

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR C. LAGOTA AND LIBRADO FERNANDEZ, ACCUSED-APPELLANTS.

G.R. No. 85795. February 14, 1991

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Sentenced to reclusion perpetua by the Regional Trial Court of Lingayen, Pangasinan, Branch 39,[1] for the crime of Murder, the accused Nestor Lagota and Librado Fernandez assail their conviction in this appeal.

The evidence for the prosecution has been narrated by eyewitnesses Flor Escaño and Alberto Rosario, thus:

In the evening of 9 May 1987, at about 7:30, Herminigildo Escaño and his wife, Flor, were walking home along the National Road at Barangay Magtaking, Bugallon, Pangasinan (Records, p. 3; tsn, p. 11, 8 March 1988). With them was their small niece whom Flor was carrying. They had just visited Herminigildo's sick father (tsn, p. 11, 8 March 1988).

Herminigildo was walking slightly ahead, about 5 arms lengths away from Flor. The road they were taking was bright, the illumination being provided by a lamp post (ibid, p. 11). Barangay Magtaking was then celebrating its "fiesta" (ibid, p. 11). While walking, Flor suddenly saw her husband, Herminigildo, confronted by Joey de Quintos who, without provocation, boxed the former (ibid, p. 11). Herminigildo was able to parry Joey's initial thrust (tsn, p. 3, 9 March 1988) but was unsuccessful in warding off the latter's subsequent act of stabbing him with an "ice pick" on the right part of his body (tsn, p. 11, 8 March 1988).

Joey was with his "barkada," namely, Nonie Navarro, Nestor Navarro, Bernardo Vargas, and the appellants herein, Nestor Lagota and Librado Fernandez. After Joey stabbed Herminigildo on the right part of his body, Nonie hacked the victim on his forehead with a "bolo" (ibid, p. 12; tsn, p. 3, 9 March 1988). Then, the rest of the "barkada" took turns in hacking, stabbing and stoning Herminigildo (tsn, p. 12, 8 March 1988; tsn, pp. 3-6, 9 March 1988; tsn, pp. 5-6, 4 April 1988), with the use of "bolo," "balisong," and stones.

The culprits then dragged the already helpless Herminigildo into a canal and there, Nestor Navarro sat on him while the rest of his companions continued hacking and stabbing the victim (tsn, p. 13, 8 March 1988; tsn, p. 6, 4 April 1988). Herminigildo did not survive the brutal assault. When they were through, the assailants ran away (tsn, p. 13, 8 March 1988).

No one helped the unfortunate victim. People around scampered away when the attack began (tsn, p. 7, 9 March 1988). Flor, Herminigildo's widow, was unable to do anything for fear that the attackers might vent their ire on her and her niece (ibid, p. 7). Eyewitness Alberto Rosario, who corroborated Flor Escaño's testimony with regard to the killing, testified that he did not attempt to stop the attack on the victim, also, out of fear (tsn, p. 6, 4 April 1988).

When the commotion ceased, Flor rushed to Sylvia de Vera, Herminigildo's sister, to tell her of the incident. They then called Abelardo Escaño, Herminigildo's elder brother, after which all three went to the crime scene and

carried Herminigildo's body home (tsn, pp. 13-14, 8 March 1988).

Fifteen (15) stab wounds and eight (8) incised wounds, ten (10) of which were fatal, were inflicted on Herminigildo (tsn, pp. 4-5, 7 March 1988; Medical Report dated 10 May 1987, pp. 8-9, Records; Autopsy Report, p. 10, Records). The examining physician testified that death must have occurred within five (5) to ten (10) minutes after the assault due to massive bleeding from the inflictions of said wounds (tsn, p. 6, 7 March 1988).

The killing of Herminigildo was later investigated by the Integrated National Police of Bugallon, Pangasinan, resulting in the apprehension of three of the suspects: Nestor Navarro and herein appellants Librado Fernandez and Nestor Lagota. The three other suspects, namely, Joey de Quintos, Nonie Navarro and Bernard Vargas, have remained at large up to the present.

On 2 December 1987, about seven (7) months after the incident, an Information charging Murder was filed against the six (6) accused before the Regional Trial Court of the same province.

On 15 December 1987, Nestor Lagota pleaded "not guilty." On 26 January 1988, Librado Fernandez also pleaded "not guilty." Nestor Navarro, on the other hand, pleaded "guilty" on 16 February 1988, and a separate Decision was rendered against him (Decision, p. 122, Records). Trial ensued with respect to Nestor Lagota and Librado Fernandez, who interposed their respective defenses of alibi.

According to Nestor Lagota, married, a driver of a passenger jeepney in Baguio City, residing at Magtaking, Bugallon, Pangasinan, on 9 May 1987, he went home to Magtaking to attend the baptism of his son scheduled between 1:00 and 2:00 P.M. From 8:30 in the morning he stayed home to make preparations therefor. The party lasted up to 5:00 P.M. Because he was tired from cooking he stayed home and rested with his father, children and wife. He slept and woke up at 6:00 P.M. after which he took a bath and conversed with his father inside the house while partaking of two (2) bottles of beer each. While still at home, and as he went down to answer the call of nature, he was told that someone had been stabbed. His father, who stays at Sual, slept at their house that night, with neither of them having gone out. His father left the next morning while he stayed home until 16 May 1987 when he went to Baguio. He was arrested on 25 November 1987. He denied the accusation against him, the truth being that he stayed home in the evening of the incident (tsn, pp. 5-11, 13 April 1988).

Jose Lagota, father of said accused, substantially corroborated his son's testimony (ibid., pp. 17-21).

For his part, accused Librado Fernandez testified that he works at Barangay Santol, San Fernando, La Union, as a surveyor aide. On 8 May 1987, he returned to Magtaking as it was their "barangay fiesta." He stayed in the house of his aunt, Nenita Reyes. The next morning he helped his aunt and others cook for the "fiesta." At about 6:00 P.M., visitors arrived and he also helped in the entertainment up to about 10:00 P.M. when they left. He stayed behind, however, to help wash dishes. On January 1, 1988, he was arrested at Bugallon, Pangasinan. He vehemently denied the charge that he had stabbed the victim with an ice pick, insisting that he was in his aunt's house at the time of the incident (tsn, pp. 15-20, 20 April 1988).

On 8 June 1988, judgment was rendered by the Trial Court finding Lagota and Fernandez guilty beyond reasonable doubt of the crime of Murder and sentencing each of them to reclusion perpetua, with the accessories provided by law, and to pay the proportionate costs. Further, they were ordered, jointly and severally, to indemnify the heirs of the victim in the sum of P30,000.00; to pay them the sum of P23,972.00, by way of actual damages, all without subsidiary imprisonment in case of insolvency (Decision p. 134, Records). In the same Decision, the Trial Court issued an Alias Warrant of Arrest against Lagota in view of his escape from detention pending promulgation of the judgment (ibid, p. 134). He was re-arrested thereafter, however, and the judgment as against him was promulgated on 13 June 1988 (Original records, p. 139).

Hence, this appeal taken by both of the accused through the Citizens Legal Assistance Office (CLAO) (now called Public Assistance Office [PAO]) with a sole assignment of error:

"The Trial Court gravely erred in convicting the accused although the constitutional presumption of innocence has not been overturned by proof beyond reasonable doubt."

The error attributed is without basis.

There were two eyewitnesses to the crime, Flor Escano, the victim's wife, and Alberto Rosario, a "compadre" of the deceased. The prosecution evidence, as recounted earlier, is based on their respective narrations and are substantially corroborative of the other, particularly, on material and crucial points.

But the defense maintains that their testimonies are riddled with "grave" inconsistencies, standing alone, or compared to the other. We do not find it to be so.

While Flor did not specifically mention in her Affidavit executed before the Investigator that an "ice pick" and a "balisong" were used in stabbing her husband, it is possible that those details were not elicited from her. The incontrovertible fact, as shown in the autopsy report (Exhibits A, A-1), is that the victim suffered fifteen (15) stab wounds and eight (8) incised wounds, leading to the inevitable conclusion that those weapons were, in fact, used by the assailants. Besides, inconsistencies between statements of affiants in their sworn statements and those made by them on the witness chair do not necessarily discredit them since ex-parte Affidavits are generally incomplete (*People v. Dumpe*, G.R. Nos 80110-11, 22 March 1990, 183 SCRA 547).

As to the question of who actually dumped the victim into the canal, whether it was only Nestor Navarro and his brother Nonie Navarro, as Flor stated in her Affidavit, or whether all of the accused did so, as Flor had testified to, is a detail insufficient to impair the principal thrust of Flor's testimony that her husband was hacked, stabbed and stoned to death by all his assailants. It has been invariably held that inconsistencies on minor details usually do not destroy the probative value of a witness' testimony because generally they may be due to an innocent mistake and not to deliberate falsehood (*People v. Bongo*, G.R. No. L-26909, 27 February 1974, 55 SCRA 547; *People v. Resayaga*, G.R. No. L-23234, 26 December 1973, 54 SCRA 350).

The discrepancy in Flor's Affidavit and her testimony as to whether the victim was employed or not at the time of his death is too extraneous a matter as to affect her credibility besides the fact that she sufficiently clarified it when she stated that he had been a tricycle driver for a long time at Olongapo but that in Pangasinan he was jobless (tsn, p. 12, 9 March 1988).

The defense also faults Flor for her alleged "very unusual manner" in which she had acted while witnessing the killing of her husband. The suggestion is that the proper norm of behavior was for her to have begged for mercy from his killers rather than to have done nothing. We are far from persuaded. Her reaction is not really contrary to human experience. As she had explained, it was borne out of fear that the assailants might turn against her and her little niece (tsn, p. 7, 9 March 1988). The attack on her husband was so sudden and shocking that she was petrified into inaction. Moreover, "there is no standard form of behavior when one is confronted by a shocking incident" (*People v. Radones*, G.R. No. 68421, 20 March 1986, 141 SCRA 548; *People v. Amoncio*, G.R. No. L-49069, 22 June 1983, 122 SCRA 686). In fact, so shaken was she that she was unable to inform the police immediately of the identity of her husband's assailants (tsn, p. 8, 8 March 1988).

But the defense still makes capital of the fact that eyewitness, Alberto Rosario, stated that he did not see Flor while the stabbing incident was taking place and that the first time he saw her was when the victim was already dead and the assailants had already fled (tsn, p. 9, 4 April 1988). It should be recalled, however, that Flor was following her husband approximately five (5) arms-lengths away from the precise site of the mauling incident.

This accounts for the fact that Alberto did not see her right away, particularly so, as his attention was necessarily focused on the startling and shocking occurrence. But Alberto did say, however, that he saw her immediately after the attack (tsn, p. 6, 4 April 1988), which would not have been the case if she had not been in the vicinity of the crime. Besides, even if Alberto mentioned that he did not see Flor at the scene, it does not necessarily follow that she was not in the area at all.

Concentrating on eyewitness Alberto's testimony again, the defense contends that inconsistencies also exist between his written Statement and his testimony on the stand and in his declarations inter se as well. Thus, in his Statement he did not identify Lagota and Fernandez as among the culprits who were armed, but in his testimony he stated that Fernandez had attacked the victim with a "balisong," while Lagota had stoned, boloed or hacked the victim (tsn, pp. 7-9, 4 April 1988). It is also claimed that he had vacillated in his testimony as he could not state how many times Lagota had stoned the victim, nor the number of stabs that Fernandez had inflicted, nor did he say that he could identify all the assailants (ibid; Exhibits 4 to 4-E).

The foregoing observations, however, do not detract from Alberto's testimony. Trivial inconsistencies in an eyewitness' narration of details are understandable considering, in this case, the suddenness of the attack, the dreadful scene unfolding before his eyes, as well as the imperfection of human memory, especially when a blow-by-blow account is exacted of him. It is for this reason that jurisprudence uniformly pronounces that minor inconsistencies in the testimony of a witness do not reflect on his credibility, as what is important is that he had positively identified the accused as the assailants (People v. Dava, G.R. Nos. L-41642-45, 15 May 1987, 149 SCRA 582).

That measure of positive identification has been satisfied herein. The credibility of eyewitnesses, Flor Escano and Alberto Rosario, has not been successfully assailed. The findings of the Trial Court thereon are supported by the evidence and deserve the highest respect consonant with settled jurisprudence. The mind rests easy on a finding of guilt.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with the modification that the indemnity to the heirs of the victim, Herminigildo Escano, should be increased to P50,000.00, following recent cases.

Proportionate costs against the accused Nestor Lagota and Librado Fernandez.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Judge Cornelio W. Wasan, Sr., Presiding.

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