

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELCHOR BESA, ACCUSED-APPELLANT.

G.R. NO. 78899. March 22, 1990

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the decision of the Regional Trial Court, 6th Judicial Region, Branch 17, Roxas City* finding accused-appellant Melchor Besa guilty beyond reasonable doubt of the crime of murder and sentencing him to imprisonment for life; to indemnify the heirs of the deceased Gaspar Besa in the sum of P30,000.00; and to pay the costs.

The information filed by Assistant Provincial Fiscal Carlos V. Andaya, Jr. reads:

"That on or about the 19th day of May, 1980 in the municipality of Jamindan, province of Capiz, Philippines, and within the jurisdiction of the Honorable Court the above-named accused armed with a knife and with deliberate intent to kill, with treachery, did then and there, willfully, unlawfully and feloniously, attack, assault and stab from the back, one Gaspar Besa, killing the latter instantly.

"Contrary to law, with qualifying circumstances of treachery."

Upon his arraignment on September 30, 1980, accused Melchor Besa entered a plea of not guilty.

The facts as gathered from the records are as follows:

At about 9:00 o'clock in the evening of May 19, 1980, the victim Gaspar Besa who is accused-appellant's younger brother, and Mariano Luces were drinking beer just outside the store of Thelma Belleza which is situated at Baye-baye, Jamindan, Capiz. They were later joined by Santiago Villanueva and accused-appellant Melchor Besa who came from the baptismal party in the house of Jorge Belleza which is located just at the back of the store. Gaspar ordered four more bottles of beer. They talked of various things, sang native songs and tried to be merry. Their merrymaking were understandable as it was the eve of the barangay fiesta and Gaspar Besa had just arrived two days earlier from Mindanao after staying there for six years. He was fetched from Mindanao by another brother so that he could get his share from the proceeds of the sale of a residential lot their mother was intending to sell.

An hour later, while enjoying the company of each other, Melchor Besa stood up and went behind his brother Gaspar who was seated and suddenly stabbed the latter at the back with a knife about 10 inches in length (TSN, August 31, 1983, p. 12) which resulted in the instantaneous death of Gaspar. However, before he expired, Gaspar uttered "I was stabbed by Nong Melchor" and as he fell from his seat, the two (2) (Melchor and Santiago) ran away (Hearing of November 23, 1983, TSN, p. 5). Mariano Luces who earlier went to the house of Jorge Belleza arrived and called for police authorities. Policemen Joel Balsado and Willie Bactot who acted as godfathers of the son of Jorge Belleza arrived (Ibid.). The body of Gaspar Besa was brought to the poblacion (Ibid.). The Medical Certificate issued by Dr. Abel P. Martinez (Exhibit "A", Original Record, p. 10), shows that the cause of his death

was cardiac arrest caused by internal hemorrhage which means that death is immediate (Hearing of January 12, 1984, TSN, p. 33). The doctor found a wound about an inch in diameter caused by a sharp pointed and bladed instrument which entered the left side of the paravertebral line on the level of the 7th cavity reaching the lungs. The blow came from behind. (Ibid.).

After trial, the RTC of Roxas City, Branch 17, rendered judgment dated January 21, 1987 finding herein accused-appellant guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

"WHEREFORE, this Court finds accused Melchor Besa guilty beyond reasonable doubt of the crime of murder as defined and penalized under Article 248 of the Revised Penal Code and hereby sentences him to imprisonment for life; to indemnify the heirs of the deceased Gaspar Besa in the sum of P30,000.00; and to pay costs. The period of his detention for this case only (it appearing that at present he is also detained in the provincial jail of Capiz for murder for the alleged killing of his sister-in-law) shall be credited fully in his favor if he agrees in writing to abide by and obey the rules and regulations of the prison institution in which he shall serve his sentence, otherwise, he shall be entitled to only four-fifths (4/5) thereof.

"The bailbond posted for his temporary liberty is hereby ordered cancelled and terminated under the authority granted this court by Section 2 (a), Rule 114 of the 1985 Rules on Criminal Procedure and he is hereby directed immediately committed to prison pending review of this judgment.

"SO ORDERED." (Decision, Original Record, p. 353).

Accused-appellant filed a Notice of Appeal which was given due course by the trial court in its order dated March 5, 1987.

In a resolution dated July 22, 1987, We accepted the appeal interposed by the accused-appellant which was erroneously trans-mitted to the Court of Appeals and directed that notice to file his brief, be sent to accused-appellant.

In his brief, counsel for accused-appellant raised the lone assignment of error which reads:

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER AND IN SENTENCING HIM TO SUFFER THE PENALTY OF RECLUSION PERPETUA AND TO INDEMNIFY THE HEIRS OF THE DECEASED IN THE SUM OF P30,000.00 ON THE STRENGTH OF THE TESTIMONIES OF THE PROSECUTION WITNESSES WHICH ARE INCONCLUSIVE AND HAZY AS TO THE IDENTITY OF THE ASSAILANT AND WHICH ALSO FAILED TO SHOW ANY MOTIVE ON THE PART OF THE ACCUSED-APPELLANT TO KILL HIS FULL-BLOOD BROTHER.

Three prosecution witnesses, namely: Mariano Lucas, Thelma Belleza and Santiago Villanueva who were all present at the scene of the crime that fatal night, saw the incident at close range and testified as one that the accused, without any known reason whatsoever, went behind his unsuspecting brother Gaspar and stabbed the latter to death.

Mariano Lucas, a tricycle driver, who was one of those drinking with the Besa brothers, testified as follows:

"Q.

You said you were drinking, who were your companions while you were drinking?

A.

Gaspar Besa, Melchor Besa, Santiago Villanueva and myself.

Q.

Aside from the four of you, were there or was there any other person in the store of Thelma Belleza?

A.

No more. Only Thelma.

Q.

Do you remember if anything happened while you were drinking at the store of Thelma Belleza?

A.

There was.

Q.

Please tell us what happened?

A.

Gaspar Besa was stabbed by Melchor Besa.

Q.

Now these Melchor and Gaspar all surnamed Besa, how are they related with each other?

A.

They are brothers.

Q.

On what part of the body was Gaspar hit by the stab blow delivered by Melchor Besa?

A.

Here at the back. (Witness pointed to the left upper portion of his back. Slightly left toward shoulder blade).

Q.

How many times did Melchor Besa stab Gaspar Besa?

A.

Once.

x x x x x x x x

COURT:

Q.

What was the position of Melchor Besa when he stabbed Gaspar Besa?

A.

He was standing at the back.

Q.

What happened to Gaspar Besa after he was stabbed by Melchor Besa?

A.

Gaspar died."

(Hearing of August 31, 1983, TSN, pp. 3-4).

The defense impugns the testimony of this witness on the ground that he was not present when the actual stabbing occurred because he was at the house of Jorge Belleza, fifteen (15) meters away (Brief for Appellant, p. 5). However, on cross-examination, this matter was clearly explained by witness Mariano Luces when he admitted that he indeed went to the house of Jorge Belleza at the back of the store, after having been informed by appellant Melchor himself, that Jorge Belleza was looking for him, but not finding Belleza at the house, witness immediately went back to the store and it was at that moment after his return that Melchor stabbed his brother Gaspar.

Witness Mariano Luces' testimony on this vital aspect of the case is as follows:

"Q.

Now you said a while ago that this Melchor went to you, did Melchor Besa talk to you something?

A.

Yes, sir.

Q.

What was the subject?

A.

Melchor told me that the owner of the house George Belleza was looking for me.

COURT:

Q.

Which house is he referring?

A.

The house of George Belleza where the store is located.

ATTY. PRADO:

Q.

And you immediately went up the house of that George Belleza?

A.

Yes, sir, I went upstairs. I went up the house of George Belleza.

Q.

And you looked for Jorge Belleza upstairs?

A.

Yes, sir. When I went up the house of George Belleza I then inquired from his brother, 'where was George.'

x x x x x x x x

Q.

How far is that house of George Belleza from the bench where you were sitting?

A.

Very near. The house is situated right at the back of the store.

Q.

You passed outside the store in going to the house?

A.

At the side of the store. At the side of this bench where the three were seated.

Q.

What was the answer of the brother of George Belleza when you looked for George?

A.

The brother of George answered that George is presently in Mambusao because he accompanied his compadre.

Q.

And it was while you were upstairs the stabbing incident occurred?

A.

I was already going down.

Q.

Where were you actually?

A.

I was already very near to the place where they were.

Q.

In fact you have not actually seen the stabbing because you were then at the side of the store?

A.

It could be seen. I saw it clearly.

Q.

When you were facing the house of George Belleza ... you said you passed at the side of the store in going up the house. If you were facing the store which side did you pass in the left or right side of the store?

A.

I have to pass at the right side of the store to go up the house.

Q.

And the bench where you have seated is just near the place where you were at the time of the incident?

A.

When I came back that was the time that I saw Gaspar stabbed by Melchor Besa. When I was already right there at the store, Gaspar was already lying dead facing downward.

Q.

Where were you actually at the time of the stabbing incident?

A.

The stabbing incident took place when I was already very near to the store when I returned coming from the house of George Belleza and I really saw the stabbing incident.

Q.

The store is just in front of the house of George Belleza?

A.

Yes, sir.”

(Ibid., TSN, pp. 9, 10, 11).

Despite grilling cross-examination conducted by the defense counsel, the witness remained steadfast in his testimony to the effect that he actually saw the stabbing incident.

He testified as follows:

"Q.

You said you stayed there at the house of George Belleza and went down. While you were at the side of the store you said the incident took place. Where were you actually at the side of the store?

A.

I was actually at the middle of the store and the house.

Q.

And the store has a wall by the side?

A.

Yes, sir.

Q.

So, actually you have not seen the incident because your vision is being blocked by the wall of the store?

A.

The bench is clearly seen and then the path is leading directly to the house from the bench, and taking this path the bench can be clearly seen from the place where I was.

x x x x x x x x

Q.

The deceased was then standing by the side of the bench at the time he was stabbed?

A.

He was sitting.

Q.

And Santiago Villanueva was sitting by his side?

A.

Yes, sir.

Q.

And this Melchor Besa was seated at the time he stabbed Gaspar?

A.

No, sir. He went around at the back.

Q.

He went around by passing Santiago Villanueva?

A.

No need because Santiago Villanueva was not seated at the right side of Gaspar.

Q.

The bench was made of bamboo?

A.

Yes, sir."

(Ibid., TSN, pp. 11, 12).

Finally, on further cross-examination, Mariano Lucas re-affirmed his positive identification of the accused as the assailant and showed beyond doubt that he could not have been mistaken because the place was clearly lighted with a petromax lantern.

He stated:

"Q.

And the bench where the three persons Melchor, Gaspar and Santiago Villanueva were seated (is) near the path towards the house of George Belleza?

A.

Yes, sir.

Q.

And of course the three were not clearly lighted because of the wall of the store, is that right?

A.

They were clearly lighted. There was a petromax hanging at the center of the store."

(Ibid, TSN, p. 12).

Moreover, the foregoing testimony of Mariano Lucas was corroborated by the testimony of Thelma Belleza, the storeowner. In an equally clear statement, she testified:

"Q.

Miss Belleza on May 19, 1980 at about 10:00 o'clock in the evening can you tell us where were you?

A.

I was at Brgy. Bayebaye, Jamindan, Capiz.

Q.

Where particularly in Brgy. Bayebaye?

A.

In my store.

Q.

What were you doing inside your store?

A.

I was watching my store.

Q.

Whose store was that you were watching?

A.

Mine.

Q.

Who were with you in that store about that time 10:00 o'clock in the evening of May 19, 1980?

A.

Inside the store I was alone but outside of my store they were four (4). They were Mariano, Gaspar, Melchor and Santiago.

x x x x x x x x

FISCAL AZARRAGA:

Q.

What were these four (4) persons doing outside your store?

A.

They were drinking.

X X X X X X X X

Q.

Was there an unusual incident that happened while you were inside your store and these four (4) persons you named outside your store?

A.

There was.

Q.

Please tell us of that incident?

A.

Melchor Besa stabbed Gaspar Besa at the back.

Q.

Was Gaspar Besa hit when he was stabbed by Melchor Besa?

A.

Yes, man, at the back.

X X X X X X X X

Q.

When Melchor stabbed Gaspar at the back what happened to Gaspar?

A.

After Melchor Besa hit Gaspar Besa at the back Gaspar even stood up and even touched the part which was hit by Melchor and he even commented I was stabbed by Nong Melchor, then he fell and then the two (2) referring to Melchor and Santiago ran away."

(Hearing of Nov. 23, 1983; TSN, pp. 21, 22, 23).

On cross examination, she confirmed that Mariano Luces went to the house of George Belleza, her brother, but he did not go up the house. He just called and was told that George was not present and so he immediately returned to the store. She declared that Mariano Luces was only 2-1/2 meters away from Gaspar when the latter was stabbed by the accused (Hearing, November 23, 1983; TSN, pp. 24-25).

Santiago Villanueva, another witness for the prosecution and one of the four persons who were drinking that night with the Gaspar brothers, testified on exactly the same facts and fully corroborated the statements of Mariano and

Thelma.

On the other hand, the accused resorted to alibi for his defense. He testified that he was not present when the stabbing occurred but was some 15 meters away defecating and that it was somebody else, one Antonio Laureano, who killed his brother. However, said person (Antonio Laureano) allegedly disappeared and could not be found.

To corroborate his statements, the accused presented several witnesses.

The first witness was Generoso Apregil, a 65-year-old blacksmith and a resident of Santa Cruz, Jamindan, Capiz. He claimed that he was at the crossing of Baye-baye, three arms length from where Santiago Villanueva and Gaspar Besa were drinking beer; that Melchor Besa was not present when the stabbing occurred because he was somewhere defecating; that all of a sudden a certain Antonio Laureano, a drunkard, who wants to kill when drunk, ran in front of him towards the back of Gaspar Besa and stabbed the latter. Thereafter, Antonio ran away passing in front of the witness at which time he saw the weapon used, a knife (sundang) about 12 inches long excluding its handle, which he knew very well because he himself made it. Melchor Besa arrived later just in time to hear his brother say "Manong Miling, I was stabbed by a person" after which the victim died immediately. Panic-stricken Melchor ran looking for police authorities. The witness then left and never knew if Melchor went back to the scene of the incident (Hearing of May 28, 1985 TSN, pp. 49-52).

On cross-examination, witness Apregil admitted that he never revealed what he saw that night of May 19, 1980 despite the fact that he knew the Barangay Captain. In fact, he was never investigated by the police authorities and although he knew that Melchor Besa was jailed in Jamindan for killing Gaspar, he never told the authorities that they have put in jail the wrong person. Pressed further, for his reason in waiting two years to tell his story, Melchor just said that it was none of his business.

The trial court finds it difficult to believe, as We do, that this witness would withhold such valuable information for the accused for that long period of time for the simple reason that it was none of his business; and only to contradict himself by alleging that he came to court after that long period of time of his own volition, obviously making it his business now without any given reason (Rollo, p. 349).

More than that, the witness claimed to be only three (3) arms length away from the scene of the crime and yet none of the prosecution witnesses saw him. In fact, they (the prosecution witnesses) were emphatic that only five (5) persons were in that store and nobody mentioned his (Apregil's) presence.

Another defense witness who could not be taken seriously, is Feliciano Villas. He claims that he knew Antonio Laureano, a barber in his barbershop; that he was at home on the night of May 19, 1980 drinking tuba with a friend; that around midnight, Antonio Laureano called from below and upon his (Feliciano's) invitation, Laureano went up the house, drunk tuba and later got a knife from his waist and examined it before the light, at which time, Feliciano saw that it was blood-stained. When asked by Feliciano why there is blood stain, Laureano answered, "That is no longer your business." (Hearing, August 14, 1985; TSN, pp. 62-63). He further declared that Laureano continued working in his shop until July 11, 1980 when Laureano stabbed and killed one Oscar Miguel, and disappeared thereafter. (Ibid).

On cross-examination, he admitted that he did not have personal knowledge that Laureano stabbed Gaspar but based his assumption only on the fact that he saw the knife with blood stain on the person of Laureano (Ibid, p. 65). He alleged that he told others about what he saw but did not take any interest to be involved in this case. He admitted that he never told the municipal trial judge from 1980 to 1985 the date of the hearing, to help clear Melchor Besa despite his suspicion. Neither did he execute a sworn statement as to what he knew (Ibid, TSN, p. 66).

All told, it defies reason that Antonio Laureano would drop by the house of this witness at twelve midnight only for the purpose of displaying to him and his guest the bloodstained knife.

More incredible is the story of Wilfredo Villas, brother of Feliciano Villas, who testified that he also knew Antonio Laureano very well because they live in the same house; that on one occasion while he and Laureano were drinking tuba, the latter confided to him that he was the one who stabbed Gaspar Besa; that he got the information on July 4, 1980 but chose to withhold it from everyone including his brother Feliciano for fear that Antonio who has then disappeared, might come back and stab him.

As in the case of his co-witnesses, he failed to explain why he finally came out in the open at such late date to testify, except for the fact that he pitied Melchor (Hearing of March 4, 1986; TSN, pp. 79-80; 82-84).

After a careful review of the records of this case, no cogent reason could be found to disturb the findings of facts of the trial court which are binding on the Supreme Court in the absence of a clear showing of grave abuse of discretion or an obvious misapprehension of the facts (*People v. Ancheta*, 148 SCRA 178 [1987]; *People v. Aboga*, 147 SCRA 404 [1987]; *People v. Natipraval*, 145 SCRA 483 [1986]; *People v. Valentino*, 141 SCRA 397 [1986]; *People v. Patola*, 141 SCRA 401 [1986]) considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial (*People v. Marzan*, 128 SCRA 203 [1984]; *People v. Gomez*, 124 SCRA 260 [1984]).

Apart from the inherent improbability of the version of the defense witnesses, it will be noted that their testimonies came several years late. Thus, this Court has ruled that the silence of an alleged eyewitness for several weeks render his credibility doubtful and failure of a witness to whom one of the accused allegedly confessed having killed the victim to report the crime right away, renders his testimony doubtful (*People v. Tulagan*, 143 SCRA 107 [1986]). Moreover, the long delay in reporting the crime or its author to the authorities not caused by threat, intimidation or coercion, renders the testimony untruthful (*People v. Cruz*, 129 SCRA 156 [1984]).

In the case at bar, as earlier stated, appellant pleaded alibi and sought corroboration of his defense from the testimonies of his witnesses, pointing the commission of the crime to one Antonio Laureano. To begin with, the trial court is not even convinced that such a person exists or existed. As shown by the records, the police authorities had not even as much as hinted that Gaspar Besa was killed by anyone other than Melchor Besa.

The defense of alibi combined with tall stories of the defense witnesses cast serious doubts as to the merits and integrity of their testimonies. Considering that the defense of alibi is inherently weak because it can easily be fabricated (*People v. Sarabia*, 127 SCRA 100 [1984]), the same become even more weak on account of the accused having been positively identified as the assailant by three (3) credible witnesses. Hence, the defense interposed must necessarily fail.

In contrast, the positive testimony of the prosecution witnesses who actually saw the incident at close range and who have no reason at all to testify falsely against the accused, established beyond doubt the culpability of the latter. The positive identification establishes the guilt of the accused to a moral certainty (*People v. Demetrio*, 124 SCRA 914 [1983]; *People v. Cunanan*, 75 SCRA 15 [1977]).

Consequently, the oft repeated principle that "alibi cannot prevail over the positive identification of prosecution witnesses" (*People v. de la Cruz*, 148 SCRA 582 [1987]; *People v. Petil*, 149 SCRA 92 [1987]; *People v. Garcia*, 141 SCRA 336 [1986]; *People v. De las Pinas*, 141 SCRA 379 [1986]; *People v. Lopez*, 141 SCRA 385 [1986]; *People vs. Martinez*, 127 SCRA 260 [1984]) finds another application in the case at bar.

More than that, this Court has already ruled that categorical declarations of witnesses for the prosecution on the details of the crime are more credible than the denials and uncorroborated alibi interposed by the accused (*People*

v. Tan, Jr., 145 SCRA 614 [1986]).

Accused-appellant's insistence of lack of motive to kill his brother does not deserve serious consideration, inasmuch as the accused-appellant has been positively identified as the assailant by no less than three (3) credible witnesses. It has been repeatedly held by this Court that motive becomes relevant, and its absence may assume determinative significance only when the accused has not been positively identified (*People v. Milflores*, 115 SCRA 570; *People vs. Araja*, 105 SCRA 133), and proof thereof becomes essential only when evidence of commission of the crime is purely circumstantial or inconclusive (*People v. Ariel*, 96 SCRA 199). Lack of motive does not even preclude conviction when the crime and participation of the accused herein are definitely established (*People v. Dorico*, 54 SCRA 172).

Finally, there is no question that the stabbing was done with treachery as positively shown by the testimony of prosecution witnesses and by the location of the wound.

WHEREFORE, the decision appealed from is Affirmed in toto.

SO ORDERED.

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

* Presided by Judge Pelagio R. Lachica.

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