

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OCTAVIO JUANGA, DEFENDANT-APPELLANT.

G.R. No. 83903. August 30, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Octavio Juanga, herein accused-appellant seeks a review of the decision of the Regional Trial Court of Iloilo City, Branch 24, finding him guilty of murder.

An information was filed charging Octavio Juanga with murder committed as follows:

"That on or about March 5, 1982, in the municipality of Leganes, province of Iloilo, and within the jurisdiction of this Court, the above named accused, taking advantage of the nighttime, armed with homemade shotgun (pugakhang) with treachery evident premeditation and with a decided purpose to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Mamerto Peñaflor Jr., with said weapon with which he was then provided, thereby inflicting upon the latter gunshot wounds on the vital parts of his body which caused his death thereafter." (Orig. Records, p. 1)

On arraignment, the accused entered a plea of not guilty through counsel.

Trial proceeded with the prosecution presenting evidence on the following facts as attending the commission of the crime:

"On March 5, 1982, at about 5:30 o'clock in the afternoon, Esperidion Dapitas, Jr. met Mamerto Peñaflor, Jr. at the Poblacion of Leganes, Iloilo. He invited Mamerto for a drink of one bottle of beer at the public market. Mamerto acceded (pp. 14-15, 19, tsn, Nov. 19, 1984).

"While Esperidion and Mamerto were drinking beer, appellant Octavio Juanga went inside the place where the two were. Mamerto invited Octavio to have a drink with them. Octavio refused the invitation. Mamerto then placed his arm around the shoulder of Octavio but the latter brushed aside the former's arm. Afterward, (sic) Mamerto attempted to shake hand with Octavio at the same time telling him to forget what happened in the past between them. Octavio evaded the hand of Mamerto and left the place without saying anything (pp. 15-16, tsn, ibid)

"After Octavio left, Esperidion and Mamerto continued with their drinking. At that instance, Esperidion asked Mamerto what happened between him and Octavio. Mamerto replied that he and Octavio had a fist fight two days ago in which Octavio was at the receiving end until somebody came to pacify them (pp. 17-18, tsn, ibid).

"After about thirty minutes Esperidion and Mamerto decided to go to the town plaza where there was a fair and stayed there for about one hour twenty minutes. From the plaza, they proceeded to the house of Elvira Galo at Sitio Bulangan, Brgy. Guinobatan, Leganes, Iloilo. They met Claro Cesama in said house. While they were there, Elvira served them with beer. At about 7:45 o'clock that night, Octavio entered the house of Elvira as if looking for somebody. Mamerto again invited Octavio to drink but the latter declined the offer and left. About thirty minutes later, Octavio again went inside the house of Elvira also as if looking for somebody. After about

two minutes, Octavio left (pp. 5, 21-24, tsn, *ibid*)

"Moments later, Mamerto asked permission from Esperidion to urinate. Esperidion followed Mamerto toward the footwalk near a banana plant at the back of the kitchen of said house. When Esperidion was about four and half arms length from Mamerto who was urinating, he saw Octavio pointing something at Mamerto. Almost at the same time, Octavio whispered to Mamerto and a gunshot rang out. Mamerto turned around and collapsed with blood oozing from his right clavicle and with his private part still visible. Esperidion forthwith went to help Mamerto by cradling him (pp. 6-8, 26-30, tsn, *ibid*). At the same time, Thelma Dapitas who was then looking for her son Esperidion, passed by said place and saw Octavio still holding a gun with his right hand (pp. 7-8, tsn, November 12, 1984). Octavio then ran toward the road going to the house of Ex-Mayor Jagunap. Esperidion pursued Octavio. Esperidion stayed for about three minutes outside the house of the Ex-Mayor waiting for Octavio to come out. Esperidion left when he saw Octavio with a companion proceeding toward the ricefield (pp. 10-11, tsn, *ibid*; pp. 9-10, tsn, Nov. 12, 1984)

"Esperidion and Claro brought Mamerto to the hospital. Dr. Tito Doromal conducted an autopsy on the cadaver of Mamerto and found the cause of his death as 'hemorrhage due to multiple pellet wounds located on his right upper chest.' (Exhs. "A", pp. 3-5, tsn, March 1, 1985)." (Appellee's Brief, pp. 3-7)

The defense on the other hand, presented the following version supporting the accused-appellant's plea of not guilty:

"In his defense, accused testified that he was with his father attending to their farm the whole day of March 5, 1982. He stopped working only at about 5:00 p.m. to comply with his father's bidding to buy viand at the poblacion. He did buy the viand as instructed but asked a cousin, Wilson Juanga, to bring said viand to their house. He then proceeded to the irrigation to see if there was water and later decided to go to the poblacion. Along the way, he met Conrado Abao and while both of them were passing by the house of ex-mayor Esperidion Jagunap, the latter, who was at the gate of his house, engaged them in a conversation and thereafter invited them inside the house. A certain Dante Guinalon was with them in the conversation outside the mayor's house. He too was invited by the mayor inside the house. While inside the mayor's house, he watched television until 9:00 p.m. when he decided to leave. He arrived home at about 9:30 and the following morning, he was informed by his father that Mamerto Peñaflor, Jr. was shot at the cockpit. On March 8, 1982, he proceeded to Manila where he was then employed with General Milling Corporation (Exh. 1) returning only on January 22, 1984.

"Accused's claim that he worked in the farm the whole day of March 5, 1982 or up to 5:00 p.m. of that day is corroborated by his father, Roman. His other allegation that he was at the ex-mayor's house from 7:30 p.m. to 9:00 p.m. is corroborated by the ex-mayor himself, Esperidion Jagunap and by Dante Guinalon." (Record, pp. 417- 420) (Rollo, p. 48)

On the basis of the evidence presented, the trial court rendered a decision convicting the accused as charged. The decision is now the subject of this appeal. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds the accused Octavio Juanga, guilty beyond reasonable doubt of the crime of murder as defined and penalized under Article 248 of the Revised Penal Code, the qualifying circumstance of treachery having been present in the commission of the crime, but without any modifying circumstances, and hereby sentences him to reclusion perpetua with all the accessory penalties provided by law, to indemnify the heirs of Mamerto Peñaflor, Jr. the sum of Thirty Thousand Pesos (P30,000.00) Philippine currency as compensatory damages for the latter's death, to pay the sum of P12,344 as funeral and burial expenses, P3,000 as actual expenses, P5,000 as moral damages, P10,000 representing legal fees and the costs.

"Octavio Juanga should be credited in full for the period of his preventive imprisonment, should there be any, if he agrees voluntarily in writing to abide by the disciplinary rules imposed upon convicted prisoners, otherwise, four fifths (4/5) thereof." (Rollo, pp. 420-421)

Not satisfied with the decision of the trial court, the accused-appellant raises two issues for our determination, namely:

I

THE LOWER COURT ERRED IN UNDULY RELYING ON THE TESTIMONY OF PROSECUTION WITNESS ESPERIDION DAPITAS, JR., NOT ONLY BECAUSE IT DID NOT HEAR THE TESTIMONY OF SAID WITNESS BUT ALSO BECAUSE OF THE INHERENT INCREDIBILITY OF THE SAID WITNESS AND THE IMPROBABILITY OF HIS TESTIMONY.

II

THE LOWER COURT ERRED IN FINDING THAT THERE WAS POSITIVE IDENTIFICATION OF THE ACCUSED AND THAT THE DEFENSE OF ALIBI CANNOT PREVAIL OVER THE SAME." (Appellant's Brief, pp. 43-44)

After a thorough examination of the records of the case, we hold that there is no reversible error in the trial court's relying on the testimonies of the prosecution witnesses. The fact that the Judge who decided the case was not the one who heard the witnesses testify does not weaken the finding that the evidence is conclusive of the guilt of the accused-appellant. In *People v. Abaya*, G.R. No. 80885, May 17, 1990 we stated that "xxx 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 this 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." The appellant has not shown any convincing reasons why the same rule should not apply in this case.

It is not an unusual practice for a Judge who did not try the case to decide it. Not a few cases have been decided by Judges who did not conduct the trial in its entirety. Weighing of the evidence of a case is not confined to testimonial evidence; it includes the totality of the evidence presented by both the prosecution and the defense, both testimonial and documentary.

The accused-appellant raises the improbability of the testimonies of the prosecution witnesses. Juanga claims that Thelma Dapitas did not actually see him shoot Peñaflor. Moreover, he states that, according to her testimony, there were eight (8) other persons near her who were one arm's length away from her and where she in turn was 5 arm's length away from Juanga. He assails the fact that not one among those eight (8) persons was presented as witness.

There is nothing irregular about this.

It is up to the parties to determine for themselves whether it is necessary to present corroborating evidence or to rely alone on its principal evidence (*People v. Zabala*, 86 Phil. 251 [1950]; *People v. Salazar*, 58 SCRA 468 [1974]).

The fact remains that the accused was positively identified by Thelma Dapitas as the person with a gun immediately after Peñaflor was shot. She heard a shot and immediately after, she saw Juanga with a gun in his right hand. She was able to recognize him because of the reflection of light from the nearby houses.

More important, however, was the presence of eyewitness Esperidion Dapitas, Jr. during the shooting incident and who testified as to its details. Esperidion was only three arms length from the victim when he saw the accused-appellant shoot Mamerto Peñaflor Jr. with the home-made shotgun. The presence of Esperidion was not

rebutted by controverting evidence.

In questioning Esperidion's positively identifying him as the assailant, the appellant points to some alleged inconsistencies in his testimonies such as that Esperidion testified that he saw and met Pat. Kwan at the incident before he ran after Juanga. This was later contradicted he claims, by a later testimony of Esperidion that he saw Pat. Kwan after he ran after Juanga.

Whatever may be the seeming inconsistency, it is reconcilable by the fact that Esperidion was consistent in testifying that he met Pat. Kwan only when he returned from the body of Peñaflor after pursuing the appellant up to the house of Juanga, the ex-mayor. The other alleged contradictions are even more inconsequential and easily explained. We apply the well-settled rule that minor inconsistencies will not affect the credibility of witnesses (People v. Pacala, 58 SCRA 370, [1974]; People v. Clemente, 58 SCRA 742 [1974])

Juanga's defense of alibi, although corroborated by Jagunap and Guinalon is unavailing as against his positive identification by the prosecution witnesses and the absence of physical impossibility of his being at the scene of the crime. The house of ex-Mayor Jagunap where he claims he was at the time of the incident is only 400 meters away from the scene of the crime. Alibi, thus, cannot prevail (People v. Garcia, 141 SCRA 336 [1986]; People v. Parilla, 144 SCRA 454, [1986]).

The prosecution witnesses whose integrity is being questioned by the accused have no motive to falsely testify against the accused. On the contrary, it is the appellant who had a motive to kill Peñaflor. As related by the victim to prosecution witness Esperidion Dapitas, Jr., Juanga and Peñaflor had an earlier fist fight where Juanga was bested. This angered the accused to the point that the victim's reconciliatory moves were pointedly ignored.

It is true that motive in the instant case does not have to be proved considering the positive identification by the prosecution witnesses of the accused-appellant. However, the fist fight, the brushing off of the attempts to reconcile, and the appellant's sizing up the situation immediately before the shooting add to the correctness of the decision. It is an established jurisprudential rule that as between the positive declaration of the prosecution witnesses and the negative denials of the accused, the former deserves more credence (People v. Espejo, et al., G.R. No. 88662, June 18, 1990 citing People v. Macabenta, 170 SCRA 298, [1989]; People v. de Jesus, 145 SCRA 521, [1986]; People v. Plaza, et al. 140 SCRA 277, [1985]).

Finally, we hold that the crime committed was murder qualified by alevosia, the accused having shot the victim from behind without warning (People v. Acosta, G.R. No. 70133, July 2, 1990). This is shown by the suddenness of the attack. (People v. Maranan, 146 SCRA 243 [1986]).

WHEREFORE, premises considered, the decision appealed from is hereby **AFFIRMED**.

SO ORDERED.

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

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