

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL MITRA AND DENNIS ABADILLA, ACCUSED-APPELLANTS.

G.R. No. 80405. November 24, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Accused Arnel Mitra and Dennis Abadilla were charged with the crime of murder in the Regional Trial Court of Lucena, allegedly committed as follows:

"That on or about the 30th day of March, 1986, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, with evident premeditation and treachery, armed with a deadly weapon, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously attack, assault and stab with said weapon one Nestor Alana Burac, thereby inflicting upon the latter stab wounds which caused his death.

"Contrary to law." (At pp. 2-3, Original Records)

The crime was allegedly perpetrated not only by the two appellants but together with another person by the name of Victor Garganta. The latter, however, managed to escape and remained at large up to the date of the hearing so that trial proceeded only against Mitra and Abadilla who pleaded 'not guilty' when arraigned.

The lower court findings upon which guilt beyond reasonable doubt was established are summarized as follows:

"At about 4:00 o'clock in the afternoon of March 30, 1986 a quarrel took place between Ildefonso Catamio, father-in-law of the victim Nestor Burac and Nena Mañago while they were at the Alitao River, Gulang-gulang, Lucena City while having a picnic celebrating the Easter Sunday. Ildefonso Catamio was with his daughter Maria Burac, his son-in-law Nestor Burac, and the latter's three children Michael Burac, Myra Burac and Janice Burac, and spouses Alberto Obado and Marina Obado and their children. On the other hand, at the other side of the river were the group of Nena Mañago and her children, and accused Dennis Abadilla, Arnel Mitre and Victor Garganta. A quarrel took place between Ildefonso Catamio and Nena Mañago. The quarrel is over a land dispute the tenancy of which is being claimed by Ildefonso Catamio. The property is owned by Floro Mitra, the father of one of the accused Arnel Mitra. In the exchange of words the group of Aling Nena Mañago was agitated, as Arnel Mitre joined in the exchange of words challenging the group of Ildefonso Catamio to fight him in the following manner 'kung sino ang matapang sa inyo ay lumapit (Tsn May 16, 1986, page 60). The victim Nestor Burac accepted the challenge but was prevented to reach the group of Arnel Mitra notwithstanding attempts on his part to free himself from the hold of his companions. To avoid actual confrontation, Myrna Obado suggested that her group will leave the place and go home, they could not however immediately do so, as the group of Aling Nena started crossing the river, and proceeded to the house of Aling Nena which is just on the embankment of the river. In going home the group of Catamio have to pass the house of Aling Nena; they managed to pass said house and saw the group of Aling Nena who were looking and staring at them in a very hostile and unfriendly manner. They managed however to pass thru unmolested and unharmed and reached the National Highway where they settled in a waiting shed to wait for a passenger vehicle to bring them home to Lucena City. While waiting for a ride Arnel Mitra, Dennis Abadilla and Victor

Garganta arrived. The victim Nestor Burac was holding and carrying his youngest daughter Janice with his left hand, when Victor Garganta went to his back drew a three-edged pointed instrument and stabbed him on his right side just below the armpit. The sudden attack and the blow temporarily disabled him as he fell on his knees and his daughter was thrown away from his hold. Nestor Burac ran away for dear life towards the other side of the road but tripped himself and fell down. He tried to stand up and was in a squatting position near the fence when Dennis Abadilla hit him on the head with a big stone; Arnel Mitra uttered the following 'sige, sige, iyan ang patayin mo' and while Mitra was giving this Order Victor Garganta continued stabbing Nestor Burac. Then Cesar Naynes, the Purok Leader in Gulang--gulang came. He told him to leave the victim. Nestor Burac with the help of Cesar Naynes was boarded in a pick up which was flagged down and the victim was brought to the Quezon Memorial Hospital.

"Arnel Mitra was arrested at eight o'clock in the evening of March 30, 1986 by the police while Dennis Abadilla was arrested before twelve o'clock midnight.

"The witness Marina Burac, wife of the victim and an eye witness to the case gave a written statement of how the incident happened at 10 o'clock in the evening of March 30, 1986. Another eyewitness to the incident Michael Burac gave his statement at nine forty o'clock of March 31, 1986." (At pp. 39-41, Rollo)

The appellants claimed they were enjoying with a picnic group on one side of the river at the time they learned about the killing of Nestor Burac. When they arrived at the place where people wait for rides, things were already normal. The appellants state that they do not personally know Nestor Burac. They claim that the killers were Victor Garganta and a certain "Jun." They disclaimed any knowledge of or participation in the crime.

The case is now before us on appeal with the accused-appellants assigning the following errors of the trial court:

I

THE LOWER COURT ERRED IN FAILING TO CONSIDER THE FACT THAT THE ACCUSED HAD NO MOTIVE OR REASON TO COMMIT THE CRIME CHARGED.

II

THE LOWER COURT ERRED IN NOT GIVING DUE CONSIDERATION TO THE IMPARTIAL AND VOLUNTARY TESTIMONY OF DISINTERESTED WITNESSES.

III

THE LOWER COURT ERRED IN STRICTLY APPLYING THE STRAIGHT JACKET RULE ON ALIBI WITHOUT CONSIDERING EXCEPTIONAL/ATTENDANT CIRCUMSTANCES AND THAT PROSECUTION WITNESSES COULD HAVE BEEN ILL-MOTIVATED.

IV

THE LOWER COURT ERRED IN FAILING TO CONSIDER AND GIVE WEIGHT TO THE FACT THAT THE ACCUSED STAYED AT HOME AND DID NOT HIDE FROM POLICE AUTHORITIES." (At p. 56, Original Record)

On the 1st assignment of error, the accused-appellants contend that they had no motive to kill the victim, Nestor Burac because neither of them personally know the victim nor the knife-wielder, Victor Garganta and his companion, Jun. They further contend that Victor Garganta and Jun were not among the group picnicking with them and that Dennis Abadilla was merely invited by Arnel Mitra to the picnic. What they are trying to say is that it is impossible for them to have conspired to commit a crime when they do not know the victim nor the

perpetrators.

It was, however, established from the records that Garganta, Mitra, and Abadilla were among the group of Nena Mañago, with whom Ildefonso Catamio, father-in-law of Nestor Burac, had an altercation regarding a land dispute. In the exchange of words, Arnel Mitra challenged the group to a fight and it was the victim, Nestor Burac who tried to answer the challenge. It was further established that it was Mitra who urged Garganta to stab the victim and that it was Dennis Abadilla who hit the head of the victim with a big stone.

The appellants further contend that consideration should have been given to the testimonies of Ligaya Padillo, a teacher and Cesar Naynes, an Assistant Purok Leader, whom they consider as disinterested witnesses.

Prosecution witnesses, being mostly relatives of the victim, are claimed by the appellants to be interested witnesses whose testimonies should be given lesser weight.

In *People v. Tunhawa*, G.R. No. 81470, October 27, 1988; *People v. Canada*, 144 SCRA 121 [1986]; and *People v. Radomes* 141 SCRA 548 [1986], it has been held that mere relationship of prosecution witnesses to the victim does not make their testimony biased nor render such testimony unworthy of belief in the absence of an improper motive making the witness testify against the accused. We have time and again upheld the well-established principle that findings of fact of trial courts are accorded great weight and respect considering that they had the opportunity to observe the deportment and behavior of witnesses (*People v. Panuelos*, 136 SCRA 501 [1985]; *People v. Magdaraog*, 160 SCRA 153 [1988]; *People v. Cabanit*, 139 SCRA 94 [1985]). No improper motive on the part of prosecution witnesses to testify falsely was established by the defense in this case.

The appellants' contention that the witnesses implicated them on account of their desire to extort money from them appears ridiculous and far-fetched. It is seen from the records that the victim's family clearly wanted the perpetrators of the crime punished. To use the death of a loved one to extort money is difficult to believe and contrary to human nature. There is nothing in the records to sustain this contention of the appellants.

The accused-appellants further assail the denial of their defense of alibi. Apart from the fact that alibi is the weakest of all the defenses an accused can invoke (*People v. Muñoz*, 163 SCRA 730 [1988]), the appellants were positively identified by the prosecution witnesses. It was not physically impossible for the appellants to be at the scene of the crime. In fact they were within the vicinity of Raymar Subdivision where, across from it, the crime was committed. The appellants' defense of alibi, therefore, cannot prevail over the positive identification made by prosecution witnesses, aside from the added fact that it was not physically impossible for them to have been at the situs of the crime at the time it was committed (*People v. Berbal and Juanito*, G.R. No. 71527, August 10, 1989; and *People v. Nolasco*, 163 SCRA 623 [1988]).

Anent the last assigned error, the fact that the accused stayed at home and did not hide from the police is not conclusive evidence of absence of guilt. In fact, not a few criminals have been arrested in their residences. The accused-appellants are likewise banking on the absence of derogatory findings against them in their records. We have, however, held in *People v. Cerelegia*, 147 SCRA 528 [1987] that evidence of good character cannot prevail over clear and convincing evidence of the commission of a crime.

A new issue further raised by the appellants is whether or not the affidavits of retraction of the prosecution witnesses are such newly discovered evidence contemplated in the rules as basis for a new trial.

We do not agree with the appellants on the point raised as the said affidavits are not the newly-found evidence contemplated by law. The prosecution witnesses had been subjected to gruelling cross examinations in court but they clung to their version. Thus, whatever retraction of testimonies they may have made later could only be a mere after thought.

As the Solicitor General has commented, such facts were already available at the time of the trial. To grant a new trial at every instance would result in no end to the litigation process.

WHEREFORE, PREMISES CONSIDERED, the Motion for New Trial is hereby DENIED and the judgment appealed from is affirmed in toto.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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