

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOVENCIO DE PAZ, ACCUSED-APPELLANT.

G.R. No. 86436. August 04, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal by accused-appellant Jovencio de Paz from the decision[1] dated June 25, 1987 of the Regional Trial Court of Palo, Leyte, Branch VIII, Eighth Judicial Region in Criminal Case No. 5767, the dispositive portion of which reads:

"PREMISES CONSIDERED, the Court finds Jovencio de Paz guilty beyond reasonable doubt of the crime of Murder which is punishable by Reclusion Temporal in its maximum period to death. Applying the Indeterminate Sentence Law, he is sentenced to suffer the penalty of Prison Mayor in its maximum period to Reclusion Temporal in its medium period or TEN (10) YEARS and ONE (1) DAY to SEVENTEEN (17) YEARS and FOUR (4) MONTHS, with all the accessory penalties provided for by law, to indemnify the heirs of Floro Florendo the amount of THIRTY THOUSAND (P30,000.00) PESOS and to pay the costs."[2]

On October 14, 1983, an information was filed against Silverio Mijares, Jr., Telesforo Almaden and Jovencio de Paz for the crime of MURDER committed as follows:

"That on or about the 13th day of August, 1983, in Brgy. Salvador, Municipality of Tanauan, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, taking advantage of their superior strength and with treachery, did then and there willfully and feloniously attack and assault, with the use of deadly weapons, Floro Florendo, inflicting upon the latter multiple incised wounds on the left arm, an amputating wound on the right arm, and seven separate incised wounds on the different parts of his body, which injuries caused the death of Floro Florendo."[3]

On November 8, 1983, a warrant of arrest was issued against the three accused but only Silverio Mijares, Jr. was arrested and when arraigned pleaded guilty to the lesser offense of homicide and was accordingly convicted.

On March 28, 1984, accused-appellant Jovencio de Paz was arrested in Manila and when arraigned on February 19, 1985, entered a plea of not guilty with the assistance of his counsel.

The facts as found by the trial court are as follows:

At around 2:30 P.M. of August 13, 1983, while the victim Floro Florendo, his wife Anacorita and their 3 children Myrna, Florita and Solario, all surnamed Florendo, were cleaning the garden at Barangay Salvador, Tanauan, Leyte, the accused-appellant Jovencio de Paz together with his co-accused Silverio Mijares, Jr. and Telesforo Almaden, all armed with long bolos, approached and surrounded the victim. Suddenly, accused-appellant hacked the victim's breast with his bolo. The victim retreated from the accused-appellant but fell on the ground after only a few steps, with his face-up. As the victim lay defenseless on the ground, Silverio Mijares, Jr. and Telesforo Almaden hacked him in different parts of his body with their bolos.

While said incident was happening, Anacorita Florendo and her 3 children were about 5 meters away, shouting for help and pleading with the 3 accused to spare the victim's life. Anacorita even picked up a piece of wood to strike her husband's attackers in a futile effort to defend him from his assailant but only to retreat when Silverio Mijares, Jr. turned toward her.

Thereafter, accused-appellant and his 2 companions left and went toward Barangay Salvador leaving the lifeless body of the victim lying prostrate on the ground.

Anacorita Florendo, on the other hand, immediately proceeded to the house of Barangay Captain Conrado Ifugat and reported the incident in question. The barangay captain together with a PC soldier accompanied Anacorita to the place where she left her husband's lifeless body and brought the same to their house.

An autopsy of the victim's body was conducted by the municipal health officer of Tanauan, Leyte, Dr. Paciencia L. Ofalla, who stated in her report as follows:

- "1. Incised Wound - 4 1/2 inches long, 1 1/2 inches wide with brain tissue exposed located at the right temporal region.
2. Incised Wound - of the mouth 3 inches long 1/2 inch wide injuring the upper and lower lips, with the teeth underneath destroyed.
3. Incised Wound - at the left lateral portion of the neck with 3/4 of the neck circumference amputated, and with the skin, muscles, blood vessels and crecoid cartilages severely destroyed.
4. Incised Wound - right arm half amputated, with muscles, blood vessels & bone severely damaged.
5. Right forearm distal portion, amputated.
6. Multiple incised wounds - left arm laterally with 1/3 portion of the arm circumference affected.
7. Incised Wound - 3 inches long 1 1/2 inches wide and 2 inches deep, left arm medially with, muscles & blood vessels affected.
8. Incised Wound - dital portion of the left arm laterally, injuring blood vessels & muscles, 2 inches long, 1 1/2 inches wide & 1/2 inch deep.
9. Incised Wound - anterior portion of the chest cages, to the left side, 8 1/2 inches long, 3 inches wide, injuring the distal portion of the sternum, muscles, ribs, blood vessels, and exposing the heart and the lungs.

Cause of Death: Shock due to profuse hemorrhage due to multiple wounds."[4]

Against the positive testimony of Anacorita and Myrna Florendo, accused-appellant set up the defense of denial and alibi. He denied killing the victim and claimed that he left Kiling Salvador, Tanauan, Leyte at around 2:00 P.M. of August 13, 1983 in a passenger bus to take the M.V. Ozamis which was bound to leave for Manila at 5:00 P.M. that same day. This was corroborated by Juan Tangpus when the latter testified that he executed an affidavit dated August 26, 1983 stating that the accused-appellant was a co-passenger in the same bus that he rode bound for Tacloban City and that the accused-appellant boarded the M.V. Ozamis at 1:00 P.M. of August 13, 1983.[5] However, accused-appellant admitted, before he left for Manila, that his father and the victim had a dispute over a piece of land.

Silverio Mijares, Jr. who was previously convicted for the killing of Floro Florendo claimed killing the latter alone with his bolo.[6] This was corroborated by Antonio Copino, a businessman and barangay councilman of Barangay Salvador, Tanauan, Leyte, who testified that Silverio Mijares, Jr. surrendered to him alone at 4:00 P.M. of August 13, 1983 after informing him that he killed Floro Florendo.

The appeal is devoid of merit.

Accused-appellant's contention that the trial court erred in giving full faith and credence to the testimonies of the prosecution witnesses, Anacorita and Myrna Florendo, for being biased, self-serving and highly improbable considering that said prosecution witnesses are relatives of the victim and that Silverio Mijares, Jr. had already testified and admitted during the trial that he was the lone assailant of the victim, does not convince Us.

The fact that Anacorita and Myrna Florendo were the wife and daughter of the victim, respectively, does not necessarily indicate that they are biased witnesses as to impair the credibility of their testimonies which are otherwise positive and clear. Relationship between the victim and the witness does not undermine the credibility of the latter's testimony. Established is the rule that the mere fact that the witness is a relative of the victim is not a valid or sufficient ground to disregard the former's testimony nor does it render the same less worthy of credit, in the absence of ill motive. On the contrary, it would be unnatural for such persons interested in obtaining justice for the victims of the crime to impute the same to any person other than those responsible therefore.[7] Furthermore, when there is nothing in the records which would show a motive or reason on the part of the witnesses to falsely implicate the accused, identification should be given full credit. And when there is no evidence and nothing to indicate that the principal witness for the prosecution was moved by improper motives, the presumption is that he was not so moved, and his testimony is entitled to full faith and credit.[8]

Anacorita, Myrna, Florita and Solario Florendo knew accused-appellant even before the incident since they were all residing in the same barangay. Thus, Anacorita and Myrna Florendo could not have been mistaken in their identification of the accused--appellant. Moreover, the fact that Anacorita and her children did not run from the scene of the crime and instead cried for help and sought to defend the victim when he was being hacked by the accused-appellant and his two companions made their testimonies highly credible since in spite of the danger to their persons, their first impulse was to help and defend the victim. As correctly observed by the trial court:

"3. Aside from being neighbors and barangay mates, the prosecution witnesses were only five meters from the place where they saw a loved one slowly agonizing to meet his tragic demise by the simultaneous and continuous infliction of the wounds. There is no compelling reason why their testimonies should not be believed, they did not have an ill motive to point to the persons if it is not true. Even when they reported the fact of death of the deceased to the barangay captain and councilman, Myrna and Anacorita spontaneously mentioned the names of Jovencio de Paz, Silverio Mijares and Telesforo Almaden. Antonio Copino, the councilman, a defense witness confirmed this, too.

4. More, the accused have not shown any fact or circumstance from which it can be reasonably inferred that said witnesses falsely testified or that they were actuated by improper motives. Indeed, it is hardly credible that a 13 year old girl could harbor any grudge so deep as to implicate Jovencio de Paz in a very serious offense as Murder, if she did not see him deliver the first hacking wound on the breast of his father followed by other wounds inflicted by the three accused as proved by the autopsy report. (People vs. Ali, 29 SCRA 756)."[9]

Accused-appellant's defense of alibi must fail in view of his positive identification by the prosecution witnesses who had known him for years. Alibi is the weakest of all defenses especially in the absence of proof that it would have been physically impossible for said accused to have been at the scene of the crime. To establish alibi, accused must not only show that he was present at some other place at about the time of the commission of the alleged crime but that it was also physically impossible for him to have been at the place where the crime was committed either before, during or after the time he was at such other place,[10] which accused failed to do in the case at bar. As correctly pointed out by the trial court:

"7. Jovencio de Paz's alibi that he was not present during the incident as he left for Manila could not be believed. He might have left for Manila after his participation in the killing of the deceased. He admitted that

his father was allegedly having a quarrel with the deceased while he was preparing to leave the barangay for Manila. Under the circumstance, a good son cannot in conscience leave alone his father faced an adversary. Hence, with two other companions, Jovencio, Silverio and Telesforo sought the deceased in his garden on August 13, 1983, in the afternoon after coming from a drinking spree in his brother-in-law's house.

Defense witness Tangpus, collaborating with Jovencio de Paz that at twelve o'clock Noon, August 13, 1983, they were co-passengers in a bus for Tacloban City is not believable. Tangpus is an old man with defective eyes. He admitted in Court that he did not have a time piece, neither did he know how to tell and read the time. His contention that it was twelve o'clock noon was because the sun was over his head. More, barangay Salvador was only six kilometers from the poblacion Tanauan, Leyte. It appears that Jovencio de Paz left ahead after stabbing the deceased. The stabbing as claimed by Anacorita took approximately ten minutes. If he immediately left at 2:40 o'clock in the afternoon for Tanauan, then to Tacloban City, Jovencio could still be on time to take the five o'clock trip for Manila."^[11]

Accused-appellant's contention that the trial judge did not have the opportunity to observe the conduct and demeanor of the witnesses since he was not the same judge who conducted the hearing is also untenable. While it is true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision since the latter can also rely on the transcribed stenographic notes taken during the trial as the basis of his decision.

The trial court, however, erred in the penalty imposed for the crime of MURDER qualified by TREACHERY. The penalty prescribed by Article 248 for said crime is reclusion temporal in its maximum period to death. Since the Indeterminate Sentence Law is not applicable in the case at bar there being no generic mitigating or aggravating circumstance, the penalty imposed by the trial court should be modified to reclusion perpetua. Likewise, the death indemnity has been increased to P50,000.00 under our present jurisprudence.

WHEREFORE, finding no error in the decision of the trial court, the same is hereby AFFIRMED but with the MODIFICATION that the proper penalty imposable is reclusion perpetua and the death indemnity which the accused-appellant should pay to the heirs of the victim increased to P50,000.00. Costs against appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Penned by Presiding Judge Lolita O. Gal-lang.

[2] RTC's Decision, p. 7, Rollo.

[3] Page 13, Record.

[4] Page 3, Record.

[5] T.S.N., July 30, 1986, pp. 3-8.

[6] T.S.N., February 28, 1986, p. 7.

[7] People vs. De Guzman, 194 SCRA 618 (1991).

[8] People vs. Doctolero, 193 SCRA 632 (1991).

[9] RTC's Decision, pp. 14-15; Rollo, p. 7.

[10] People vs. Mandapat, 196 SCRA 157 (1991).

[11] Id., pp. 15-16.

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