueno?

A.

I cannot remember because of fear. We were only few who went to that place, but I can remember that it is more than one. x x x.

Q. Can you remember the locations of those alleged gunshot wounds found on the body of Marcelo Bueno?

A. If my memory does not fail me, what I saw were mostly on the thorax cavity (breast) x x x.

Q. Why did you entertain fear when you said that you conducted examination in front of the house of the deceased?

A. Somebody might come to apprehend us because of that infested barrio. x x x" (pp. 4-9, tsn, August 27, 1984)

The relationship of Silveria to the victim does not impair her credibility. As held in *People vs. Radomes*, 141 SCRA 548, when there is no showing of improper motive on the part of witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. On the contrary, their natural interest in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the latter would thereby gain immunity.

Well settled is the rule that when the issue is one of credibility of witnesses, the trial court's findings are given great weight on appeal, and We find no cogent reasons to disturb the same.

WHEREFORE, the judgment of conviction is hereby **AFFIRMED**, but the imprisonment is modified to a minimum of ten (10) years and one (1) day of prision mayor to a maximum of eighteen (18) years, eight (8) months and one (1) day of reclusion temporal.[1]

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Judge Cristobal J. Rebolledo.

[1] Applying the Indeterminate Sentence Law.

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