

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO BARING, DEFENDANT-APPELLANT.

G.R. No. 87017. July 20, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review of the decision dated January 16, 1989 of the Regional Trial Court of Lanao del Norte, Branch 4, Iligan City, convicting defendant-appellant Pedro Baring of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

The information which was filed against the appellant on June 5, 1987 by the Provincial Fiscal of Lanao del Norte reads as follows:

"The undersigned Provincial Prosecutor accuses PEDRO BARING of the crime of MURDER, committed as follows:

"That on or about the 17th of October 1985, at more or less 9:00 P.M. in barangay Lapinig, Municipality of Kapatagan, province of Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with Nelson Rodriguez, Pedro Gabato and several John Does, who are still at large and whose case is still pending in the lower Court and with Romeo Panilagao, whose case is still pending in the Military Tribunal, armed with assorted firearms, with evident premeditation, treachery, taking advantage of superior strength, nighttime and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot PATROCENIO EYAS, inflicting upon the latter gunshot wounds at the different parts of his body, which wounds caused his instantaneous death.

'That the above-named accused be adjudged to indemnify the heirs of the deceased the sum of P12,000.00 and to pay them another sum of P20,000.00 representing moral and exemplary damages.'

"CONTRARY to and in violation of Article 248 of the Revised Penal Code with qualifying circumstances of treachery, evident premeditation and the attendance of the aggravating circumstances of taking advantage of superior strength and nighttime." (p. 8, Rollo.)

Upon arraignment, Baring pleaded not guilty.

The records show that at about 9:00 o'clock in the evening of October 17, 1985, in Barangay Lapinig, Kapatagan, Lanao del Norte, the victim, Patrocinio Eyas, his wife Sosima, their daughter Maria Fe, and a younger son were watching television in their next-door neighbor's house from the open window of their house when someone called out: "Good evening." The person asked Patrocinio to come down from his house because he wanted to talk with him. The victim obliged. As he was going down the stairs, he was followed by his wife who immediately shouted for help. Maria Fe looked out and saw at that very moment her father being "shot by a certain Nelso[n] Rodriguez. Another person by the name of Romeo Panilagao also shot her father with a firearm that was firing rapidly followed by the accused Pedro Baring who also shot her father who had already fallen down. A certain

Pedro Cabato also shot her father with a firearm which was also firing rapidly. After these four persons had shot her father they left going towards the direction of the national highway. (p. 54, Rollo.) Maria Fe and her mother and brother sought help from their neighbors who carried the wounded man inside the house. They did not report the killers to the police, but a certain Dr. Bontilao arrived the next day. The deceased was embalmed for five days but very few people attended the wake because they were afraid. There were rumors that those who would attend the wake would also be killed. After the last prayers for the deceased, the victim's family moved to Bohol and later to Kabgan. They sold their farmland in Lapinig.

They did not report the murder to the authorities for fear of the killers. Besides, they believed it would have been useless because there had been other unsolved killings in their place, which the authorities had ignored. However, a year later, in August 1986, after a new mayor had been elected in Kapatagan, they reported the killing to Assistant Provincial Fiscal Cesar Zerna. Maria Fe reported that she personally knew the persons who shot her father because they were also their neighbors in Lapinig.

Sosima Eyas was presented as a witness but because she was still in shock from having personally witnessed the killing of her husband at close range, and unable to answer properly the questions addressed to her, she was withdrawn by the prosecution (p. 55, Rollo).

The appellant testified that he was a security guard of the San Diego Fishpond in Lapinig, Kapatagan, Lanao del Norte, and also a member of the CHDF, provided with a homemade shotgun as shown by his memorandum receipt. He knew the deceased, Patrocinio Eyas, who was his neighbor for sometime but he came to know of the latter's death only on October 18, 1985. He denied any participation in the killing of Eyas. He alleged that on October 17, 1985, at around nine o'clock in the evening when the shooting occurred, he was in the house of Alfredo Aleviado, conversing with him and eating iguana starting from 8:00 o'clock in the evening; that the distance between Aleviado's house and the house of Patrocinio Eyas was half a kilometer and could be negotiated by walking; and that he knew Nelson Rodriguez who was a security guard of Don Federico Santos' fishpond, also in Lapinig, Kapatagan, Lanao del Norte, and who is now dead. He also knew Pedro Gabato who was a member of the CHDF and who was a security guard in one of the fishponds, and Romeo Panilagao, a PC soldier who is now in Cotabato; that although he was a neighbor of the deceased, he did not pay his respects to the family, nor attend the funeral procession. He opined that Maria Fe Eyas could not have known the identities of the killers of her father because she allegedly approached him during the hearing in Tubod, Lanao del Norte, in December 1986 and asked him to identify the killers for if he would not do so, she would finger him as the killer.

The other defense witness was Aleviado who corroborated Baring's alibi.

On January 16, 1989, the trial court rendered judgment finding the appellant guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the penalty of reclusion perpetua. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered:

"1. Finding the accused guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua;

"2. Ordering him to pay Sosima Eyas the sum of P20,000.00 as moral damages plus the sum of P30,000.00 as indemnification for the death of Patrocinio Eyas." (p. 60, Rollo.)

Hence, this appeal wherein the appellant alleges that the court a quo erred:

1. in believing the testimony of prosecution witness Maria Fe Eyas without giving credit to the evidence of the defense;

2. in finding the appellant guilty beyond reasonable doubt of the crime of murder; and
3. in appreciating the generic aggravating circumstance of nighttime against the accused.

The first assignment of error is devoid of merit. In attempting to discredit the testimony of Maria Fe Eyas, that she saw the appellant and others shoot her father, appellant relies heavily on the circumstance that Maria Fe did not denounce the killers to the Mayor and the Barangay Captain who went to the victim's house after the incident, but reported the perpetrators of the crime only ten (10) months later.

However, Maria Fe Eyas explained that her silence immediately after the killing of her father was due to the fact that previous killings in the barrio had not been given proper attention by the authorities. The appellant himself, as pointed out by the Solicitor General in his brief, admitted that "there were people who died where the killer is unknown (t.s.n., Nov. 15, 1988). Maria Fe's silence for a period of ten months after her father's death was, therefore, understandable.

Besides, at the time of the killing, Maria Fe was only sixteen years old. Neither her mother who was in a state of shock, nor her grandparents who were terrified of her father's killers, could provide her with guidance and encouragement in seeking redress for her father's murder. It was only when her mother had partially recovered from shock that both of them decided to report the incident to Assistant Provincial Fiscal Zerna and to the new mayor of Kapatagan.

The court a quo correctly rejected the appellant's defense of alibi in view of the clear and positive identification by Maria Fe of the accused-appellant as one of her father's killers. It held thus:

"The defense is alibi, the accused denying having participated in killing, alleging that he was in another place at the time of the incident. However, he was positively identified by the daughter of the deceased, Maria Fe Eyas, whose testimony appeared to be credible and devoid of any falsehood. Accused and his witness even admitted that they could not think of any motive at all by Maria Fe and her mother to implicate the accused in the killing. The identification of the accused by the prosecution witness appears to be indubitable considering that she knows him quite well being a neighbor for some period of time and as already stated, there appears to be no reason for Maria Fe Eyas to point to the accused as one of the killers if he was not guilty.

"Our Supreme Court has ruled that:

"xxx xxx xxx

"An alibi in order to be given full faith and credit must be clearly established and must not leave any room for doubt as to its plausibility and verity. – People vs. Sagario, L-18659, June 29, 1965, 14 SCRA 468; People vs. Pasilan, L-18770, July 30, 1965, 14 SCRA 694; People vs. Dayday, L--20806-07, August 14, 1965, 14 SCRA 935.

"xxx xxx xxx

"Considering that the admission of the accused and his witness that the accused was only half a kilometer away from the scene of the crime which can even be negotiated just by walking, his defense of alibi fails." (pp. 57-59, Rollo.)

Courts always receive with caution, if not suspicion, evidence of alibi, "not only because it is inherently weak and unreliable, but also because of its easy fabrication. To overcome the evidence of the prosecution, an alibi must satisfy the test of 'full, clear, and satisfactory evidence.' This test requires not only proof that the accused was somewhere else other than the scene of the crime, but clear and convincing proof of physical impossibility for the accused to have been at the place of the commission of the crime." (People vs. Gaddi y Catubay, 170 SCRA 649).

Appellant's second and third assignments of error are not well taken. The trial court correctly found the accused guilty of murder aggravated by the generic aggravating circumstance of nighttime. Said the trial court:

"The accused is charged of murder and as alleged in the information the crime was committed with evident premeditation, treachery, taking advantage of superior strength and nighttime. However, the prosecution failed to prove the qualifying circumstances of evident premeditation and treachery. But, the qualifying circumstance of taking advantage of superior strength was duly proven since it was shown that the deceased was killed by four armed men. It was proven that the crime was committed at nighttime, obviously to facilitate the killing of the deceased.

"The crime committed therefor and proven is murder aggravated by the circumstance of nighttime. x x x." (p. 59, Rollo.)

Maria Fe Eyas clearly and positively testified that she saw the accused shoot her father even after the latter had fallen to the ground. She saw her father gunned down by Pedro Baring and his armed companions, namely, the team leader Nelson Rodriguez, Romeo Panilagao, and Pedro Gabato.

The trial court was perplexed that the accused, admittedly "never paid his respects to the dead nor join the funeral procession despite the fact that they were neighbors." It rejected his alibi as well as his "incredible claim" that the daughter of the deceased Maria Fe Eyas approached him during the hearing of the criminal case in the sala of Judge Salazar at Tubod, Lanao del Norte and asked him to identify the killers otherwise he would be pointed to as the killer, "since the records will show (page 5 of the records) that long before the hearing Maria Fe Eyas had already executed an affidavit pointing to him and several others as the killers." (pp. 58-59, Rollo.)

The aggravating circumstance of nighttime was correctly appreciated against the accused. The accused-appellant, who was living only 150 meters away from the victim's house, evidently waited for nightfall to hide his identity and facilitate his escape, knowing that most barrio folks are already asleep, or getting ready to sleep, at 9:00 p.m. "Nocturnity is an aggravating circumstance when it is deliberately sought to prevent the accused from being recognized or to ensure his unmolested escape." (U.S. vs. Billedo, 32 Phil. 575; People vs. Perez & De Leon, 32 Phil. 163; People vs. Apduhan, 24 SCRA 789, 816; People vs. Ancheta, 148 SCRA 178).

WHEREFORE, finding no merit in the appeal, the decision of the trial court is affirmed in toto.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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