

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE MALOLOY-ON, ACCUSED-APPELLANT.*G.R. No. 85246. August 30, 1990*

Ponente: REGALADO, J.

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Accused-appellant Felipe Maloloy-on and his son, Titing Maloloy-on, were charged with murder in the Regional Trial Court of Masbate in an information dated August 23, 1985 which alleges that on or about July 1, 1985, at Sitio Basyao, Barangay Jose Abenir, Sr., Palanas, Masbate, the said accused, with intent to kill, evident premeditation, treachery and superiority of strength, feloniously attacked and hacked with bolos one Biotesma Tambago, thereby inflicting wounds on the victim which directly caused her instantaneous death.[1]

Only appellant Felipe Maloloy-on was arraigned and pleaded not guilty, with the assistance of his counsel de parte.[2] Accused Titing Maloloy-on was not apprehended and was later reported to be dead, after having purportedly figured in a stabbing incident, hence the case against him was ordered by the trial court to be placed in the archives in the absence of proof of his death.

The pertinent facts divulged during the trial show that in the afternoon of July 1, 1985, spouses Gerardo and Biotesma Tambago went to visit their coconut plantation situated at Sitio Basyao, Barangay Jose Abenir, Sr., Palanas, Masbate.[3] There they saw Titing and Bebot Maloloy-on, children of appellant Felipe Maloloy-on, making bundles of firewood inside the plantation. Titing and Bebot ran away, leaving behind the firewood, their clothes and a petroleum container, and the spouses waited for them to come back but said children did not return.[4]

At about 4:00 o'clock in the afternoon, Biotesma told Gerardo to get their carabao from the creek about one hundred (100) meters away from their hut.[5] Gerardo then left his wife. After getting the carabao and when he returned to the hut where he left his wife, Gerardo Tambago saw accused Felipe Maloloy-on and Titing Maloloy-on at a distance of about twenty (20) meters pulling and/or dragging towards the creek the lifeless body of his wife who was lying flat on the ground.[6] The accused were wearing white shirts and maong pants.[7]

Thereupon, Gerardo shouted at the accused Felipe and Titing Maloloy-on, saying: "What did you do with my wife?" On hearing Gerardo, the accused threw Biotesma's body into the creek and ran away.[8] Gerardo proceeded to where his wife was thrown by the accused and saw several hacking wounds sustained by his wife, one on the nose, another on the neck, and also on the right arm. After examining the body of his wife and finding her dead, Gerardo immediately went to the poblacion of Palanas, Masbate and reported to the police authorities what accused Felipe and Titing Maloloy-on did to his wife. Gerardo also informed the mother of his wife about the incident.[9] He likewise reported the matter to the municipal health officer.[10]

On July 2, 1985, a post-mortem examination was conducted by Dr. Primitivo Monterde, Municipal Health Officer of Cataingan and Palanas, Masbate, on the cadaver of Biotesma Tambago.[11] The examination disclosed that the deceased sustained the following injuries, viz: Wound No. 1, incised wound on the right arm below the shoulder

cutting it, including the humerus bone and blood vessels; Wound No. 2, incised wound at the back of the neck, cutting the neck, including the nape bone, blood vessels and throat (esophagus) leaving a small flap of skin at the thyroid region; and Wound No. 3, incised wound at the maxillary region cutting the nose, 6.5 inches in length and 5.0 inches in depth in the maxillary bones, all of which wounds were fatal[12] and could have been caused by a sharp-edged instrument like a bolo.

The defense consists merely of alibi, that is, that at about 3:00 o'clock in the afternoon of July 1, 1985, appellant Felipe Maloloy-on, together with his wife and co-accused Titing, were weeding grass at their farm situated at Sitio Basyao, Jose Abenir, Sr., Palanas, Masbate.[13] Appellant also claimed, and this was corroborated by the testimony of his wife, Rosario,[14] that on July 3, 1985, upon returning to their house at Sitio Basyao, he learned from his neighbor that his carabao was taken by policemen to the Municipal Building of Palanas, Masbate.[15] He claims that on July 4, 1985, he went to see Barangay Captain Artemio Abenir to ask why his carabao was taken by the policemen. Thereafter, he was accompanied by said barangay captain to the Municipal Building of Palanas, Masbate.[16] He, however, averred that when he reached the place, he was taken into custody and immediately detained by Policemen Yolly Tambago and Gregorio Tamayo.[17]

After trial, a judgment of conviction was rendered by the trial court, the decretal portion of which reads:

"WHEREFORE, it having been established beyond reasonable doubt that accused Felipe Maloloy-on committed the offense charged with the aid of his son Titing Maloloy-on (who is now allegedly dead) employing superior strength qualified by treachery in the process which aggravating circumstance is not off-set by any mitigating circumstance, said Felipe Maloloy-on is penalized under Par. 1 of Article 248 of the Revised Penal Code and is sentenced to the extreme penalty of reclusion perpetua; to indemnify the heirs of the victim in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency; to suffer the accessory penalties provided for by law; and to proportionately pay the costs.

"Credit said accused with the whole period of his preventive imprisonment; and until it shall have been satisfactorily established that accused Titing Maloloy-on is now really dead, the case against him is ordered archived and an alias warrant issued."[18]

In a "Modification of Judgment" dated August 22, 1988, the trial court increased the amount of indemnity to P30,000.00.[19]

Hence, this appeal[20] where appellant assigns the following reversible errors, to wit:

1. The lower court gravely erred in convicting accused-appellant of the crime of murder despite the prosecution's failure to prove his guilt beyond reasonable doubt and in not acquitting accused-appellant.
2. The lower court gravely erred in giving weight and credence to the otherwise highly improbable, incredible and ill-motivated testimonies of prosecution witnesses Gerardo Tambago, Pfc. Gregorio Tamayo and Artemio Abenir.
3. The lower court gravely erred in appreciating in evidence the petroleum container (Exh. "B") and hat (Exh. "C") adduced by the prosecution.
4. The lower court gravely erred in concluding that accused-appellant's alleged acts of shouting unintelligible words, defecating on the floor and attempting to escape from detention are indicative of his guilt of the crime charged.
5. The trial court gravely erred in discrediting accused-appellant's defense of alibi.
6. The trial court gravely erred in finding that the aggravating circumstances of abuse of superior strength and treachery are attendant in the case at bar.[21]

We affirm, with modification, the decision appealed from.

As against the clear, direct and positive identification of Gerardo Tambago that he saw the accused dragging the lifeless body of his wife, the alibi of appellant Felipe Maloloy-on cannot prevail. While it is true that the defense of alibi may sometimes be considered exculpatory, as when the participation of the appellant is not established beyond cavil,[22] it is equally settled that for alibi to succeed it must be shown not only that accused was at some other place at the time of the alleged crime and that it was physically impossible for him to have been at the site of the crime at the time of its commission either before or after the time he was at such other place.[23] If the required physical impossibility of being present at the scene of the crime is not proved, alibi as a defense becomes unavailing to the accused.[24]

In the instant case, appellant himself admitted that at or about the time when the crime was committed, he was at his farm in Sitio Basyao, Jose Abenir, Sr., Palanas, Masbate. It appears that his farm is only one (1) kilometer away from the coconut plantation where the deceased was killed,[25] an easily traversable distance. There was thus no physical impossibility of his being present at the locus criminis at the time the crime was committed. It will likewise be observed that his defense of alibi was corroborated only by his wife and mother-in-law. Such corroboration by his close relatives, constrains us to receive the same with extreme caution, considering the added facility of its fabrication.[26]

Moreover, there is nothing the records to show that Gerardo Tambago was motivated to testify falsely against appellant. There is also no possibility that he could have been mistaken in the identity of appellant for, apart from being at the scene of the crime, he also knew appellant very well since they are residents of the same place. In fact, appellant also admitted having known Gerardo Tambago for a long time.[27] In the absence of any proof that the principal prosecution witness acted because of improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[28] What appears instead as a strong probable cause for the actuations of both accused is the fact that Gerardo Tambago and his wife caught the children of appellant stealing bundles of firewood from the former's coconut plantation.

Appellant's claim that on July 4, 1985, he was accompanied by Barangay Captain Artemio Abenir to recover his carabao at the Municipal Hall of Palanas was belied by the latter himself who denied having gone with appellant to the municipal hall. Said public official testified, on the contrary, that appellant came to him to surrender.[29] Appellant also posits that it is highly improbable for a husband not to lend succor to his wife whose life is under threat or danger. Gerardo Tambago's failure to come to the rescue of his wife was understandable. He was naturally shocked and taken aback by such unexpected and frightful occurrence. He was unarmed, with nobody around to help him, and there were no houses near the creek where his wife was thrown. However, after regaining his composure, he immediately rushed to the poblacion and reported the incident to the police authorities.[30] This was confirmed by Pfc. Gregorio Tamayo.[31]

Gerardo Tambago was the only eyewitness to the surrounding circumstances of the heinous crime upon which the guilt of appellant may be established. While it has been said that the identification of the offender is crucial in every criminal prosecution when the defense pleads alibi, and in such a case the identity of the culprit must be established beyond reasonable doubt,[32] we are satisfied that there has been an indisputable identification of the accused in this case. To repeat, prosecution key witness Gerardo Tambago knew appellant very well and where the latter resided.[33] His having witnessed the two accused dragging the lifeless body of his wife and running away after he shouted at them indubitably establish the appellant's criminal participation. As earlier explained, prior to the incident in question, the children of appellant including his co-accused son were at the premises where the crime was committed.

True, the foregoing closely-knit narration of events came from the sole eyewitness. Nevertheless, we accord full credence to his testimony for the reasons hereinbefore stated, bolstered by the fact that his testimony on the fatal injuries of his wife which he saw and immediately reported was subsequently corroborated by the post-mortem examination conducted by Dr. Primitivo Monterde. The testimony of a lone eyewitness is sufficient to convict the accused where it was given in a straightforward manner and it was full of details which by their nature could not have been merely invented. In determining the sufficiency of evidence, what matters is not the number of witnesses but the credibility, nature and quality of the testimony.[34]

The other remaining errors assigned by appellant hinge on and may be subsumed under the issue of credibility. We accordingly reiterate the time-honored rule that the findings of the trial judge, who had the better opportunity to observe the witnesses, assess their demeanor on the stand and evaluate their respective testimonies, should generally be entitled to great weight unless the court has plainly overlooked the undisputed facts of substance and value that if properly considered would affect the result of the case. We do not find any such excepting feature in this case as would detract from the application of said doctrinal rule.

We find, however, that the court a quo erred in appreciating the circumstances of treachery and abuse of superior strength to qualify and aggravate the liability of appellant. Although both circumstances are alleged in the information, they were not shown beyond reasonable doubt to have been employed by appellant. There was no testimony on the actual nature and mode of the attack on the hapless victim, much less to show that treachery was deliberately adopted to ensure the infliction of the fatal wounds.[35] For the same reason, there is likewise no evidence of the respective or joint participation of the two accused in assaulting the victim, much less that they took advantage of their superior strength. Mere superiority in the number of assailants, and nothing more, does not constitute the circumstance of abuse of superior strength.[36] Furthermore, superior strength is inherent and absorbed in treachery[37] which, latter circumstance, however, was not proved in this case.

Appellant Felipe Maloloy-on can, therefore, be convicted only of homicide. While there is testimony that appellant supposedly asked the barangay captain to accompany him to the municipal building to surrender, this mitigating circumstance was not appreciated by the trial court obviously because of the conflicting versions thereon. More to the point, appellant stoutly maintains in his brief that he did not surrender to the police authorities on July 4, 1985, but that he merely went to the municipal building to retrieve his impounded carabao.[38] Consequently, the mitigating circumstance of voluntary surrender cannot be credited in favor of appellant, with the result that sans any modifying circumstance, the medium period of reclusion temporal, or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, should be imposed on appellant, with the corresponding application of the Indeterminate Sentence Law.

WHEREFORE, the assailed judgment is hereby MODIFIED by finding accused-appellant guilty of homicide and imposing on him an indeterminate sentence of twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. With such modification, the judgment of the court below is AFFIRMED in all other respects.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.
Sarmiento, J., on leave.

[1] Original Record, 1.

[2] Ibid., 17.

- [3] TSN, July 21, 1986, 12.
- [4] Ibid., id., 7.
- [5] Ibid., id., 26-27.
- [6] Ibid., id., 9, 29.
- [7] Ibid., id., 31.
- [8] Ibid., id., 29-30.
- [9] Ibid., id., 10.
- [10] Ibid., id., 36.
- [11] Ibid., October 17, 1986, 3.
- [12] Ibid., id., 4-5; Original Record, 59.
- [13] Ibid., August 25, 1987, 4.
- [14] Ibid., November 9, 1987, 20.
- [15] Ibid., August 25, 1987, 8.
- [16] Ibid., id., 7.
- [17] Ibid., id., 10.
- [18] Original Record, 156.
- [19] Ibid., 158.
- [20] Ibid., 160.
- [21] Brief for Accused-Appellant, 1-2.
- [22] People vs. Gonzales, et al., G.R. No. 80762, March 19, 1990.
- [23] People vs. Brioso, et al., 37 SCRA 336 (1971); People vs. Obando, et al., G.R. No. 72742, February 12, 1990; People vs. Simene, G.R. No. 86164, April 3, 1990.
- [24] People vs. Aldeguer, G.R. No. L-47991, April 3, 1990.
- [25] TSN, July 21, 1986, 26.
- [26] People vs. Talla, et al., G.R. No. L-44414, January 18, 1990.
- [27] TSN, August 25, 1987, 14.
- [28] People vs. Campana, 124 SCRA 271 (1983); People vs. Noguerras, G.R. No. 76238, January 11, 1990.
- [29] TSN, May 9, 1988, 2, 4-5.
- [30] Ibid., July 21, 1986, 10-11, 29.
- [31] Ibid., August 1, 1986, 9.
- [32] People vs. Acosta, etc., G.R. No. 70133, July 2, 1990.

[33] TSN, July 2, 1986, 25-26.

[34] *People vs. Salazar, et al.*, 58 SCRA 467 (1974); *Cordial vs. People, et al.*, 166 SCRA 17 (1988); *People vs. Baysa, et al.*, 172 SCRA 706 (1989).

[35] Art. 14 (16), Revised Penal Code; *U.S. vs. Pangilion*, 34 Phil. 786 (1916); *People vs. Tumaob*, 83 Phil. 738 (1949); *People vs. Macalisang*, 22 SCRA 699 (1968).

[36] *People vs. Apduhan, Jr., etc., et al.*, 24 SCRA 798 (1968).

[37] *People vs. Mobe, etc., et al.*, 81 Phil. 58 (1948); *People vs. Redoña*, 87 Phil. 743 (1950).

[38] Brief for Accused-Appellant, 16-17.

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