

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO DE MESA Y PANTALEON AND MARIO DE MESA, ACCUSED, DOMINGO DE MESA Y PANTALEON, ACCUSED-APPELLANT.*G.R. No. 87216. July 28, 1990*

Ponente: MELENCIO-HERRERA. J.

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This is an appeal brought before this Court by appellant, Domingo de Mesa y Pantaleon, from a Decision of the Regional Trial Court of Quezon City, Branch 104 (Special Criminal Court),^[1] dated 1 February 1989, which adjudged him guilty beyond reasonable doubt of the crime of Murder and sentenced him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim in the sum of one hundred thousand (P100,000.00) pesos representing actual, compensatory and moral damages; and to pay the costs.

The prosecution presented as a witness; Crisostomo Mapalad, a helper in .Yolly's Canteen, situated at 1081 Quirino Hi-way, Barangay Kaligayahan, Quezon City, where the crime occurred. In his testimony (Rollo, pp. 15-16, TSN, pp. 20-22, October 18, 1989) he narrated that on 19 January 1988, at about 3:45 in the afternoon, the appellant, together with his co-accused Mario de Mesa, who is his cousin, and another man, arrived at Yolly's Canteen. They ordered beer and started drinking. The victim, Sgt. Renato Santos, a member of the Malabon Police. Station and owner of the canteen, also entered the premises and after asking for coffee, sat on a long bench inside the canteen. The appellant approached Sgt. Santos and asked him whom he had voted for. When the latter replied that he had voted for "Oreta", appellant's cousin, Mario de Mesa, addressed these remarks to Sgt. Santos, "Gago ka pala. Si Planas ang ibinoto ko." Sgt. Santos said that he voted in Malabon. Mario de Mesa, however, said, "Baka akala mo, komo sarhento ka ay natatakot ako sa iyo." Sgt. Santos asked Mario de Mesa, "Bakit, inaano ba kita?" As Sgt. Santos started to stand up, Mario de Mesa pushed him on the shoulder as appellant Domingo de Mesa simultaneously stabbed him on his left chest below the shoulder. Mapalad witnessed the incident as he was only about one arm's length from the three. The witness knew the appellant as the latter drank and ate at the canteen quite often.

After the stabbing of Sgt. Santos, Mario and Domingo de Mesa ran away. The victim drew his gun and fired three times but he was not able to hit them (Rollo, p. 15). Sgt. Santos was taken to the MCU Hospital where he expired.

On 20 January 1988, appellant was apprehended at the BLTB bus terminal in Pasay City. He was arraigned while his cousin, Mario de Mesa, remained at large. In the course of the trial, the prosecution Corrected the name of the appellant appearing in the Information from Dominador de Mesa y Pantaleon to Domingo de Mesa y Pantaleon (Rollo, p. 15) .

The prosecution also presented Beatrice Alpanoso Perez. Her testimony (Rollo, p. 16, TSN, pp. 3-6, October 5, 1989) dovetailed with that of Mapalad on all material points. She stated that she went to Yolly's Canteen to borrow some lotion from her sister-in-law, Yolly Santos, owner of the canteen and the second wife of the victim. She observed that the appellant and the latter were having an argument. It turned out that the appellant was trying

to get from Yolly Santos the clothes of a certain Marivic, but Yolly refused because Marivic is indebted to her in the amount of P300.00. After that, the appellant approached Sgt. Santos, and the subsequent exchange of words between them leading to the stabbing incident, occurred.

The defense presented only one witness, the appellant, 25 years, single, a deep-well driller, who categorically denied that he had stabbed the victim. He implicated his cousin and co-accused, Mario de Mesa, as the perpetrator of the crime. He narrated that at 3:45 in the afternoon of 19 January 1988, he was inside Yolly's Canteen with his cousin, Mario de Mesa and another man named Nick De Vera. While inside the canteen, he witnessed an argument among Sgt. Santos, the victim, Mario de Mesa (accused-at-large) and Yolly" Santos. According to him, the argument started when he asked Renato Santos whom he voted for. When Santos answered "Oreta", Mario de Mesa said, "Tarantado ka pala, Quezon City ito. Bakit si Oreta ang ibinoto mo." The victim reportedly answered, "Tarantado ka rin." The appellant said that he transferred to another bench when an altercation ensued between the two. After several moments, appellant claimed that Mario de Mesa told him to run. When he asked Mario why, appellant alleged that Mario told him that he stabbed a man, which he assumed to be Sgt. Santos. He knew that Mario, a butcher, was carrying a knife when they entered the canteen. As they were fleeing the place, he heard three successive gun shots (TSN, pp. 45-49, 14 December 1988).

When asked if he knew of any reason why Crisostomo Mapalad would testify against him, he told the Court that he had a previous quarrel with the latter (TSN, p. 50, 14 December 1988). The accused admitted that Crisostomo used to be his gangmate and knew him for about three years.

On cross-examination, the appellant said that he used to talk to the victim about the elections whenever they saw each other, and that he did not get angry when he was told by the victim that he voted for Oreta since he knew that he was from Malabon (TSN, p. 54-55, 14 December 1988).

As aforesaid, the Trial Court convicted the appellant of the crime charged, holding that his denial of participation in the crime cannot overcome the positive identification made by the witnesses. The Court also noted the presence of treachery in the execution of the crime (Rollo, p. 19). Hence, this appeal wherein the appellant interposes the following Assignments of Error:

I

THE COURT A QUO ERRED IN RELYING SOLELY ON THE TESTIMONIES OF THE PROSECUTION'S WITNESSES AND IN REJECTING THE EVIDENCE FOR THE DEFENSE.

II

THE COURT A QUO ERRED IN CONVICTING 'USED DOMINGO DE MESA OF MURDER -INSTEAD OF HOMICIDE GRANTING WITHOUT ADMITTING THAT HE IS GUILTY.

This appeal lacks merit. A thorough law of the records of the case indicates that the guilt of the appellant has been demonstrated beyond reasonable doubt.

The first error assigned by the appellant revolves around the credibility of the prosecution witnesses as against his own testimony. On this point, the established rule is that the Appellate Courts will generally not disturb the factual findings of the Trial Court, as the latter is in a better position to decide the same, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial (*People v. Olalia*, No. 50669, March 12, 1984, 128 SCRA 139). In the case at bar, the testimonies of the witnesses against the appellant were straightforward, categorical and convincing. Their declarations were unimpaired by material discrepancies even when subjected to cross-examination. Against this backdrop, the veracity of their testimonies must be

accepted.

The prosecution witnesses positively identified the appellant as the one who stabbed the victim. Beatrice A. Perez testified:

Q. When Domingo de Mesa sat beside Sgt. Santos, what happened next, if any?

A. Domeng asked Sgt. Santos whom he voted.

Q. What was the answer of Sgt. Santos, if any, to the question asked by Domeng?

A. Sgt. Santos answered, he voted for Oreta.

Q. What happened next after Sgt. Santos answered it was Oreta whom he voted?

A. Mario de Mesa, cousin of Domeng said "gago ka pala."

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Q. What did Sgt. Santos do, if any, when Mario de Mesa uttered such words to him?

A. None, he stood up.

Q. When Sgt. Santos stood up, what happened next, if any?

A. Mario tapped him on the right shoulder and simultaneously Domeng stabbed him on the left side of his shoulder (TSN, pp. 5-6, October 5, 1988, underscoring supplied).

Crisostomo Mapalad also told the Court:

Q. And what happened next after Dominador de Mesa approached Sgt. Santos?

A. He asked him who he voted for and Sgt. Santos answered Oreta.

Q. And what was the reaction of Doming de Mesa,

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A. His cousin bat (sic) in and said "Gago ka pala. Si Planas ang ibinoto ko."

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Q. Then, what happened next, if any?

A. After that, Mario said that: "Baka akala mo, komo Sarhento ka ay natatakot ako sa iyo."

Q. And what happened next, after that?

A. And Sgt. Santos said: "Bakit, inaano ba kita?", and he attempted to stand up, but Mario pushed him on the shoulder and simultaneously, Doming stabbed him (TSN, pp. 21-22, October 18, 1988, underscoring supplied).

Thus, there can be no doubt regarding the positive identification of the appellant as the perpetrator of the crime. It is well-settled that greater weight is given to the positive identification of the accused by the prosecution witnesses than to the accused's denial and explanation concerning the commission of the crime (People v. Canada, No. 63728, September 15, 1986, 144 SCRA 121; People v. Mostoles, Jr., L-38644, September 30, 1983, 124 SCRA 906). Against such positive identification, appellant's negative assertion that he did not kill the victim cannot prevail (People v. Sabado, No. 76952, December 22, 1988, 168 SCRA 681). Further, it has been ruled that the early identification of an accused by prosecution bespeaks of their spontaneity and veracity v. Chavez,

L-38603, September 30, 1982, 117 SCRA 221)

In an effort to discredit the positive identification made by prosecution witnesses, the appellant emphasized that Crisostomo Mapalad was the victim's canteen helper for more than two years, hence, his loyalty to his employer cannot be discounted. And, in respect of Beatrice A. Perez, he avers that being the sister-in-law of the victim, she had a strong motive to testify falsely (Rollo, p. 38). Mere relationship to the victim, however, need not automatically tarnish the testimony of witnesses. "When there is no showing of improper motive on the part of witnesses for testifying against the accused. The fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. On the contrary, their natural interest in securing the conviction of the guilty would delve them from implicating persons other than the culprits, for otherwise, the latter would thereby gain immunity" (People v. Radomes, No. 68421, March 20, 1986, 141 SCRA 548; People v. Canada, supra). The appellant failed to point any specific reason that motivated the witnesses to testify falsely against him other than their relationship to the victim. As regards Mapalad, the appellant told the Court that he had a previous quarrel with him over gambling. Suffice it to state that this is not a strong enough reason to discredit Mapalad's testimony specially in the light of its obvious credibility.

Appellant's attempt to shift culpability to Mario de Mesa, who is still at large, is a convenient device which cannot succeed in the face of positive evidence against him.

With respect to the second assigned error, the Trial Court, correctly appreciated the presence of treachery in the commission of the crime. As the records disclose, the victim was suddenly stabbed by the appellant without any warning. Although he was armed with a gun, he was never given an opportunity to ward off the assault due to its suddenness. The defense cannot justifiably argue that the heated discussion had placed the victim or his guard. After all, only a trivial matter was involved. As the evidence discloses, the victim was complete unprepared for the attack, was unable to offer any resistance, nor make any move whatsoever in his defense. The attack was, therefore, carried out in a manner that precluded any risk or retaliation to the appellant that could have come from the victim. Treachery was unquestionably present.

Pursuant to the majority opinion in People v. Muñoz and Millora (L-38969-70, February 9, 1989, 170 SCRA 107), the impossible penalty for Murder, in the absence of any circumstance, is reclusion perpetua.[2]

WHEREFORE, the judgment is AFFIRMED, except that the indemnity awarded the heirs of the deceased is reduced to P30,000.00, consistent with prevailing jurisprudence. Costs against accused-appellant.

SO ORDERED.

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

[1] Judge Maximiano C. Asuncion, presiding.

[2] Subject to the undersigned's own dissenting opinion

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