

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON ABAYA, ACCUSED-APPELLANT.

G.R. No. 80885. May 17, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

Who shot Jesus Dapilos in the middle of the night? The prosecution said it was Ramon Abaya, and the trial court agreed. Abaya demurs. He says he was four hundred kilometers away when the killing occurred.

The incident happened on October 15, 1981, at about 11 o'clock in the evening, in Taguig, Metro Manila. The trial court found that at 9 o'clock of that same evening, Jesus Dapilos and Ambrosio Dumaya, security guards at the Pennel Commercial premises, went out of the compound on orders of their supervisor, Reynaldo Tassara, to buy a mosquito coil at a store seventy yards away. On the way back, they passed by a group of men drinking liquor. One of them was a soldier, the herein accused-appellant, who invited Dapilos and Dumaya to join them. Dumaya accepted a drink but Dapilos excused himself. As the two walked away, they heard Abaya say, obviously to Dapilos, "May araw ka rin." This was an angry threat.[1]

Two hours later, four shots were fired into the Pennel compound, the first two at an interval of 20 minutes and the last two in quick succession. The third hit Dapilos in the arm and lung, and he shouted out in pain. Dumaya, who had gone to sleep and was awakened by the shots, got up and found Dapilos bleeding. He immediately got a flashlight and focused it outside in search of the culprit until he sighted Abaya about ten yards away. Abaya was furtively looking from left to right as he walked away carrying an armalite. He was still wearing his fatigue uniform. Dumaya could clearly see Abaya's face.[2]

Meantime, Tessara, who had attended to Dapilos and found that he needed medical help, slipped out of the compound through the back way for fear he might be attacked if he left by the front gate. He rushed to the police station. Six policemen, including Dapilos's brother, accompanied him to the Pennel compound, but by the time they arrived the victim was already dead.[3]

Two empty armalite shells were found in front of the compound by the police investigators.[4] The autopsy, on which the medical examiner later testified, revealed that Dapilos died of cardio-respiratory arrest due to shock and hemorrhage secondary to the gunshot wounds.[5]

Although the killing happened in 1981, it was only about three-and-a-half months later that Dumaya came forward to denounce Abaya as the killer. Having been transferred to the Pennel warehouse in San Marcelino, Manila, he finally summoned the courage to make a formal statement on January 26, 1982,[6] and testify later on what happened in the evening of October 15, 1981.

On the basis of this statement, an intensive investigation was conducted by the National Bureau of Investigation, resulting in the filing of murder charges against Abaya in the Regional Trial Court of Pasig on January 13, 1984.

Against the version of the prosecution, Abaya offered the defense of alibi. At the time of the killing, he was

assigned and billeted at Camp Bagong Diwa, but he claimed that he had been given a vacation by his first sergeant. He had then gone to Isabela, where he stayed from October 13 to 18, 1981. However, there is no written evidence of such leave of absence; and no less importantly, Abaya did not present the sergeant who supposedly gave him the leave or any relative or friend to testify that he did stay in Isabela on the said dates. What the record did disclose was that Abaya, having joined the armed forces in 1974, was discharged in 1982 for absence without leave.[7]

In his brief, the accused-appellant argues that the purely circumstantial evidence submitted against him was not sufficient to establish his guilt beyond reasonable doubt. He maintains that the prosecution did not present the other security guards and the supposed drinking companions of Abaya to corroborate the testimony of Dumaya and Tessara. It is even suggested that Dapilos must have been shot by one of his own colleagues in the security force. The defense also contends that the testimony of the prosecution witnesses suffered from many inconsistencies, let alone the fact that it was inherently unbelievable.

It is up to the parties to determine for themselves whether it is necessary to present corroborative evidence or to rely alone on its principal evidence if they believe this to be sufficient.[8] If the defense felt that the persons not called by the prosecution would contradict or at least not support Dumaya and Tessara, there was nothing to prevent it from calling them as its own witnesses. The fact that it did not would reflect on its own negligence unless the accused-appellant was apprehensive that their testimony would not advance his cause.

As for the claimed inconsistencies, we have repeatedly said that minor lapses in the testimony of the witness do not necessarily brand him a liar as long as such testimony is on the whole consistent and believable.

The point is also made that Abaya hardly knew the victim and that there was no motive whatsoever to link him to the killing. Even assuming Abaya had offered a drink that was declined by Dapilos, such rejection could not have generated the provocation that ultimately led to the murder of Dapilos.

In the first place, motive is not necessary if a positive identification has been made of the culprit, as in this case.[9] While it is true that Dumaya did not actually see the shooting of Dapilos by Abaya, Dumaya categorically declared that he saw Abaya minutes after the shooting walking away from the Pennel compound with an armalite in his hand.

In the second place, the muttered threat, "May araw ka rin" suggests that the incident of the declined drink was not as light as that but indeed must have filled the accused-appellant with an unreasoning resentment. A refusal of an invitation to drink causes different reactions in different persons. To some it is a matter lightly dismissed and instantly forgotten; to others it is a serious affront calling for angry reprisal. To Abaya, evidently, it was an affair of honor that had to be settled through the muzzle of a gun.

The defense also asks why, if the killing occurred in 1981, it took Dumaya more than three months to make his accusation and the NBI almost three years before it could conclude its reports. In the case of Dumaya, as he himself confessed, the reason was fear of Abaya, who had already shot Dapilos and might do the same to him. It was only after he had been assigned to Manila, away from the slums where Abaya was living, that Dumaya finally decided to make his statement against the accused-appellant. As for the delay in the investigation of the case, the reason was Abaya himself, who disappeared soon after the killing and could not be questioned by the NBI agents.[10]

The other arguments raised by the defense are, in the view of the Court, too insubstantial to deserve comment and cannot weaken the finding that the evidence is conclusive enough of the guilt of the accused-appellant. And the mere fact that Judge Alfredo C. Flores did not preside at the trial of this case in its entirety, having taken over only

when the last defense witness was to be presented, did not detract from the validity, much less the correctness, of his decision. The full record was available to him. It is evident from the knowledgeable and analytical decision he has written that he thoroughly examined the testimonial and documentary evidence before him and carefully assessed the credibility of the witnesses with the seasoned perceptiveness he has developed as a trial judge.

We agree with his decision finding the accused-appellant guilty of murder, with the qualifying circumstance of treachery, and sentencing him to reclusion perpetua, there being no generic aggravating or mitigating circumstances, plus payment of civil indemnity of P30,000.00 to the victim's heirs, and the costs.

The Court repeats its warning that weapons and wine do not mix well and become a dangerous combination that has often enough resulted in mindless injuries and, worse, useless loss of lives. This admonition is especially addressed to the officers of the law, the soldiers and policemen who are licensed to carry firearms to protect and not to prey upon the people. They are seriously advised that when they take liquor while they are carrying arms, they might be deprived of that proper control they should always exercise in the use of their weapons, which may then become irresponsible instruments of destruction. That is what obviously happened to the accused-appellant in the case at bar.

WHEREFORE, the appealed judgment is **AFFIRMED** in toto, with costs against the accused-appellant.

SO ORDERED.

Narvasa, (Chairman), and Medialdea, JJ., concur.
Gancayco, and Griño-Aquino, JJ., on leave.

[1] Exhibit "D," Original Records, p. 286; Decision, p. 2, Rollo, p. 20; TSN, November 20, 1985, pp. 13-14; Evaluation and Comment prepared by the NBI, September 20, 1983, p. 2, Original Records, p. 277.

[2] Decision, p. 2, Rollo, p. 20; Evaluation and Comment prepared by the NBI, September 20, 1983, p. 2, Original Records, p. 277; TSN, November 20, 1985, pp. 24-25.

[3] Ibid., p. 21; Ibid, p. 278.

[4] Id.; id.

[5] Medico-Legal Necropsy Report dated October 21, 1981, Original Records, p. 273.

[6] Exhibit "C," Original Records, p. 285.

[7] Decision, p. 3, Rollo, p. 21; TSN, April 9, 1986, p. 6.

[8] People v. Zabala, 86 Phil. 251; People v. Salazar, 58 SCRA 468; People v. Padrones, 45 O.G. 1359.

[9] People v. Sespeñe, 102 Phil. 199; People v. Corpuz, 107 Phil. 44; People v. Necesuto, 109 Phil. 563; People v. Raquel, 12 SCRA 44; People v. Bautista, 30 SCRA 588; People v. Tan, 145 SCRA 614.

[10] TSN, April 9, 1986, p. 6; TSN, April 22, 1986, p. 6.

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