

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO SORIO Y BALAD, ACCUSED-APPELLANT.

G.R. No. 86211. October 17, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Convicted of the crime of murder by the Regional Trial Court of Valenzuela, Branch 171 of the National Capital Judicial Region, the accused-appellant in the instant case raises a lone assignment of error, to wit:

"THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE APPELLANT ON THE GROUND THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT (Brief of the Appellant, p. 4; Rollo, p. 42)

The records of the case were erroneously transmitted for purposes of the appeal to the Court of Appeals but were forwarded by said court to us.

The accused-appellant was charged with murder in an information dated September 30, 1986 which reads:

"The undersigned Asst. Provincial Fiscal accuses Mario Sorio y Balad of the crime of murder, penalized under the provisions of Art. 248 of the Revised Penal Code, committed as follows:

That on or about the 21st day of September 1986, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused Mario Sorio y Balad, with intent to kill one Ruben Espiritu, armed with bladed instrument, did then and there wilfully, unlawfully and feloniously, with evident premeditation, treachery, attack, assault, stab with the bladed instrument he was then provided the said Ruben Espiritu, hitting the latter on the different parts of his body, thereby causing him serious physical injuries which directly caused his death. (Records, p. 1)

Upon arraignment, a plea of not guilty was entered by the accused-appellant through the assistance of his counsel de oficio.

At the trial, the prosecution presented as witnesses: Jaime Espiritu, brother of the deceased victim, who testified that after he learned of the stabbing incident that cost his brother's life, he reported the matter to the police authorities who went to the scene of the crime with him and made inquiries regarding the incident; Patrolman Dante Dogol-Dogol who apprehended the accused-appellant after he received information that the accused-appellant was the main suspect in the killing of Ruben Espiritu; Pfc. Benedicto Chua who investigated the stabbing incident; Efren Balbastro, an eyewitness who positively identified the accused-appellant as the person who stabbed Ruben Espiritu; and Dr. Mariano Cueva, Jr., Chief of the NBI Medico-Legal Section who conducted the autopsy and submitted the following report:

"POSTMORTEM FINDINGS

Pallor, generalized.

Contusion, 4.0 x 5.0 cm., cheek, left.

Lacerated wounds: 1.0 cm., helix of right ear; 1.5 cm., temporal region, head, right side.

Stab wounds: 1) 5.0 cm. long, spindle shape, both extremities, located at pectoral region, chest, right side, 8.0 cm. from anterior median line; path of wound is directed backward and laterally, taking an intramuscular route and severing axillary blood vessels and nerves; approximate depth 12.0 cm.;

2) 2.0 cm. long, spindle shape, both extremities sharp, located at infrascapular region, posterior chest, left side, 5.0 cm. from posterior median line; directed forward downward and medially, piercing the tenth intercostal space and perforating the lower lobe of left lung; approximate depth 13.0 cm.

Hemothorax, left, 1,200 c.c.

Heart and its big vessels, almost empty of blood.

Brain and other visceral organs, pale.

Stomach, empty.

xxx xxx xxx

CAUSE OF DEATH: Hemorrhage secondary to stab wounds of the chest" (Records, p. 55)

The defense presented the accused-appellant himself as its sole witness. He denied having been present at the time and place of the stabbing incident.

After trial, the lower court, on April 22, 1988, rendered a judgment of conviction. The dispositive portion of the decision reads:

"WHEREFORE, finding the accused Mario Sorio y Balad guilty beyond reasonable doubt of the crime charged, the Court hereby sentences him to suffer the penalty of RECLUSION PERPETUA.

The accused is hereby ordered to indemnify the legal heirs of deceased Ruben Espiritu the sum of P30,000.00 (People v. dela Fuente, G.R. No. 63215-52, (sic) December 29, 1983)

SO ORDERED." (RTC Decision, pp. 6-7; Rollo, 23-24)

The antecedent facts as summarized by the Solicitor-General in his brief, are as follows:

"Efren Balbastro, 31 years old, married, CSU, Police Aide of Valenzuela, Metro Manila, and residing at 49 A. Pablo Street, Karuhatan, Valenzuela, substantially testified that on September 21, 1986 at about 5:00 o'clock in the morning after coming from jogging and while he was at Fely's Kitchenette located along Macarthur Highway, Valenzuela, Metro Manila, to drink water, Aling Fely, the owner of the restaurant, and Ruben Espiritu had exchange of heated words; that aside from him, an old man who was near the door of the kitchenette and four (4) persons drinking at a corner were inside the kitchenette (TSN, pp. 3-4, July 22, 1987); that after the heated argument with Aling Fely, Ruben Espiritu went out of the kitchenette; that the four persons drinking suddenly ran after Ruben Espiritu (TSN, p. 5, *ibid.*); that accused Mario Sorio, one of the four persons overtook and stabbed Ruben Espiritu; that accused Mario Sorio fled after stabbing Ruben; that his three (3) other companions did nothing and just watched (TSN, p. 6, *ibid.*); that he tried to find a telephone to call for police assistance; that he was not able to find a telephone because all the establishments he went to were closed; that while returning to the place, he saw policemen and approached them; that the police officers took down his name and address and told him that they will summon him in case the suspect is apprehended (TSN, pp. 7-8, *ibid.*). (Decision, pp. 2 & 3)" (Appellee's Brief, pp. 2-3; Rollo, p. 61)

The accused-appellant, in maintaining the defense of alibi, states in his brief that:

"From the testimony of the appellant Mario Sorio, it appears that on September 21, 1986 at about 5:00 o'clock in the morning, he was in his house located at Kaybiga, Novaliches, Quezon City. The night before, that was September 20, 1986, at about 10:00 p.m., he went to sleep. He then came from his store at Caruhatan, Valenzuela, Metro Manila, where he was vending peanuts. He did not go to the Fely's Kitchenette at Karuhatan, Valenzuela, Metro Manila to drink in the early morning of September 21, 1986. He did not also go there in the evening of same day to drink. The testimony of prosecution witness Efren Balbastro that he was at the aforementioned kitchenette in the early morning of September 21, 1986 and when Ruben Espiritu went out of said eatery, he stabbed the latter is not true. He could not have stabbed Ruben Espiritu because he (appellant) then was at his home. (TSN, November 8, 1987, pp. 2-5)" (Appellant's Brief, p. 4; Rollo, p. 42)

To bolster his defense of alibi, the accused-appellant further claims that the prosecution's alleged eyewitness Efren Balbastro is not a credible witness on account of the following circumstances:

1. Balbastro's name is not included in the list of witnesses contained in the information.
2. Balbastro did not formally report the stabbing incident to the police nor did he give his statement to them. It was only in court at the witness' stand when he spoke about the incident for the first time.
3. Balbastro's testimony that only the accused-appellant stabbed the victim contradicts the finding of the other prosecution witness, the medico-legal expert, that the injuries sustained by the deceased could have been inflicted by more than two (2) persons.
4. Balbastro testified that there was light in the kitchenette but could not make out whether it was red or not. Balbastro could not also state how many times and which part of the victim's body did the accused-appellant stab the said victim.
5. Balbastro was the only eyewitness presented by the prosecution but from his testimony it can be gathered that allegedly there were other eyewitnesses whom the prosecution failed to present. (Appellant's Brief, pp. 5-6; Rollo, pp. 43-44)

Hence, premised on the allegation that the entire testimony of the prosecution's eyewitness must be disregarded for being unreliable and tainted by serious inconsistencies, the accused-appellant in this appeal prays for his acquittal on the ground that the prosecution had not established his guilt beyond reasonable doubt.

Considering that the issue presented by the accused-appellant zeroes in on credibility of witnesses, i.e., whether or not Balbastro's positive identification of the culprit operates to convict the accused-appellant and whether or not the accused-appellant's alibi suffices to exculpate him, we accord great weight to the factual findings made by the trial court because the trial judge was in a better position to examine as well as to observe the demeanor of witnesses while testifying in the case and as long as he has not plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, the trial judge's findings are binding on us. (see *People v. Nestor Espejo*, G.R. No. 88662, June 18, 1990 citing *People v. Pimentel, et al.*, 147 SCRA 25 [1987]; *People v. Grefiel, etc.*, 125 SCRA 102 [1983]; *People v. Fernandez*, 124 SCRA 319 [1983]; see also *People v. Carlito Eswan, et al.*, G.R. No. 84713, June 4, 1990 citing *People v. Javier*, G.R. No. 77756, March 26, 1990; *People v. Miranda*, G.R. No. 78900, March 21, 1990).

In the case at bar, the trial court correctly ruled that the defense of alibi interposed by the accused-appellant cannot be given credence. We reiterate our pronouncement in the case of *People v. Felipe Maloloy-on* (G.R. No. 85246, August 30, 1990) that:

"x x x 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, (*People v. Gonzales, et al.*, G.R. No. 80762, March 19, 1990), 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 (People v. Brioso, et al., 37 SCRA 336 [1971]; People v. Obando, et al., G.R. No. 72742, February 12, 1990; People v. Simene, G.R. No. 86164, April 3, 1990). 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. (People v. Aldeguer, G.R. No. L-47991, April 3, 1990)" (At p. 6)

Aside from the fact that the accused-appellant did not present evidence to corroborate his defense of alibi, the records of the instant case are bereft of any showing that the said accused-appellant was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. On cross-examination, the accused-appellant stated that when there was no heavy traffic, it would not take him thirty minutes to reach Karuhatan, Valenzuela, the place of the stabbing incident from his place of residence at Kaybiga Novaliches, Quezon City. (TSN, November 18, 1987, p. 7). He further testified that on the day of the said stabbing incident or on September 21, 1986, he was asleep at home and woke up at 6:00 o'clock in the morning. (Ibid., p. 8). Inasmuch as the time of the stabbing incident was established at about 5:00 o'clock in the morning of September 21, 1986, and considering that there could have been no heavy traffic between 5:00 o'clock and 6:00 o'clock in the morning from Karuhatan, Valenzuela to Novaliches, Quezon City, the element of physical impossibility to support the defense of alibi cannot be appreciated considering further that the accused-appellant stated on direct examination that he had gone to bed at 10:00 o'clock the night before the incident. (Ibid., p. 3) The accused-appellant had more than enough time to commute to and from his house to the scene of the crime then back to his house again. Clear and convincing evidence is required to show that it was physically impossible for the accused to go to the scene of the crime and return to his place (see People v. Aniñon, 158 SCRA 701 [1988]; People v. Perante, Jr., 143 SCRA 56 [1986]).

Besides, the defense of alibi cannot prevail over the positive identification of the accused (People v. Felix Raquipo y Tolentino, G.R. No. 90766, August 13, 1990 citing US v. Garcia, 9 Phil. 434 [1907]; People v. Ocaya, 144 SCRA 165 [1986]). The lone prosecution eyewitness categorically pointed to the accused-appellant as the perpetrator of the crime under consideration. The testimony of a lone prosecution eyewitness, as long as credible and positive can prove beyond reasonable doubt the guilt of the accused especially when, as in the instant case, the evidence for the defense consists merely of denials and alibis. (See People v. Melicor, 160 SCRA 580 [1988]).

The accused-appellant assails the credibility of the prosecution's lone eyewitness by claiming that the latter's testimony was not corroborated by the other persons whom the said eyewitness indicated as also present at the scene of the crime but were not summoned as witnesses by the prosecution. The contention of the accused-appellant is untenable for it is a jurisprudential imperative that 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 if they believe this to be sufficient. (People v. Octavio Juanga, G.R. No. 83903, August 30, 1990; People v. Ramon Abaya, G.R. No. 80885, May 17, 1990). Moreover, the fact that the said eyewitness' name was not listed in the Information as one of the witnesses is not a fatal defect and does not prejudice the evidence for the prosecution contrary to the argument advanced by the accused-appellant.

In the light of the foregoing considerations, there is a clear indication that the finding of guilt of the accused-appellant beyond reasonable doubt for the death of Ruben Espiritu by the trial court does not suffer from any reversible error. We find no need to discuss the other points raised by the accused-appellant as they are subsumed under the issue of credibility. The inconsistencies he mentions are inconsequential so that they cannot alter the evidence relied upon by the trial court in rendering a judgment of conviction.

Likewise, the trial court is correct in ruling that the qualifying circumstance of treachery in murder was present.

To constitute treachery, two conditions must be present, to wit (1) the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate and (2) the means of execution were deliberately or consciously adopted. (Article 14, sub-paragraph 16 and Article 248, sub-paragraph 1, Revised Penal Code; *People v. Edwin Mabubay*, G.R. No. 87018, May 24, 1990 citing *People v. Samonte*, 64 SCRA 319).

We quote with approval the trial court's finding that:

"xxx xxx xxx

"The autopsy report (Exh. C & C-1) bears eloquent testimony to the accused (sic) merciless and fierce attack with evident homicidal intent. There were two stab wounds on the body of the victim, one located at the right chest and the other at the back.

"All things considered, the Court is convinced that accused Mario Sorio inflicted the stab wounds with the clear intent to kill a hapless target. The thrusts of the knife were piercing and deep which severed axillary blood vessels and nerves and punctured vital internal organs of the deceased. Death was instantaneous and prompt medical attention would not save the victim because of the gravity of the wounds inflicted.

"The commission of the offense was attended by the aggravating circumstance of treachery that qualified the killing to Murder. Treachery was present, because accused attacked the unarmed/unsuspecting victim from behind in a sudden and unexpected manner with his weapon such that the latter was in no position to flee or defend himself. It is apparent that the method of attack was consciously chosen to insure a speedy consummation of the offense without risk to himself." (Rollo, pp. 22-23)

WHEREFORE, premises considered, the appealed judgment of the trial court dated April 22, 1988 is hereby **AFFIRMED** except for the indemnity which is increased to P50,000.00 following recent pronouncements of this Court.

SO ORDERED.

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

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