

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. PONCIANO MANDAPAT, ACCUSED/APPELLANT.

G.R. No. 76953. April 22, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the decision[*] of the Regional Trial Court of Dagupan City, Branch 44, convicting accused/appellant of the crime of murder, the decretal portion of which reads:

"WHEREFORE, the Court finds the accused Ponciano Mandapat guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code and in view of the presence of the aggravating circumstances of taking advantage of superior strength and that the crime was committed in the dwelling of the victim which are not offset by any mitigating circumstance, hereby sentence(s) said accused Ponciano Mandapat to suffer the supreme penalty of Death and to indemnify the heirs of the deceased Crispula Nonan in the sum of P30,000 (sic) plus costs.

"Accused Ponciano Mandapat is also ordered to pay actual damages in the sum of P2,548.00 and moral damages of P10,000.00 for the heirs of the deceased Crispula Nonan." (Rollo, p. 41)

On March 9, 1982, an information was filed against accused/appellant charging the latter with the crime of murder allegedly committed as follows:

"That on or about October 5, 1977, in Barangay Barang, municipality of Malasiqui, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Pat. Ponciano Mandapat armed with a firearm, with treachery and evident premeditation and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shot one Crispula Cariño--Nonan, thereby inflicting upon said Crispula C. Nonan three (3) gunshot wounds which caused her immediate death. xxx" (Original Record, p. 1)

Upon arraignment, accused pleaded not guilty. Thereafter, trial on the merits followed.

The prosecution established its case, among others, through the testimonies of Maria Razo-Montemayor, an eyewitness; Dr. Tomas Refe, a medico-legal officer of the NBI; and Rogelio Munar, a ballistics expert of the NBI.

Montemayor testified that at about 10:00 a.m., she saw the accused holding the hair of the deceased Crispula Nonan, and with a gun on his hand, shot her on the head. She could not recall how many shots were fired but upon hearing the first shot, she hurriedly went home, terrified.

Dr. Refe, on the other hand, testified that he recovered two slugs from the exhumed body of the deceased which he submitted to the ballistics section of the NBI for examination. The service firearm of accused/appellant, Tell Revolver Caliber .22 with Serial No. 66330, was likewise submitted to the NBI office to determine whether the slugs (evidence bullets marked "CN") taken from the body of the deceased were fired from the same revolver.

In Ballistics Report No. B-184-1177, Munar, the NBI ballistics expert reported that the "comparative

examinations made between evidence bullet, Caliber .22 marked "CN" and the test bullets fired from the submitted TELL Revolver. Caliber .22 with SN-66330, revealed that they possess similar class and individual characteristic markings; said evidence bullet was fired through the barrel of this particular firearm." (Original Record, p. 9).

Appellant's defense is alibi. In support thereof, he testified that his tour of duty was that of night poblacion patrol from 8:00 p.m., October 4, 1977, to 4:00 a.m. of the following morning, October 5, 1977. At the end of his duty, he slept at the police barracks located at the back of the Malasiqui Municipal Building together with his companion, Pat. Jaime Cerezo, and woke up at about 11:30 a.m. His testimony was corroborated by Pat. Cerezo.

After trial, the court rendered judgment finding accused/appellant guilty of the crime charged.

Appellant assigns the following errors:

"THAT THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT AS SHOWN BY THE FOLLOWING CIRCUMSTANCES:

"1) THE ALLEGED EYEWITNESSES TO THE INCIDENT NOT CREDIBLE

"2) BALLISTIC EXAMINATION DOUBTFUL

"3) ALIBI OF ACCUSED STRONG AND NO MOTIVE TO KILL

"4) EQUIPOSE RULE IN FAVOR OF ACCUSED

"5) PRESUMPTION OF INNOCENCE NOT REBUTTED" (Appellant's Brief, p. 12; Rollo, p. 61).

The appeal is devoid of merit.

1. It has been repeatedly held by this Court that the appellate courts will not disturb the factual findings of the trial court especially as to credibility of witnesses because the trial court is in a better position to examine real evidence as well as to observe the demeanor of the witnesses while testifying in the case. The trial court's finding on the credibility of witness is accorded greatest respect (*People v. Tangliben*, 184 SCRA 220 [1990]; *People v. Marcos*, 185 SCRA 154 [1990]; *People v. Nabor*, 185 SCRA 615 [1990] and a long line of cases).

The main objection of the defense is that the lower court relied heavily on the testimony of Montemayor as eyewitness, when the latter is only a substitute, the real eyewitness being Virgilio Nonan, who was killed by an unknown assailant (Original Records, pp. 40, 41 and 93). Appellant further argues that Montemayor was not included in the original list of prosecution witnesses and she testified six (6) years, two (2) months and 28 days, after the incident.

The argument is untenable. It will be recalled that Montemayor testified at length why she did not report what she knew about the case to the Malasiqui Police. She stated that she was afraid of the accused who was a policeman stationed at Malasiqui, Pangasinan. She mentioned that there were some killing incidents attributed to the accused (TSN, January 3, 1984, pp. 10-11). At the hearing, she was able to testify because the accused was detained already at the Provincial Jail and she was under the protection of the court (TSN, January 3, 1984, pp. 17-18). Further, she did not report the killing to the barangay officials because the barangay captain, Dionisio Mandapat, is the father of the accused.

Thus, the fact that the witness was in a state of mortal fear for her life cannot be seriously doubted, more so if one considers that one of the eyewitnesses has already been silenced by an unknown assailant.

As a general rule, the failure of a witness to report at once to the police authorities the crime he had witnessed cannot be taken against him (People v. Demate, 113 SCRA 353 [1982]) for "it is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case. The natural reticence of most people to get involved in a criminal case is of judicial notice" (People v. Pacabes, 137 SCRA 158 [1985]; People v. Coronado, 145 SCRA 250 [1986]) and the fear of eyewitnesses when townmates are involved in the commission of the crime is understandable for they may provoke reprisals from the accused (People v. Rosario 134 SCRA 496 [1985]). The delay, when adequately explained, does not impair the credibility of the witness, as in the case at bar (People v. Cabanit, 139 SCRA 94 [1985]; People v. Millora, 119 SCRA 417 [1984]); neither will it render his testimony biased (People v. Itura, 129 SCRA 127 [1984]); nor will it destroy its probative value (People v. Millora, supra). Under the circumstances, We find the failure of the herein eyewitness Maria Razo-Montemayor to immediately present herself to the authorities and to relate the commission of the crime justifiable and consistent with normal behavior considering that the accused is a policeman.

Furthermore, Montemayor testified that she offered to testify during the investigation of the case but according to her, Fiscal Fernandez who was investigating the case was of the view at the time that the testimony of Virgilio Nonan, as an eyewitness, was sufficient (TSN, January 3, 1984, pp. 9-10). This accounts for her not being originally included as one of the prosecution witnesses.

At any rate, there is nothing that could prevent the prosecution from presenting witnesses in court not listed in the information, as it is well settled that the court has the undisputed right to call on a witness whose name does not appear in the list of the fiscal, unless the omission of said witness is intentional and tainted with bad faith (People v. Martinez, 127 SCRA 260 [1984]; People v. Valera, 15 SCRA 164 [1965]). The established rule is that the prosecution may call unlisted witnesses to testify (People v. Lacson, 1 SCRA 414 [1961]).

Moreover, the purpose of the listing of the names of the witnesses in the complaint or information is merely to avoid the presentation of surprise witnesses and to enable the defense to examine their record, morality and character, but once placed on the witness stand, it can no longer be disputed that the defense has already the opportunity to examine the character and credibility of the unlisted witness (People v. Morado, 4 SCRA 292 [1962]). Finally, it is beyond question, that it is the prosecution's privilege to present such number of witnesses it deems sufficient (People v. Quebral, 134 SCRA 425 [1985]).

2. Three (3) slugs were recovered from the body of the victim: one by Dr. Andaya, the Municipal Health Officer of Malasiqui, Pangasinan, and the other two (2) by Dr. Tomas Refe, Senior Medico-legal Officer of the NBI. All three (3) bullets, as evidence bullets, were sent first to the NBI and then to the PC-INP Crime Laboratory together with test bullets for ballistics examination to determine whether they were fired from Tell Revolver Caliber .22, with Serial No. 66330, which was the service gun of the accused at the time the crime was committed. As to the first bullet, marked "CN", the NBI concluded that said evidence bullet was fired through the barrel of the subject firearm (Ballistics Report No. B-184-1177, Original Records, p. 9) but the PC-INP Crime Laboratory, on the other hand, stated that no conclusion can be made whether or not the bullets in question marked "CN" and "CN-1" were fired from the same firearm.

Admittedly, there is a difference between the findings of the NBI and the PC-INP ballistics experts, but as correctly observed by the trial court, such fact does not militate against the case of the prosecution.

The accused was positively identified by the prosecution witnesses as the person who shot the deceased Crispula Nonan. The accused admitted that the Tell Revolver with Serial No. 66330 which was used in killing Nonan, was issued to him, and was taken from him only when he was being investigated by the PC in Bayombong (TSN, January 14, 1986, p. 34). Witness Rogelio Munar stated that the three (3) fired bullets are the same bullets that

were fired from the same gun and which were also those taken by Dr. Tomas Refe from the three (3) gunshot wound of the victim during the exhumation (TSN, March 28, 1984, pp. 84-85).

Moreover, it will be noted that the second ballistic report of the PC-INP Crime Laboratory does not categorically deny that the evidence bullets extracted from the body of the deceased were fired from the .22 Caliber Tell Revolver, SN 66330. The two ballistic reports of the NBI which were concurred in by five (5) ballisticians who performed the required ballistics examinations individually and separately to serve as a check and to counter check their individual findings, are more accurate and credible than the individual and uncorroborated finding of Vicente R. de Vera, the ballisticians of the PC-INP.

3. The accused interposed the defense of alibi. According to the accused, he was not at the scene of the crime when the same was committed because he was sleeping at the police headquarters at the back of the Municipal Hall from 5:00 a.m. to 10:30 a.m. with his companion Jaime Cerezo, after their tour of duty at 4:00 a.m.

Alibi as a defense is inherently weak. It can easily be contrived and may only be accepted with great caution and not with precipitate credulity. In the case at bar, appellant's alibi, even if corroborated by Cerezo, does not inspire a scintilla of belief. Indeed, alibi may be fabricated even by those not related by blood (*People v. Cabanit*, supra, citing *People v. Lumantas*, 5 SCRA 157; *People v. Pelagio*, 20 SCRA 153; *People v. Bulawin*, 29 SCRA 710). In any event, it is axiomatic that the defense of alibi is unavailing where the accused is positively identified by one without motive to falsely charge the accused (*People v. Marcos*, supra; *People v. Clores*, 184 SCRA 638 [1990]; *People v. Cabatlao*, 108 SCRA 359 [1981]; *People v. Demate*, supra; *People v. Plaza*, 140 SCRA 277 [1985]; *People v. Arbois*, 138 SCRA 24 [1985]; *People v. Casundo*, 134 SCRA 197 [1985]).

To establish alibi, a defendant must not only show that he was present at some other place about the time of the commission of the alleged crime but that it was also physically impossible for him to have been at the place where the crime was committed either before, during or after the time he was at such other place (*People v. Perante, Jr.*, 143 SCRA 56 [1986]; *People v. Nabor*, supra; *People v. Muñoz*, 107 SCRA 313 [1981]; *People v. Ganado*, 116 SCRA 362 [1982]; *People v. Gani*, 139 SCRA 301 [1985]).

Appellant himself testified that the police barracks where he slept on October 5, 1977 was only three (3) kilometers away from the residence of the victim and that there was a road extending to about one (1) kilometer from the barracks which leads to the house of the deceased.

The defense has not shown that the distance of three (3) kilometers from the police barrack to the scene of the crime renders it impossible for the accused/appellant to be present there considering that there is a short cut to the place which is only one (1) kilometer and leads to the interior to reach the victim's house. A distance of one or two (2) kilometers from the scene of the crime does not exclude the possibility of the commission of the crime by the accused (*People v. Araya*, 105 SCRA 133 [1981]).

Undeniably, no motive for the killing of the victim has been shown by the prosecution, but 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. Derante, Jr.*, supra). As the Court previously said, the absence of motive does not preclude the commission of the crime considering that nowadays, it is of judicial knowledge that others have been killed or assaulted for no reason at all (*People v. Basadre*, 128 SCRA 641 [1984]; citing *People v. Reyno*, 13 SCRA 647).

WHEREFORE, the decision under review is AFFIRMED with the modification that the penalty of death imposed by the trial court is reduced to life imprisonment (Sec. 19 [1], Art. III, Constitution) and the civil indemnity is increased from P30,000.00 to P50,000.00. Costs against appellant.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Davide, Jr., JJ., concur.

[*] Penned by Hon. Judge Crispin C. Laron

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