

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORIEL FULE Y CAYUBE, DEFENDANT-APPELLANT.

G.R. No. 83027. February 28, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Appellant Noriel Fule was charged with killing his father Mauro Fule in an Information, dated 8 September 1986, which read:

"The undersigned 3rd Assistant City Fiscal accuses Noriel Fule y Cayube of the crime of parricide, defined and penalized under Article 246 of the Revised Penal Code, committed as follows:

That on or about August 17, 1986, in the City of San Pablo and within the jurisdiction of this Honorable Court, the accused aboved-named, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and stab his natural father Mauro Fule with a bladed weapon with which said accused was then conveniently provided, thereby inflicting a stab wound upon said Mauro Fule which directly caused his instantaneous death.

Contrary to law."[1]

On arraignment, appellant pleaded not guilty. After trial, the court a quo found him guilty in a decision dated 8 January 1988, the dispositive portion of which follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused Noriel Fule guilty beyond reasonable doubt of the crime of Parricide defined and penalized under Article 246 of the Revised Penal Code committed with one mitigating circumstance of voluntary surrender without any aggravating circumstance to offset the same, hereby sentences him to Reclusion Perpetua and to indemnify the heirs of the deceased the sum of P30,000.00 as civil liability for his death, without subsidiary imprisonment in case of insolvency and to pay cost."[2]

Hence this appeal, where the following are assigned as errors:

- "1. The lower court grievously erred in giving credence to the prosecution witnesses who only adduced evidence of suspicion that it was the appellant who killed his father which testimonies were replete with self-contradiction, incredibilities and infirmities; and
2. The lower court grievously erred in holding that the guilt of the appellant was proved beyond reasonable doubt, and in not acquitting the appellant."[3]

The facts found by the trial court were summarized by it in the following manner:

"On August 17, 1986, in Barangay San Jose, San Pablo City, the deceased was one of those bayanihan workers who constructed the house of spouses Sofronio Abrera and Fidela Cayube. When it was about 4:00 P.M. that day the bayanihan workers were treated to a drinking spree by said spouses. Later, in that same afternoon, the deceased went out of the house of said spouses where he confronted, argued, and berated the accused who was

then with Normy Fule, another son. Sofronio Abrera was fetched from the house because the deceased and the accused were already engaged in a heated argument about the selling of [a] horse. Abrera pacified them and brought the deceased back to his house to drink some more while the brothers, accused and Normy Fule, went away. Later on or about 5:30 P.M. or so deceased left his tools at Abrera's house and stepped out of the house. The deceased went and sat inside the front seat of the passenger jeep of Carlito Eronico which was parked nearby, while Eronico was still inside the dining room of the house of said spouses.

The accused returned to the jeep where he again had a verbal tussle which culminated with the deceased slapping the former. In reaction thereto, the accused pulled a knife and stabbed the deceased on the chest.

When Carlito Eronico went out of the house of said spouses at about 8:00 P.M., he saw the deceased seated and stooping in the front seat of his parked jeep and thinking that the deceased was only drunk at that time, he drove for home. When he arrived home, Eronico tried to wake him up, but could not so he called the assistance of the relatives of the deceased. Together with Sofronio Abrera, Eronico went back to be informed that the deceased was already brought to the San Pablo City Community Hospital where he was pronounced dead. The body of the deceased was later transferred to a funeral parlor in Rizal Avenue, San Pablo City, where the autopsy was performed by Dra. Emma Gesmundo Brion.

That very same night Fidela Cayube went to the house of Civilian Security Unit member Avelino Bautista informing him that the accused wanted to surrender to the Mayor of San Pablo City. Bautista lost no time in informing the Mayor of the desire of the accused to surrender. The Mayor instructed Bautista to get the accused. Bautista in the company of Sofronio Abrera, was able to fetch the accused at Barangay San Gabriel. When asked why he killed his father, Mauro Fule, the accused told Bautista that he was slapped by his father and taken by surprise that was why he stabbed his father. Subsequently, the accused was brought to the residence of Mayor Zacarias Ticzon before whom he also readily admitted killing his father, Mauro Fule."^[4]

The defense presented appellant who claimed that what had transpired between him and his father^[5] at 4:00 o'clock p.m. of that tragic day was merely a "fatherly admonition" which Sofronio Abrera mistook for a bitter argument.^[6] He also claimed that he was pointed to as the killer by his uncles (brothers of his father) because of a grudge they had against him for siding with his mother when his parents had separated one from the other.^[7]

Appellant further claimed that he could not have been his father's assailant and killer as he was in the house of Norbelito Bacod from 5:00 o'clock to 8:00 o'clock on the night of 17 August 1986.^[8] The defense also presented Norbelito Bacod who stated that appellant was in his house the night in question but that appellant left his house around 7:00 o'clock that evening.^[9]

Another defense witness, Fidela Cayube, denied ever having gone to Avelino Bautista to seek his help in bringing about the surrender of appellant. She claimed that she and appellant, accompanied by her husband, went directly to the house of Mayor Zacarias Ticzon and there saw Avelino Bautista.^[10]

Prosecution presented Normy Fule, appellant's brother, as sole eyewitness. However, on cross-examination, Normy Fule retracted his prior testimony that he had seen appellant kill Mauro Fule and admitted that he did not actually see appellant stab their father. Despite the absence of an eye-witness, the trial court found that there was sufficient circumstantial evidence to convict appellant, namely: (1) that appellant had the opportunity to commit the crime; (2) that appellant had a motive to kill the deceased; (3) that appellant had admitted to Mayor Zacarias Ticzon and Avelino Bautista that he had stabbed his father Mauro Fule; (4) the surrender of the appellant upon the advice of his aunt, Fidela Cayube, to surrender if he were guilty; and (5) the appellant's failure to assert his innocence at the earliest possible time, either before the police authorities or the fiscal's office.

The basic issue in this case, therefore, is whether there is sufficient circumstantial evidence to support appellant's conviction.

The requisites of a valid conviction on the basis of circumstantial evidence are set out in Section 4, Rule 133 of the Rules of Court: "(a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt."

Appellant basically claims that the prosecution failed to establish his guilt beyond reasonable doubt as the circumstances relied upon by the trial court to sustain his guilt had not been proven.

As to the opportunity to commit the crime, prosecution witness Normy Fule's testimony put the appellant at or near the scene of the killing, at or around the time of the stabbing.[11] Appellant claims that the trial court erred in shifting the burden of proof to the defense to prove his alibi.[12] In *People v. Almario*,[13] it was held that the "Court has consistently stated that for the defense of alibi to prosper it must be established by clear and convincing evidence that the accused was at some other place for such a period of time as to negate his presence at the time and place of the crime was committed." Appellant's own witness, Norbelito Bacod, stated that appellant left his home around 7:00 that evening. Appellant himself admitted in his testimony that it would only take him twenty-five (25) minutes to walk from Noberlito Bacod's house to the scene of the crime.[14] There was, therefore, sufficient time for appellant to have gone from Bacod's house to the Abrera's house or yard.

Appellant, however, attacks Normy Fule's credibility alleging that, during cross-examination, Normy had admitted that he had pointed to appellant as the guilty party "because according to other persons, there will be no witnesses in favor of my father, and I [Normy] thought I could help." [15] Appellant suggests that that statement clearly showed the charge against him was merely a fabrication of the deceased's relatives. The Court notes, however, that aside from the fact that Normy Fule did not identify who these "other persons" were, his testimony did not in fact even insinuate that his father's relatives were behind the alleged scheme against appellant.

Appellant also claims that the trial court erred in not considering the exculpatory statement made by Normy Fule. However, an examination of the record shows that the retraction or modification by Normy Fule of his testimony is not sufficient to acquit appellant, considering that Normy did not specifically state that appellant was innocent, that appellant did not stab their father Mauro Fule. When asked by the fiscal on re-direct examination to explain the change in his testimony, the witness Normy Fule merely stated that he did not actually see appellant stab their father as he had at first testified.[16]

Appellant also contends that motive was not sufficiently proven by the prosecution as there was no direct testimony on the alleged resentment harbored by appellant towards his father for having taken a horse from his care about a year before, nor as to his father slapping him. Appellant in fact denied having quarrelled with his father and having been slapped by him.

Appellant, however, did not deny that his father took a horse back from him. Also, appellant was publicly upbraided by his father in a voice so loud as to cause other persons to intervene. The Court agrees with the trial court that these, together with the appellant's admission made separately to Mayor Ticzon and to Avelino Bautista that he (appellant) stabbed his father because the latter had slapped him,[17] are quite sufficient to show that appellant had a motive to cause the victim's death.

It is appellant's contention that Mayor Ticzon's testimony regarding appellant's oral acknowledgment of guilt should not have been admitted in evidence as it was hearsay. Avelino Bautista had testified to the same effect but, curiously, appellant did not urge the same argument that such testimony was hearsay. In any case, it is settled that when testimony is presented to establish not the truth but tenor of the statement or the fact that such statement was made, it is not hearsay.[18] In *Aballe v. People*, [19] the Court held that an oral admission by the accused of authorship of a crime is admissible in evidence against him:

"The declaration of an accused expressly acknowledging his guilt of the offense may be given in evidence against him.

The rule is that any person, otherwise competent as witness, who heard the confession, is competent to testify as to the substance of what he heard if he heard and understood all of it. An oral confession need not be repeated verbatim, but in such case it must be given in its substance."^[20] (Underscoring supplied)

Appellant also attacks Mayor Ticzon's credibility claiming that the witness, in his testimony, corrected the date of appellant's surrender stated in his affidavit to match the date stated in Avelino Bautista's (another prosecution witness) affidavit and testimony. The Court does not find this material, considering that appellant does not deny having gone to Mayor Ticzon to surrender. It has been the constant holding of this Court that variance between the testimony and the affidavit of a witness does not itself affect the witness' credibility considering that affidavits, being taken ex parte, and prepared by someone other than the affiant, are usually incomplete and inaccurate.^[21] Thus, in *People v. Loveria*,^[22] the Court said:

"x x x. The appellant further claims that Richard Bales did not implicate him in his affidavit but pointed to him on the witness stand. Affidavits, taken ex-parte, are generally considered to be inferior to the testimony given in open court (*People v. Pacola*, G.R. No. L-26647, August 14, 1974, 58 SCRA 370). The Court has consistently held that an affidavit taken ex-parte, is almost always incomplete and inaccurate, sometimes from partial suggestions, sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory and for his accurate recollection of all that belongs to the subject (*People v. Tan*, 89 Phil. 337 (1951); *People v. Gonzales*, G.R. No. L-40727, September 11, 1980, 99 SCRA 697; *People v. Avanzado, Jr.*, G.R. No. 73116, February 29, 1988, 158 SCRA 427)."^[23] (Underscoring supplied)

The firmly settled rule is that the findings of fact of the trial court as to the credibility of witnesses are accorded great respect by the Supreme Court.^[24] The trial court found Mayor Ticzon and Avelino Bautista to be credible witnesses:

"The Court has no valid reason to question the veracity of the testimony of Bautista. Even under thorough cross-examination he did not waver on the substantial points of his testimony. Cayube tried to downplay the role played by Bautista by claiming she never went to his house to fetch him. However, she did not explain how Bautista was present at the residence of the Mayor when the accused was surrendered. How could Bautista have known [of] the private plan of Cayube to surrender the accused at a certain time and date? The inevitable conclusion is that Bautista was fetched by Cayube.

The accused also tried to undermine the credibility of the Mayor when he testified on the facts and circumstances of his surrender denying having admitted the stabbing of his father. However, the Court cannot divine what possible motive could the mayor have to fabricate such a lie. The Mayor [has] nothing to gain. There was no showing at all that the Mayor has an axe to grind against the accused or his relatives. Evidently, the Mayor and the accused were complete strangers prior to the surrender. The Court believes that Cayube arranged the surrender of the accused to the Mayor because off the latter's official capacity as the highest public city official after the accused agreed to surrender. x x x."^[25]

The Court also finds the allegation made by appellant that Mayor Ticzon had testified against him because of the political connections of a barangay captain who was the brother-in-law of the deceased Mauro Fule to be too conjectural to warrant serious consideration.^[26]

The Court, however, notes that the circumstances of surrender and the allegedly tardy protestation of innocence on appellant's part cited by the trial court as indicative of his guilt are not properly taken as such. These circumstances, standing by themselves, are not necessarily indicative of either the guilt or the innocence of a person; they are, at worse, ambiguous in nature.

However, the Court believes that the three (3) remaining circumstances of opportunity, motive and admission are, taken together, sufficient to prove appellant's guilt beyond reasonable doubt. In the case at bar, appellant had the opportunity and the motive to commit the crime charged. To round up and buttress these two (2) circumstances, there is the acknowledgment appellant made twice, to Mayor Ticzon and to Avelino Bautista, which we have ruled to be admissible, that he had killed his father in a fit of rage.

WHEREFORE, the Decision of the trial court dated 8 January 1988 is hereby **AFFIRMED** with the modification that the civil liability of appellant is increased to P50, 000.00, in line with current jurisprudence.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Record, p. 1.

[2] Id., p. 81.

[3] Rollo, p. 43, Decision p. 7.

[4] Records, pp. 77-78, Decision; pp. 2-3.

[5] In his testimony, appellant acknowledged that the victim was his father (TSN, 3 December 1987, p. 3).

[6] TSN, 3 December 1987, pp. 5 and 11.

[7] Id., pp. 5, 9 and 10.

[8] Id., p. 6.

[9] Id., 7 January 1988, p. 4.

[10] Id., 22 October 1987, pp. 10-11.

[11] TSN, 1 April 1987, p. 12.

[12] Appellant's Brief, p. 11.

[13] 171 SCRA 291 (1989).

[14] TSN, 3 December 1987, p. 13.

[15] Appellant's Brief, p. 7.

[16] TSN, 19 May 1987, p. 2.

[17] TSN, 28 May 1987, p. 3; TSN, 16 July 1987, p. 4.

[18] *People v. Gaddi*, 170 SCRA 649 (1989); *People v. Cusi*, 14 SCRA 944 (1965).

[19] 183 SCRA 196 (1990).

[20] 183 SCRA at 205.

[21] *People v. Sabio*, 102 SCRA 218 (1981); *People v. Gonzales*, 99 SCRA 697 (1980).

[22] 187 SCRA 47 (1990).

[23] 187 SCRA at 58-59.

[24] *People v. Idnay*, 164 SCRA 358 (1988).

[25] Decision, p. 5, Records, p. 79a.

[26] In *People v. Arbois* (138 SCRA 24 [1985]), the Court similarly struck down the motives ascribed to the prosecution witness as mere conjectures.

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