

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS VARGAS, JR. (AKA) “LUCKY”, DEFENDANT-APPELLANT.

G.R. NO. 86728. April 06, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

It was at 9:00 o'clock in the evening of October 29, 1982, while Romeo Malones, Sr. was reading the Bible by a kerosene lamp in his house at Barangay Banugan, Municipality of Dueñas, Iloilo, when his house was sprayed with bullets causing his death as well as that of his daughter Rosalie, and physical injuries to the remaining members of his family.

Romeo Malones, Jr. heard the first burst of gunfire that came from the back of the house. He was resting in the extension of the house. His mother, brother and sisters were also resting in the receiving room.

Romeo, Jr. peeped through the wall of bamboo strips (tadtad) and saw the brothers Jesus Vargas and Fortunato Vargas firing at their house. They were armed with a long firearm and an armalite, respectively. He recognized them because the moon was bright. It was a full moon and they stood only about five (5) meters away from him. Besides, the Vargases were his relatives. Upon seeing them, Romeo, Jr. lay flat on his stomach on the ground where his bed was situated, then he heard another set of gunfire followed by many others. After the firing ceased he saw his father fall in the kitchen. He died instantly.[1] His brother and sisters were also wounded. He told his mother what he saw and his mother told him to inform his grandmother Leonora Malones and he did as he was instructed. The grandmother went with him to the house. Simplicia Segura, Modesto Lorilla and some relatives came and brought the victims to the hospital. His sister Rosalie died in the hospital.[2]

Simplicia Segura was then the barangay captain of the barrio. When she learned about the incident she immediately proceeded to the house of the Malones and she saw Romeo, Sr. already dead and the rest of the family wounded. She conducted an investigation, and from her inquiries directed at those present at the scene and the information furnished her by the victim's family, especially those of Florentino Ladines and Romeo Malones, Jr., whom she interviewed, she learned that the person who was seen armed at the time and who fired the shots at the house were Fortunato Vargas alias Nono and Jesus Vargas alias Lucky. She knew the brothers personally ever since they were small boys. She also remembered an untoward incident between the Vargas and the Malones family sometime in 1972 when Romeo Malones, Sr. went to her to complain about an attempt on his life. Romeo, Sr. slept in her house that night for fear of losing his life. The following morning she accompanied him to the police station to report the incident. The chief of police summoned Fortunato Vargas who appeared. Since Romeo, Sr. was not wounded, upon suggestion of the chief of police the parties agreed to settle the case amicably and Fortunato Vargas promised not to do it again.

At 11:00 o'clock in the morning of October 13, 1982, Dr. Melchor G. Tupaz, senior resident physician of the Western Visayas Medical Center, attended to the Malones family for their wounds as follows:

"a) Maribeth Malones for gunshot wounds in the right thigh and left leg (Exhibits "C" and "C-1");

- b) Ronald Malones for abrasion in the anterior chest area (Exhibits "D" and "D-1");
- c) Nona Malones for abrasions in the right thigh and left leg (Exhibits "E" and "E-1");
- d) Sheila Malones for gunshot wound, through and through, in the lateral aspect of the left thigh. The wound was serious and if not treated she 'could have died secondary to hemorrhage' (Exhibits "F" and "F-1");
- e) Rosalie Malones for 'head wound about 2 x 2 cm. right parietal area'. There was no exit wound, only entrance. 'And when x-rayed there is extensive linear fracture at both parietal bone with single irregular metallic density located at the soft tissue of the parietal area'. She died in the emergency room (Exhibits "G", "G-1", "H" and Tsn., August 25, 1986, pp. 2-11)."

Dr. Ricardo H. Jaboneta, NBI medico-legal officer, performed an autopsy on the bodies of Romeo, Sr. and Rosalie.[3] Romeo, Sr. died of four gunshot wounds in the liver, stomach and lungs.[4] Rosalie Malones died from one head wound.[5]

In due course, an information was filed against Fortunato Vargas and Jesus Vargas in the Regional Trial Court (RTC) of Iloilo. They were charged with the crime of double murder with multiple frustrated murder and attempted murder. In as much as the accused Fortunato Vargas was still at large, so only the accused Jesus Vargas was arraigned and he pleaded not guilty. The trial on the merits was conducted at the termination of which a decision was rendered on June 24, 1988 finding the accused guilty of the offense charged as follows:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered finding the accused Jesus Vargas, Jr., GUILTY beyond reasonable doubt of the crime of -

- a) Two separate murders for the fatal shooting of Romeo Malones, Sr. and Rosalie Malones for which he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA for each Murder;
- b) Two separate less serious physical injuries for the gunshot wounds sustained by Maribeth and Sheila Malones for which he is hereby sentenced to suffer the penalty of imprisonment of FOUR (4) MONTHS of Arresto Mayor for each;
- c) Two separate slight physical injuries for the abrasions suffered by Ronald and Nona Malones for which he is hereby sentenced to suffer the penalty of imprisonment of TWENTY (20) DAYS of Arresto Mayor for each;
- d) To pay the surviving heirs of the deceased Romeo Malones, Sr., the sum of P30,000.00 as death compensation and another sum of P30,000.00 for the heirs of the deceased Rosalie Malones as death compensation;
- e) To pay the surviving heirs of Romeo Malones, Sr., the sum of P9,983.70 by way of reimbursement for funeral expenses; and
- f) To pay the sum of P5,000.00 as attorney's fees; and,
- g) To pay the costs.

The accused who is presently detained shall be credited with the entire period of his detention in connection with this case."

This case was brought on automatic review to this Court as Jesus Vargas, Jr. was meted two life sentences. Inasmuch as the death penalty may no longer be imposed under the 1987 Constitution so that there is no more automatic review of capital offenses, the case is now treated as if it was brought on ordinary appeal.

In this appeal the appellant raises the following errors:

"I

THE COURT ERRED IN CONVICTING ACCUSED FOR ALL RESULTANT CRIMES AFTER FINDING THERE WAS NO CONSPIRACY AND EVIDENT PREMEDITATION.

II

THE COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF ROMEO MALONES, JR., THAT ACCUSED WAS ONE OF TWO PERPETRATORS.

III

THE COURT ERRED IN DENYING MOTION FOR NEW TRIAL BY TREATING AS CORROBORATIVE EVIDENCE CERTIFICATION OF PAGASA NOT INTRODUCED DURING TRIAL.

IV

THE COURT ERRED IN NOT GIVING WEIGHT TO THE ACCUSED DEFENSE OF ALIBI

The appeal is devoid of merit.

The case of the prosecution must rise or fall on the strength of the testimony of Romeo Malones, Jr. who was an eyewitness to the incident. The appellant argues that it could not have been possible that upon hearing the gunshots Romeo, Jr. would still have the guts to stand up and peep to see who were the assailants instead of lying flat on the floor to protect his life as any experienced Filipino soldier would do. He also avers that it is not probable that he could have peeped through the bamboo walling of the house when the wall of the house is of flattened bamboo known as tadtad which can hardly be penetrated by wind, rain and light. He likewise states that even assuming that the moon was bright that evening, the place where the two men were allegedly seen was darkened by the shadows of some coffee plants.

Suffice it to say that Romeo, Jr. is not a Filipino soldier. He is a young man who was startled by the gunshots. He stood up and looked through the slits of the wall of their house. Such bamboo poles when dried would tend to shrink so that one inside could easily peep through the slits to see what is outside. Romero, Jr. also asserted that the moon was bright. As it was a full moon he had no difficulty recognizing the two men. He testified as follows:

"Q.

While you were there resting in your house, could you please tell us if there was any unusual incident that happened?

A.

I heard bursts of firing.

Q.

You said you heard bursts of firing. Where did it come from?

A.

I heard bursts of firing coming at the back of our house outside the fence.

Q.

When you heard bursts of firing, what did you do?

A.

I observed.

Q.

When you observed, what did you notice?

A.

I saw two (2) men.

Q.

What were those two (2) men doing that time?

A.

They were firing at our house.

Q.

These two (2) persons which you said you saw, do you know their names?

A.

Yes, sir.

Q.

Who were the names of those two (2) persons?

A.

Fortunato Vargas and Jesus Vargas, Jr.

x x x x x x x x

Q.

While ago you said that you saw two (2) persons firing at your house. With what weapon they were firing at the time?

A.

An armalite.

Q.

Who was armed with an armalite that time?

A.

I saw Fortunato was holding an armalite.

Q.

What about Jesus Vargas, Jr.

A.

I saw that he was also holding a long firearm but I cannot identify what kind of firearm.

Q.

Considering that it was nighttime at the time, how were you able to identify these two (2) persons, Jesus Vargas, Jr. and Fortunato Vargas?

A.

Because I peeped through the wall of our house.

x x x x x x x x

Q.

After you peeped through the wall of your house, how were you able to see these two (2) persons as it was nighttime?

A.

Because the moon was bright.

Q.

When you saw these two (2) persons, now far were they from the place where you were?

A.

A distance of about five (5) meters.

Q.

If we take the place where you are sitting now, where were these two (2) persons at the place where you were resting, where were these two (2) persons at the time you were resting?

A.

A distance of five (5) meters, more or less.

Q.

After you saw these two (2) persons firing at your house and after you laid flat on the ground, what happened after that?

A.

I heard another bursts of firing.

Q.

How many bursts of firing did you hear?

A.

Many.

Q.

You said that you heard several burst of firing, what happened?

A.

I saw that my father was hit."

x x x x x x x x

COURT

Q.

Please demonstrate how they were delivering the shots; what was Fortunato Vargas actually doing when you saw him?

A.

He was standing firing his firearm towards our house.

Q.

How about Jesus Vargas, Jr., what was he actually doing?

A.

He was also firing facing our house."[6]

While it is true that the trial court observed that conspiracy and evident premeditation have not been established by the prosecution, it is equally true that the testimony of Romeo, Jr. is clear that at the time he saw the accused Vargases fire simultaneously towards the Malones home with their respective firearms and together they fled from the scene of the crime. These are clear indicia of conspiracy.

In the motion for a new trial filed by the appellant before the trial court he alleged that the prosecution failed to pinpoint who among the Vargases was responsible for the death of Romeo, Sr. and Rosalie Malones and for the

wounds inflicted on the rest of the family, that since there is no conspiracy as found by the trial court and considering the alibi of the accused, consequently the acquittal of the accused is sought. The motion was denied an order dated September 19, 1988 wherein it was observed that the bureau furnished the Court a certification that on the fateful evening of October 29, 1982 the moon was bright when the incident happened.

The denial of the motion is well-taken. Indeed, there is a clear conspiracy between the two Vargases. The act of one is the act of the other. There is no need for the prosecution to pinpoint which of the victims was felled by the shots of the two.

The trial court committed no reversible error in considering the evidence presented consisting of the certification of the weather bureau as corroborative evidence. This document that was submitted even after the trial, upon the order of the court, was properly appreciated by the court. It is within the power of the court to require the production of such evidence to satisfy itself in its search for the truth even after the trial.

The appellant then argues that his alibi should be given credence.

In disposing of this defense, the trial court said:

"The accused Jesus Vargas, Jr., anchors his defense on simple denials and alibi. While Romeo Malones, Jr., asserts having seen said accused and his brother Fortunato Vargas spray their house with bullets, herein accused denies the same and maintains that he was in Brgy. Mabini, Buenavista, Guimaras, Iloilo, in the evening of October 29, 1982 attending a barangay fiesta. Attempts by the defense to establish and prove that the accused was elsewhere or away from the scene of the incident notwithstanding, the Court noted glaring inconsistencies in the testimony of defense witnesses. Whereas, defense witness Lolita Ferrer Vargas testified that the accused left their house at the New Poblacion, Buenavista, Guimaras, before lunch and returned to their house at 10:00 o'clock that same evening, another defense witness Rogelio Fernandez declared that he, the accused and their companions left the auditorium of Brgy. Mabini, Buenavista, Guimaras, at 12:00 o'clock midnight when the dance was over. In fine, the accused could not have returned to the house of his uncle Rodolfo Vargas at New Poblacion, Buenavista, Guimaras, at 10:00 o'clock that evening because said accused was still at the auditorium of Brgy. Mabini until 12:00 o'clock midnight. Whereas, accused Jesus Vargas, Jr., averred that he and his companions were served dinner in the house of Brgy. Capt. Pablito Gabe and left the place at 8:30 o'clock in the evening, defense witness Rodolfo Fernandez on the other hand testified that they were only served drinks in the house of Pablito Gabi leaving the place at 5:30 o'clock in the afternoon and they returned to the house of Fernandez for dinner (Gallon, pp. 4-5, tsn, October 28, 1987). This defense also endeavored to establish the non-availability of regular means of sea and land transportation from Buenavista, Guimaras to the Municipality of Dueñas, Iloilo. The Court takes judicial notice that it will only take from 15 to 25 minutes by pumpboat to negotiate from Buenavista to Iloilo City and that special hires could be obtained at very reasonable rates. The Municipality of Dueñas is barely 53 kilometers from Iloilo City and it is not extremely difficult to reach the place via regular means of transportation.

In order that an alibi as a defense may prosper, the evidence to support it must be clear and convincing as to preclude the possibility of the accused's presence at the scene of the crime, while the evidence as to identification must be weak and insufficient (P. vs. Alcantara, 33 SCRA 813). This is not so in the instant case. Besides the marked inconsistencies in the testimonies of defense witnesses which dented their credibility, it was not physically impossible for the accused to be at the scene of the crime. More importantly, the accused was positively identified by Romeo Malones, Jr., who was at a young age of 14 years when the incident happened and the Court has observed, Romeo showed he was able to relate well what he saw that fateful evening on October 29, 1982 despite the rigid cross-examination he was subjected to by the defense during the presentation of the evidence for the prosecution as well as the rebuttal evidence. This Court noted that Romeo Malones, Jr., testified in almost straight-forward manner, continuously and flawlessly and that he was not shaken during the cross-examination. His testimony is admissible in evidence sans any showing that it was

punctured with serious inconsistencies as to lead one to believe that he was coached." [7]

We agree.

In determining the offense or offenses committed the court reproduces with approval the disquisition of the court a quo:

"The shooting and/or spraying with series of gunfires the house of Romeo Malones, Sr., by accused Jesus Vargas, Jr., resulted to the death of Romeo Malones, Sr., and his daughter Rosalie Malones (Exhs. "A" and "B"), gunshot wounds to Maribeth and Sheila Malones requiring medical attendance for more than nine (9) days but less than thirty (30) days (Exhs. "C" and "F") and abrasions to Ronald and Nona Malones requiring medical attendance in less than nine (9) days (Exhs. "D" and "E"). The aforementioned victims sustained gunshot wounds and abrasions because of the several bursts of fire delivered by Fortunato and Jesus Vargas, Jr., (Tabud, tsn, p. 305, March 2, 1987). A perusal of the Necropsy Report (Exh. "A") and a reading of the testimony of Dr. Ricardo Jaboneta, Medico-Legal Officer of the NBI Western Visayas Regional Office, reveal that Romeo Malones sustained one (1) grazing wound caused by a bullet and four (4) gunshot wounds with three (3) deformed slugs recovered therefrom. As reflected in another Necropsy Report (Exh. "B"), Rosalie Malones sustained gunshot wounds on the right side of her head where a deformed slug was likewise recovered. Evidently, this is a case where several persons were killed and others injured by successive shots. In the case of *People vs. Mones*, No. L-2029, May 6, 1950; 47 O.G. No. 12 Supp. 11; 86 Phil. 331, the Supreme Court found the accused guilty of three distinct and separate murders, each qualified by treachery, when said accused fires a series of shots killing three persons attending a school commencement exercise. Similarly, in the case of *Peopled vs. Desierto, CA.*, 45 OG 4542, it was ruled that several shots from a Thompson submachinegun causing several deaths, although caused by a single act of pressing the trigger, are considered several acts. Although each burst of shots was caused by one single act of pressing the trigger of the sub-machinegun, in view of its special mechanism the person firing it has only to keep pressing the trigger of the sub-machinegun, with his finger and it would fire continually. Hence, it is not the act of pressing the trigger which should be considered as producing the several felonies, but the number of bullets which actually produced them (L.B. Reyes, *The Revised Penal Code*, pp. 559-560, Book I, 1971 Revised Ed.). This Court is of the considered view and holds that the aforecited jurisprudence stand four-square with the case at bar. Consequently, the accused should be held responsible for each of the resultant crimes, instead of the complex crime of double murder under Article 48 of the Revised Penal Code." [8]

The guilt of the appellant has been established beyond reasonable doubt. The testimony of the single eyewitness, Romeo Malones, Jr. proved to be competent, credible and clear. It is corroborated by the other evidence on record. Thus, the appeal must fail.

WHEREFORE, the appeal decision is AFFIRMED in toto, with costs against defendants-appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibit A.

[2] Exhibit H.

[3] Exhibits A, A-1, B and B-1.

[4] TSN, June 11, 1986, pages 8 to 15.

[5] Exhibits 16 to 17; pages 88 to 92, Rollo.

[6] TSN, March 2, 1987, pages, 2-5 and 13; pages 98 to 101, Rollo.

[7] Pages 28-29, Rollo.

[8] Pages 29-30, Rollo.

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