

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PIO CANTUBA & PEDRITO LALAGUNA, DEFENDANTS-APPELLANTS.

G.R. NO. 79811. March 19, 1990

Ponente: PARAS, J.

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PARAS, J.:

The accused-appellants Pio Cantuba and Pedrito Lalaguna together with co-accused Gualberto Versales (alias Berting), Satur Gerbuela, Ricardo Baco, Rogelio Penales (alias Pugo), Romeo Totong Labuyo and Mayor Moises Espinosa were charged with the crime of Murder under Art. 248 of the Revised Penal Code in an amended information which reads as follows:

"That on or about December 23, 1981 in the municipality of Masbate, province of Masbate, Philippines, and within the jurisdiction of the Honorable Court, the said accused, confederating with each other, did then and there willfully, unlawfully and feloniously, with evident premeditation and with night-time as a means to better facilitate the commission of the crime, attack, assault and use personal violence upon one ATTY. ADOLFO CELERA, by then and there shooting him at several parts of his body, thereby inflicting upon the latter, mortal wounds which are the direct and immediate cause of his death thereafter.

"Contrary to law." (p. 124, Rollo)

The accused Cantuba, Lalaguna, Versales, Gerbuela, Baco and Mayor Moises Espinosa pleaded not guilty upon arraignment. Penales and Labuyo remained at large and were not arraigned.

The defense, in a motion for an order requiring the Prosecuting Fiscal or Fiscals in this case to conduct another investigation and thereafter to include in the Amended Information all persons, who appear responsible therefore, moved for the inclusion of one Pat. Torrecampo, a confessed participant in the alleged crime, as one of the accused. Although the motion was granted by the court, the issue was eventually rendered moot and academic when the trial was completed without the Prosecuting Fiscals having complied with the court's order.

On April 27, 1987, the trial court rendered a decision, the dispositive portion of which states:

"WHEREFORE, premises considered, we find accused PIO CANTUBA and PEDRITO LALAGUNA, guilty beyond reasonable doubt of the crime of Murder, and hereby sentences each of them to suffer the penalty of RECLUSION PERPETUA, to indemnify jointly and solidarily the heirs of Atty. Celera in the sum of One Hundred Thousand (P100,000.00) Pesos, and to pay the costs.

"Accused GUALBERTO VERSALES, SATUR GERBUELA and MAYOR MOISES R. ESPINOSA, are hereby ACQUITTED, for insufficiency of evidence to establish guilt beyond reasonable doubt, with the consequent cancellation of their bailbonds.

"The case against accused RICARDO BACO who is already dead is DISMISSED.

"The case against ROMEO alias TOTONG LABUYO and ROGELIO PENALES alias PUGO who, up to the present are at large, is hereby placed in the ARCHIVES.

"SO ORDERED." (pp. 66-67, Rollo)

The trial court gave credence to the testimonies of the prosecution witnesses Margie Rotor, Romulo Tama and Pat. Rodolfo Torrecampo and on the basis of their testimonies the facts as hereunder narrated are reconstructed by the Solicitor General, as follows:

"On December 21, 1981, Patrolman Rodolfo Torrecampo, then under suspension but working as the bodyguard of Mayor Moises Espinosa, went to Dagusungan, Milagros, Masbate to fetch one Romeo 'Totong' Labuyo, the 'encargado' of Mayor Espinosa's ranch, and to Pulang-Bato, Masbate, Masbate to fetch Pio Cantuba, the mayor's 'sidekick' in his cockpit (TSN, Sept. 3, 1985, pp. 335, 337; TSN, September 2, 1985, p. 297).

"On December 23, 1981, all three went to the provincial jail to secure the release of Ricardo Baco, a detention prisoner (TSN, Sept. 3, 1985, pp. 338, 342). Together with Baco, they proceeded to the house of Saturnino Gerbuela, a provincial guard, but the latter was not at home (Id., p. 343). They left Baco behind to wait for Gerbuela with instructions that they both should proceed to Sunrise Disco Pub at 6:00 p.m. (Id.). Torrecampo, Labuyo and Cantuba went to the Bel-Air Theater to kill time staying there for about two hours before proceeding to the Sunrise Disco Pub (Id., pp. 344, TSN, November 7, 1985, p. 446). Ricardo Baco was already at the Sunrise Disco Pub when they arrived (TSN, September 3, 1985, p. 345).

"Torrecampo told the group to wait outside while he checked inside the pub to see if Atty. Adolfo Celera was inside (Id., p. 345). As the pub was dark, he could not confirm Atty. Celery's presence (Id., p. 346). Coming out of the pub, Torrecampo explained to Cantuba, Labuyo and Baco how they would kill Atty. Celera. He handed to Labuyo a .45 cal. pistol and to Baco a knife (machete) (Id., pp. 346, 347). Torrecampo described the features of the victim to Baco (Id., p. 346) and instructed Cantuba, who knew Atty. Celera, to signal Baco and Labuyo as soon as he sees their victim approaching (TSN, November 7, 1985, p. 446).

"Atty. Adolfo Celera was a practicing lawyer and had run for public office (Id., p. 450). He had been the lawyer for the complainant in a rape case brought against Mayor Espinosa, formerly Governor of Masbate (TSN, January 23, 1985, p. 75, TSN, October 21, 1987, pp. 3-4), who at the time of Atty. Celera's death had filed a case against the latter for moral damages (TSN, September 2, 1985, p. 294). After the trial of the damage suit began, Atty. Celera confided to his wife that Mayor Espinosa had warned him that should he lose the suit a 'miracle' would happen (TSN, October 21, 1985, pp. 4, 5). Subsequently, Atty. Jolly Fernandez (later Assemblyman), who collaborated with Atty. Celera in the rape case against Mayor Espinosa, was 'bombed' as he left the court On December 2, 1981 (Id., pp. 6, 7).

"On the evening of December 23, 1981, Atty. Celera, together with Margie Rotor and Ave Refil, attended the Christmas party of the Bureau of Land Transportation (BLT). They left the place after staying for one hour and took a tricycle to Pil-Tel, a local long distance telephone company. Atty. Celera went inside Pil-Tel while his companions waited outside. Margie Rotor noticed that there were also three other people standing outside Pil-Tel (Id., p. 59) one of them she recognized as Pio Cantuba a long time acquaintance (Id., p. 60). After 5 minutes, Atty. Celera came out of Pil-Tel and then headed for the Sunrise Disco Pub (TSN, January 23, 1985, pp. 56, 58, 61) just across the street from Pil-Tel. (Id., p. 58, 59; TSN, June 10, 1985, p. 135). Ave Refil was called by somebody and Atty. Celera and Margie Rotor went inside the Pub and ordered a bottle of White Castle and before they had consumed its contents Atty. Celera told her that he will go home already (Id., p. 62).

Margie Rotor accompanied Atty. Celera to the gate of the pub where they stood facing the street waiting for a tricycle, with Margie Rotor standing at the right side of Atty. Celera (TSN, January 23, 1985, p. 63). The gate was lighted by a long fluorescent lamp. Near them, by the side of the Carandang Optical, Margie Rotor noticed a man standing by a blue Yamaha Motorbike with a butterfly sticker (Id., p. 71). She also noticed that Pio Cantuba and his two companions were still standing near the wall of Pil-Tel (Id., p. 63; TSN, January 24, 1985, p. 133). Then the three dispersed. Pio Cantuba walked towards UCPB which was to her left and then Cantuba

returned and headed towards where she and Atty. Celera were standing (Id., p. 64). One of Cantuba's companions who was wearing a white t-shirt and maong pants, whom Margie Rotor recognized in the courtroom and turned out to be Ricardo Baco, circled behind them (Id., p. 64).

"As Cantuba slowly approached them, Margie Rotor saw that Cantuba was holding a gun (Id., 65). Then she heard a gunfire (TSN, September 3, 1985, p. 348) and Atty. Celera staggered. Then Ricardo Baco rushed from behind and stabbed Atty. Celera twice on the left chest (Id., p. 349; TSN, January 23, 1985, p. 66). Atty. Celera fell to the ground, groaning (Id., p. 67).

"As Cantuba and Baco were fleeing, Margie Rotor saw a 'tricycle' speeding towards the fallen victim (Id., p. 68) but Margie Rotor was able to pull his body out of its path (Id., p. 69). The glaring lights of the vehicle made it difficult for her to make out and identify the rider (Id., p. 68). However, 17 year old Romulo Tama, a bystander who had also seen the blue Yamaha motorbike with a butterfly sticker near Carandang Optical, saw the rider, whom he recognized as Pedrito Lalaguna, start the engine and speed away right after Atty. Celera fell to the ground mortally wounded (TSN, June 10, 1985, pp. 131, 132).

"Margie Rotor, Patrolman Igloso and Nino, a waiter at Sunrise Disco Pub, took Atty. Celera to the Masbate Provincial Hospital in a tricycle (TSN, June 23, 1985, pp. 69, 70). Atty. Celera sustained a gunshot in the left lumbar area, or at the left back just above the waistline, with no exit wound, and two stab wounds on the left side of his body, one over the 'epig. area' and the other between the 6th and 7th ribs between sternal and mid-clavicular lines or just below the nipple (TSN, July 30, 1985, p. 259; September 2, 1985, pp. 291-292). Adolfo Juancho Celera, Jr., eldest son of the deceased, also rushed to the hospital and saw the doctor remove a .45 cal. slug from his father's right torso (TSN September 2, 1985, p. 288). Atty. Celera died in the hospital.

Technical Sgt. Randolph Arizala, together with Col. Cesar Veloso immediately investigated the reported shooting of Atty. Celera (TSN, November 26, 1984, p. 13). Arizala saw the slug that was extracted from the deceased (Id., pp. 14, 15). As a result of an on-the-spot investigation, Sgt. Arizala traced the blue Yamaha motorcycle to Ernesto Lampago and found the vehicle at the latter's address in Masbate, Masbate (Id., pp. 16, 18). While the rear tire was deflated, Sgt. Arizala observed that the engine was still warm (Id., p. 17). Lampago explained that the motorcycle was owned by Godofredo Versales whose wife mortgaged the same to Lampago (Id., p. 17). Sgt. Arizala impounded the vehicle (Id., p. 18).

"That same evening, at around nine o'clock in the evening, Romeo Gerona, went out of his sister's house to buy cigarettes (TSN, July 30, 1985, pp. 266, 267). On the way, a tricycle with four persons on board passed him and then stopped in front of the house of Mayor Espinosa (Id., p. 267). He recognized two of them - Pugo Penales and Pio Cantuba (Id., pp. 267, 268)." (pp. 4-9, Appellee's Brief; p. 124, Rollo)

Now Appellants Pio Cantuba and Pedrito Lalaguna filed the instant appeal assigning the following errors:

I

The Lower Court erred in finding that accused, Pio Cantuba, fired the fatal shot that snuffed the life of deceased Adolfo Celera, despite overwhelming evidence to the contrary.

II

The Lower Court erred in convicting accused, Pedrito Lalaguna, despite the fact that the only evidence against him consisted solely of having been seen driving a motorbike away from the scene of the crime.

III

The Lower Court erred in disregarding the constitutional right of the accused to be presumed innocent until proven guilty beyond reasonable doubt. (p. 3, Appellee's Brief)

It is the contention of accused-appellant that even if he (Cantuba) did approach the victim with a gun in his hand,

it was never established that the fatal shot came from his gun.

The contention is untenable. First, the factual points marshalled by the appellants do not engender reasonable doubt as to his (Cantuba) culpability. Second, even assuming that he (Cantuba) never fired his gun, he would still be principally liable as a co-conspirator in the killing of Atty. Celera under the principle that the act of a conspirator is the act of all co-conspirators. The degree of actual participation in the commission of the crime is immaterial in a conspiracy.

With regard to the alleged conflicting testimonies of the two principal witnesses, Margie Rotor and Pat. Torrecampo, as to who really fired upon Atty. Celera, the Court is convinced that the testimony of Margie Rotor is more credible than that of Torrecampo because when witness Margie Rotor heard the gunfire, it was after she saw Pio Cantuba holding a gun while walking towards them. This court finds that the only competent persons to identify the person who fired the gun are the witnesses present at the scene of the crime. Witness Margie Rotor who was standing right beside the victim is more believable than Torrecampo who was standing across the street. When contradictory statements refer only to minor details, this does not destroy their credibility. Their inconsistency in minor details is proof that they were not rehearsed.

With respect to the sworn statement of Ricardo Baco claiming that it was Totong Labuyo who shot Atty. Celera remain hearsay evidence and, therefore, inadmissible since Baco was never presented to allow the prosecution to cross-examine him. Moreover, it was physically impossible for Baco to see who actually fired the gun because Baco went the opposite direction and encircled Rotor and the victim from behind. His eyes were fixed on the victim and not on the gunwielder who was at a distance from the victim.

It is a well settled rule that when the main thrust of the appeal is that of the credibility of the witnesses for the prosecution is assailed, and appellant failed to demonstrate why this court should depart from the cardinal principle that the findings of the trial court on the matter of credibility should not be disturbed on appeal due to its superior advantage in observing the conduct and demeanor of the witnesses while testifying unless some fact or circumstance may have been overlooked that may affect the result of the case.

Anent the second assignment of error, it is the contention of the accused-appellant Pedrito Lalaguna that the lower court erred in convicting him despite the fact that the only evidence against him consisted solely of having been seen driving a motorbike away from the scene of the crime.

We do not agree with the appellant's claim that his participation in Atty. Celera's murder is tenuous because the records show otherwise. Both prosecution witnesses Margie Rotor and Romulo Tama testify to one motorbike or 'tricycle' that was speeding at precisely the same time, i.e., immediately after Atty. Celera had fallen to the ground as a result of the gunshot and stab wounds.

Accused-appellant Lalaguna points out that Margie Rotor did not testify against him. This statement is misleading. Margie Rotor testified against the rider of the speeding 'tricycle' as a participant in the ambush because he was bent on running over the fallen Atty. Celera. The only element missing in her testimony is the identity of the rider because of the glare of the vehicle's lights. This, however, was supplied by Romulo Tama who recognized the rider to be Pedrito Lalaguna, whom he had known even before the incident. Their testimonies as to the motorbike aspect of the incident corroborate each other. They both distinctly remember the noticeable speed of the vehicle and that it happened after Atty. Celera had fallen to the ground. By reason of their relative vantage points, this court finds each witness naturally recalling details which the other would not have noticed. This is indicative of credible and unadulterated testimony. Slight variations in the testimony of two witnesses strengthen their credibility (*People v. Villamil*, 135 SCRA 610).

Accused-appellant further calls the attention of this court to the fact that Pat. Torrecampo did not mention him (Pedrito Lalaguna) as among his companions when the former directed the killing. This court finds this fact not exculpatory.

It does not in any way contradict the testimonies of Margie Rotor and Romulo Tama that appellant Lalaguna was at the scene of the crime and tried to run down the victim. Appellant Lalaguna's identity and participation had been sufficiently established, and his motives become inconsequential (*People v. Soriano*, 134 SCRA 542).

The trial court correctly convicted appellant Lalaguna as a co-conspirator as the circumstances of his participation indubitably showed unity of purpose and unity in the execution of the unlawful acts as can be gleaned from the fact that, Lalaguna knew of the plot to assassinate Atty. Celera as he too had been ordered to scout for a man who could do the job (TSN, Sept. 3, 1985, pp. 355-356). He also knew exactly the place where the killing was to take place and also the date and approximate time of the assault.

At the very least, therefore, he had to know about the Torrecampo plot and decided to joint its execution. From the legal viewpoint, conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution. (*People v. Caday*, 28 SCRA 388; *People v. Sy*, 113 SCRA 207)

Appellant Lalaguna insists that the act of driving a motorbike is an equivocal act. This would be correct only if the testimony of Romulo Tama were considered in isolation from the testimony of Margie Rotor, Pat. Torrecampo and Sgt. Rodolfo Arizala which clearly indicate that Lalaguna drove the vehicle to run down the victim and that he shared in the criminal intent to do away with Atty. Celera. Therefore, the criminal culpability of appellant Pedrito Lalaguna had been clearly established.

Relative to the last assigned error, the state has satisfactorily discharged its burden of proving the guilt of the appellants beyond reasonable doubt. Appellants' discussion of their third assignment of error seems to imply that the decision was premised on the weakness of the arguments and evidence for the defense. However, an unprejudiced reading of the decision and the points already discussed will readily show otherwise.

Be it noted that the questioned judgment tried very well to rebut the defense of alibi of Pio Cantuba and Pedrito Lalaguna. Appellants defense of alibi is jurisprudentially weak (*People v. Onquillano*, 149 SCRA 442; *People v. Acelajado*, 148 SCRA 142). As they were not able to demonstrate by convincing evidence that it was not physically impossible for them to have been at the scene of the crime at the time it was committed. Moreover, the defense of alibi is generally accepted with caution, because under certain circumstances might exonerate the accused on the ground of impossibility of participation, or at the very least, raise a reasonable doubt. In the case at bar, both appellant claimed that on the night and time of the incident they were not at the vicinity of the Sunrise Disco Pub where the alleged crime was committed, as they were then in the house of Asst. Provincial Treasurer Manlapaz playing 'pusoy'. But considering the admitted fact that the distance between the house of Asst. Provincial Treasurer Manlapaz where the accused claimed to be, is only 300 meters away from the Sunrise Disco Pub, where the crime was perpetrated, there is no physical impossibility for both accused to be at the scene of the crime. Accordingly, such defense merits no serious consideration. Moreover, both accused were positively identified by prosecution witnesses Margie Rotor, Rodolfo Torrecampo and Romulo Tama. Accused Pio Cantuba, as the person who fired the gun and Pedrito Lalaguna, as the rider of the speeding motorbike or 'tricycle' who was bent on running over the fallen body of Atty. Celera.

WHEREFORE, the decision of the trial court is hereby AFFIRMED, with costs against the appellants.

SO ORDERED.

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

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