

BERNARDO M. CORDIAL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND INTERMEDIATE APPELLATE COURT (NOW COURT OF APPEALS), RESPONDENTS.

G.R. No. 75880. September 27, 1988

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is a petition for review on certiorari of the decision of the Court of Appeals[1] affirming the decision of the Regional Trial Court, Branch XXV at Naga City[2] finding herein petitioner guilty beyond reasonable doubt of homicide and imposing on him the indeterminate sentence of eight (8) years and one (1) day prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum. The appellate court modified the lower court's decision by increasing the indemnity payable to the victim's heirs to P30,000.

The prosecution version of the crime on which the courts below based their decisions are as follows:

At around 10:00 o'clock in the morning of August 23, 1981, C2C Emmanuel Romero of the 244th Company of the Philippine Constabulary (PC) and Nicanor Lanuza, a member of the Constabulary Home Defense Force (CHDF), were riding on a passenger jeep from the PC headquarters at Concepcion Grande, Naga City to the patrol base at Antipolo, Minalabac, Camarines Sur. Romero and Lanuza, who were both carrying armalite rifles, were then seated opposite each other at the rear of the jeep nearest its running board with Romero seated on the left side.[3]

The jeep, which contained around ten passengers stopped near the house of the barangay captain at Grejalvo (Grijalvo), San Fernando, Camarines Sur, to unload some passengers. From where he was seated, Lanuza saw petitioner Bernardo M. Cordial with nine other persons.[4] Then, Cordial, armed with an "improvised knife,"[5] entered the jeep and stabbed Romero on the left side of the body. Lanuza fired his armalite rifle but the persons with Cordial got his and Romero's armalite rifles and stabbed him seventeen times. Lanuza failed to see what happened later to Romero as he became unconscious.[6]

Romero died on the spot. The autopsy conducted immediately thereafter by the municipal health officer of San Fernando, Camarines Sur, revealed that Romero, who was then 22 years old, sustained a bullet wound described as "swinging" which penetrated his left arm, another 0.8 centimeter contused wound after a bullet entered his left nipple and exited at the scapular region, still another lacerated wound 2 inches in diameter caused by another bullet on the left side of the back at the mid-scapular region, and a stabbed wound on the right hypochondriac region. Romero also had abrasions on both legs. His death was attributed to "irreversible shock secondary to severe external and internal hemorrhage due to multiple gunshot wounds." [7]

Eight months later or on April 26, 1982, Cordial was arrested by the police near the Tabuco bridge in Naga City while he was waiting for a ride to Beberon, San Fernando.[8] From the city jail, he was brought to the PC headquarters allegedly by Lanuza.[9] The following day, he was investigated by patrolman Eduardo Ginoo of the

Investigation Section, 244th Constabulary Company/Police District III at Naga City. The investigation was conducted in the Bicol dialect but Cordial refused to sign his typewritten statement.[10] In his uncorroborated testimony, Cordial stated that the answers to the questions propounded in the investigation "did not come from (him) but from Lanuza." [11]

The police filed a complaint for murder against Cordial and three John Does in the municipal circuit court of San Fernando-Pamplona, Camarines Sur. After the preliminary investigation, the second stage of which was waived by the accused, the provincial fiscal filed an information for murder against Cordial in the Court of First Instance of Camarines Sur.

On arraignment, Cordial pleaded not guilty to the offense charged. He interposed alibi as his defense. In his testimony, Cordial stated that he could not remember where he was on August 23, 1981 "because it was already a long time ago"; [12] that from June to November, 1981 he was employed as a truck laborer by Pepito Morano who owned a tobacco factory at the Naga City Subdivision and the Hotel Moraville at Dinaga, Naga City; that his duty was to load gravel, sand and boulders in Ligao or Pawili for delivery to the construction site of Morano; that he worked from five to seven days a week because there were times when the truck would be out of order and he would help in its repair, and that he worked from seven in the morning to seven in the evening even on Sundays when they disposed of tobacco waste from the Naga City Subdivision to Balatas, Naga City. [13]

Cordial swore that Lanuza testified in court that he was one of those who killed Romero and assaulted Lanuza because the latter told lies and "disreputed" persons like himself. [14] He came to know Lanuza because he used to go to San Fernando to help his parents prepare their land for planting. He could not remember if he went to San Fernando from June to November because "it was already so long a time" and his work with Morano was continuous. [15]

The defense presented two other witnesses. Fernando Bicaldo, Jr. testified that he was a co-laborer of Cordial in the gravel and sand business of Morano for five months from June, 1981; that he and Cordial would work from seven in the morning to seven in the evening delivering gravel and sand from Pawili or Ligao to Moraville, and that they would work from five to six days a week.

Catalina Noora, the barangay captain of Beberon, testified that he had known Cordial since 1978; that Cordial was a resident of Naga City and he would go to Beberon only during the planting season to help his parents; that he knew Lanuza to be a CHDF member who would come to Beberon if he had someone to arrest; that Lanuza picked up Dominador Peñaflor, one Bandola and Mamerto Peñaflor; that Lanuza brought these three persons to the PC detachment at the boundary of Lupi, San Fernando and Antipolo and to the PC detachment in Tamno and later they were brought back to Lupi; that when the three were back in Lupi, he heard gunshots and "there were spray of bullets" which he believed to have come from an armalite or machinegun because they were successive; and that after he heard the gunshots, the three were loaded in a jeep and brought to the municipal hall already dead.

Finding that the qualifying circumstances of treachery and evident premeditation were not proved, the lower court ruled that the crime committed was homicide and not murder as charged. Mitigating or aggravating circumstances being absent, the court imposed the aforementioned penalty. The sum of P12,000 it had imposed on the accused "for the fact of death" and the amount of P10,000 as reimbursement for the interment expenses were later increased by the appellate court to the total amount of P30,000.

His motion for reconsideration having been denied, Cordial appealed to the Intermediate Appellate Court. On April 2, 1986, the later court affirmed the lower court's decision.

The instant petition for review on certiorari is centered on petitioner's challenge to the credibility of the

prosecution's sole eyewitness, Nicanor Lanuza, and his testimony.

In assailing the credibility of Lanuza as a witness, Cordial relies on the testimony of Catalino Noora specifically the following:

"Q.

Do you know whether Nicanor Lanuza as a member of the CHDF came to Beberon on any occasion?

A. Yes sir.

Q. On what occasion?

A. Lanuza goes to Beberon if he has a person to be arrested.

Q. Do you know who (were) these persons arrested by Nicanor Lanuza?

A. Yes sir.

Q. Who are they?

A. Dominador Peñaflor and one Bandola and Mamerto Peñaflor.

Q. Do you know why these persons were arrested by Lanuza?

A. I don't know because they were just picked up.

Q.

Where were they brought?

A.

They were brought to the PC Detachment located at the boundary of Lupi and Antipolo and at the PC Detachment at Tamno and then returned to Lupi.

Q. Where is this barangay Lupi located?

A. San Fernando, Camarines Sur.

Q. Do you know what happened to these persons after they were brought to Lupi?

A. Yes, sir.

Q. What happened to them?

A.

When they were brought back to Lupi, we heard gunshots and there were spray of bullets and I believe those bullets comes (sic) from an armalite or machinegun because they were successive.

xxxx xxx xxx xxx.

Q. After you heard the gunshots, what happened next?

A.

What I knew, they were loaded on a jeep and were brought to the Municipal Hall already dead." (Underlining supplied.)[16]

Through this testimony, petitioner attempts to convince the Court that Lanuza is not a credible witness because of moral turpitude.[17] Ranged against this contention are the trial court's finding that no proofs were adduced regarding Lanuza's participation in the operations which resulted in the "salvaging" of three youths, and its conclusion that these alleged "facts" were merely stated by defense witness Noora whose knowledge of said killings was based on rumors without any solid first hand evidence to back them up.[18]

We are not persuaded that the defense's testimonial evidence on Lanuza's alleged moral depravity is sufficient to discredit him as a witness. Moral turpitude or depravity as a reason for exclusion of a witness is legally frowned upon mainly for the reason that any attempt to establish such an incapacity is met by two objections. One is that in rational experience, no class of persons can safely be asserted to be so thoroughly lacking in a sense of moral responsibility or so callous to the ordinary motives of veracity as not to tell the truth (as they see it) in a large or larger proportion of instances. The second objection is that, even if such a defect existed and were ascertainable, its operation is so uncertain and elusive that any general rule of exclusion would be as likely in a given instance to exclude the truth as to exclude falsities.[19]

Moreover, impeachment of a witness must be confined to an attack on his general character or reputation and on his character or reputation for truth and veracity. Such impeachment cannot be directed to any particular trait or character, or particular facts of particular wrongful or immoral acts.[20] Hence, the defense may not validly attack Lanuza's credibility through Noora's uncorroborated account of Lanuza's alleged participation in a rub-out, more so because Noora himself did not see it happen. In the same vein is Cordial's unsolicited information which has no factual basis that Lanuza usually speaks ill of other persons.

We need not belabor the point that findings of the trial court on the credibility of witnesses is entitled to great weight.[21] Suffice it to state that under Section 18, Rule 130 of the Rules of Court, even convicted criminals are not excluded from testifying in court so long as, having organs of sense, they "can perceive, and perceiving, can make known their perceptions to others".

Petitioner considers Lanuza's testimony as "not only contrary to common experience and observation of man" but also "inherently improbable." [22] He zeroes in on Lanuza's testimony that there was a lapse of "more or less five minutes" from the time he saw Cordial's group and the actual attack on Romero,[23] and that Lanuza had known Cordial for the past twenty years.[24]

Petitioner contends that the 5-minute lapse of time provided Lanuza with enough time "to prepare himself" and "to forwarn the victim,"[25] and hence, the lower court erred in finding that the attack was sudden. Petitioner also

avers that Lanuza could not have known Cordial for twenty years because the latter was only 23 years old at the time of the testimony.

We consider Lanuza's apparently erroneous reckoning or mis-estimation of time as too trivial and immaterial to discredit his testimony.[26] On cross-examination, Lanuza testified that although upon seeing Cordial with a knife, he knew that he and Romero would be attacked, the assault was so sudden that he had no time to prepare himself or to forwarn Romero. Repeated questioning by both the defense counsel and the court failed to unflinch Lanuza to depart from his testimony on the suddenness of the attack which left him and Romero helpless.[27]

Lanuza's claim that he had known Cordial for twenty years is too insignificant to affect his testimony. What is material is the proven fact that being residents of the same province who frequently took the same passenger jeep in San Fernando, Lanuza could have familiarized himself with Cordial's physical features to recognize him as one of the assailants. In fact, Cordial himself admitted that he came to know Lanuza because his parents had a piece of land in San Fernando and he usually went there during the planting and harvesting seasons.[28]

Petitioner also labels as inherently improbable the appellate court's finding that he sat first inside the jeep, stood up and stabbed Romero. On this matter, the appellate court said:

"The appellant alleges that while Lanuza said the appellant was seated when he stabbed the victim, thereafter Lanuza said he was not sitting beside the victim but he was standing. There is no inconsistency here. What Lanuza must have meant was at the beginning appellant was seated but thereafter he stood up and stabbed the victim.

The appellant then asked how could it be possible that he would have entered the crowded jeepney to stab the victim when he could have stabbed the victim from outside. The evidence reveal that the appellant was with several companions and that it was the appellant who went inside and stabbed the victim while his other companions stabbed Lanuza from outside."[29]

This finding of the appellate court is based on the following testimony of Lanuza:

"Q. Where was Bernardo Cordial when he stabbed Emmanuel Romero?

A. He was inside the jeep.

xxx xxx xxx xxx

Q. How far was Bernardo Cordial when he stabbed Emmanuel Romero?

A. He was able to come nearer the victim.

Q. How near?

A. More than one arm length also."[30]

"COURT:

Q. At the time that Romero was stabbed by Cordial, was Cordial seated?

A. Yes, your honor, Cordial was seated.

Q. Where was Cordial seated?

A. Bernardo Cordial, your Honor, was inside the jeep.

Q. Was he seated beside Romero?

A. No, your honor, he was not sitting beside Romero.

Q. So he was standing when he stabbed Romero?

A.

Yes, he was standing, your honor.

Q. Inside the jeep?

A. Yes, your honor."^[31]

Lanuza's ostensible confusion is explained by his earlier testimony that there was a "rumble" during the assault.^[32] However, such confusion and seeming inconsistency in his testimony cannot be considered earmarks of prevarication. On the contrary, they indicate that the witness was unrehearsed.^[33]

A witness is credible despite minor variances in his testimony where the testimony is consistent and natural on substantial matters and is corroborated by physical evidence.^[34] Shorn of the portions objectionable to petitioner, Lanuza's testimony is sufficient to pinpoint culpability on Cordial. That he was the sole eyewitness of the prosecution is of no moment. There is no law which required that the testimony of a single witness in a murder or homicide case has to be corroborated. The testimony of only one witness, if credible and positive, is sufficient to convict.^[35]

The defense of alibi interposed by Cordial is unavailing in view of his positive identification by Lanuza who had no proven motive to falsely accuse Cordial of a grave offense.^[36] Furthermore, the defense failed to prove that it was physically impossible for Cordial to be at the scene of the crime.^[37] August 23, 1981 was a Sunday and by Cordial's admission, Sunday was a rest day for him except when there was tobacco waste to be disposed of.^[38] Also, as Cordial himself testified, Grijalvo is adjacent to Beberon where his parents resided.^[39] It was, therefore, not indubitably proven that he could not have been in Grijalvo on August 23, 1981 when a group of men ambushed Romero and Lanuza.

In the absence of qualifying circumstances, the courts below correctly ruled that the killing was a homicide punishable under Article 249 of the Revised Penal Code and not murder as charged. There being no aggravating and mitigating circumstances, the appellate court correctly imposed the aforementioned indeterminate penalty and the indemnity of P30,000.

WHEREFORE, the decision of the Intermediate Appellate Court (now Court of Appeals) is hereby affirmed. Costs against the petitioner.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Gutierrez, Jr., J., on leave.

[1] Emilio A. Gancayco, J., ponente. Lorna S. Lombos de la Fuente and Manuel T. Reyes, JJ., concurring.

[2] Herculano Tech, presiding judge.

[3] TSN, August 18, 1983, pp. 4 & 14; Exhibit E.

[4] TSN, supra, p. 17.

[5] TSN, supra, p. 20.

[6] TSN, supra, p. 11

[7] Exh. A; Exh. C; TSN, April 12, 1983, pp. 4-6.

[8] TSN, March 14, 1984, p. 10

[9] TSN, supra, p. 9.

[10] Cordial's typewritten statement in the Bicol dialect is attached to the Record (pp. 8-10). Therein he admitted that he was one of the persons who killed Romero and attempted to kill Lanuza. He was then with Juanito Flora alias Ka Victor, German Moscoso alias Ka German, Martin Casquejo alias Ka Meroy, Felitacio Morado alias Ka Tayoy and others he knew only as Ka Larry, Ka Ronald, Ka Lanny (a woman) and Ka Roldan. He knew these persons because they were all members of the New People's Army (NPA) of which he had been member since May, 1981.

His group, which was led by Ka Larry, actually intended to kill Lanuza not only because the latter was part of the military but also because Ka Larry had a personal reason to kill him.

In the morning of August 23, German Moscoso fetched him at his house in Beberon and together they went to Grijalvo where they found three members of their group. Junior Calaguyo, German Moscoso, Martin Casquejo and Felitacio Morado took a jeep to San Fernando while he and others were instructed to wait for them.

When the jeep carrying Lanuza and Romero was approaching, they hailed it and one of their companions inside the jeep pointed at Romero and Lanuza. Together with Ka Larry, Martin Casquejo and German Moscoso, he approached Romero and stabbed him until he fell to the ground. Ka Larry then shot Romero. He stabbed Romero on the left side of the body under the armpit and he used a dagger ("daga") one inch in width and six inches in length with a wooden handle. Romero died on the spot.

Lanuza was attacked by Martin Casquejo, Juanito Flora and German Moscoso with knives and daggers while Ka Larry shot him. They left Lanuza lying on the ground and they thought that he was dead only to find out later that he survived because he was brought to the hospital. While they were attacking Romero and Lanuza, some of their companions watched out for possible assistance from the (PC) camp.

His companions had a BAR (Browning Automatic Rifle), a Garand, a Thompson and some short arms. When they thought Lanuza and Romero were dead, they got their guns and armalite magazines and escaped towards Beberon where they went their separate ways to hide.

[11] TSN, supra, p. 18.

[12] TSN, March 14, 1984, p. 3.

[13] TSN, *supra*, pp. 4-7.

[14] TSN, *supra*, p. 7.

[15] TSN, *supra*, pp. 8-9.

[16] TSN, July 5, 1984, pp. 4-7.

[17] Brief, p. 4.

[18] Order of December 12, 1984 denying Cordial's motion for reconsideration of the lower court's decision; Record, p. 199.

[19] II Wigmore on Evidence, 1940 ed., p. 602.

[20] 98 C.J.S. 396.

[21] *People v. Patola*, L-41265, February 27, 1986, 141 SCRA 401.

[22] Petition, p. 4; Rollo, p. 7.

[23] TSN, August 18, 1983, p. 20.

[24] TSN, *supra*, p. 7.

[25] Petition, p. 5; Rollo, p. 8.

[26] *People v. Canumay*, L-29181, July 9, 1984, 130 SCRA 301, 309.

[27] TSN, August 18, 1983, pp. 20-25.

[28] TSN, March 14, 1984, p. 8.

[29] Rollo, p. 15.

[30] TSN, August 18, 1983, pp. 8-10.

[31] TSN, *supra*, pp. 34-35.

[32] TSN, *supra*, p. 8.

[33] *People v. De las Piñas*, L-40586, February 19, 1986, 141 SCRA 379.

[34] *De Sagun v. People*, G.R. No. 53196, July 31, 1986, 143 SCRA 255.

[35] *People v. Canada*, G.R. No. 63728, September 15, 1986, 144 SCRA 121; *People v. Tan, Jr.*, G.R. No. 53834, November 24, 1986, 145 SCRA 258.

[36] *People v. Lopez*, L-47299, February 19, 1986, 141 SCRA 385, 392.

[37] *People v. Bihasa*, G.R. No. 63452, June 25, 1984, 130 SCRA 72.

[38] TSN, March 14, 1984, p. 6.

[39] TSN, *supra*, pp. 14-15.

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