

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO SAGADSAD, JESUS ATENDIDO, OSIAS ATENDIDO, RAMON ATENDIDO, ACCUSED-APPELLANTS, ALINER ATENDIDO) MANUEL ATENDIDO) AT LA...

G.R. No. 88042. November 13, 1992

Ponente: MELO, J.

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MELO, J.:

Before Us is the appeal from the decision dated July 5, 1988 of the Regional Trial Court of the Fifth Judicial Region (Branch XLIV, Masbate, Masbate) in its Criminal Case No. 3419, which found herein accused?appellants guilty beyond reasonable doubt of the crime of murder and sentenced them to suffer the penalty of Reclusion Perpetua, except for Ramon Atendido who was meted out the penalty of ten years and one day of Prision Mayor to seventeen years and four months of Reclusion Temporal. All the accused were likewise ordered to indemnify the heirs of the victim in the sum of Thirty Thousand Pesos (P30,000.00) and to pay the costs of suit (Original Record, Decision, p. 175).

Accused-appellants were charged in an information filed on August 31, 1981 which reads as follows:

"That on or about April 16, 1981, in the afternoon thereof, at Barangay Matugnao, Municipality of Palanas, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused confederating together and helping one another, with intent to kill, evident premeditation, treachery and superiority of strength, did then and there willfully, unlawfully and feloniously attack, assault, strike with stone, beat with a piece of bamboo pole, hack with a bolo and stab with a knife one Alicia Bulan, hitting the latter on the different parts of the body, thereby inflicting wounds which directly caused his instantaneous death.

Contrary to law." (p. 7, Rollo; p.1, Original Record)

Gregorio Sagadsad and the brothers Jesus, Osias, and Ramon Atendido were later apprehended by the authorities, while Manuel and Aliner Atendido remained at large. Upon arraignment, accused-appellants entered a plea of not guilty to the crime charged (Original Record, p. 22), and at the ensuing trial, the prosecution presented the following witnesses:

Dr. Ernesto Tamayo, the Municipal Health Officer of Dimasalang, Masbate who testified that he conducted a post-mortem examination on the body of the victim, Alicia Bulan. Based on his findings, he explained that the hematomas at the root of the nose, at the mouth and at the forehead could have been caused by hard blunt instruments like a stone and a bamboo pole and that the hack and stab wounds were probably caused by sharp bladed instruments like a bolo and a knife. Dr. Tamayo considered most of the said wounds as fatal. In the death certificate which he issued, he confirmed that the death of the victim was due to "multiple hacking wounds, scalp wounds and multiple stab wounds."

On cross-examination, Dr. Tamayo stated that he was not informed where the incident involving the victim

occurred. He added that the hack and stab wounds could have been caused by the same sharp bladed instrument and inflicted by only one or several persons. (tsn, November 24, 1982, pp. 2-5; 6-7).

Fortunato Tamayo, a resident of Bo. Nipa, Palanas, Masbate and the eyewitness of the prosecution, declared that he knew the accused as he frequented their place when he was not yet married. On April 16, 1981, he went to Matugnao, Palanas, Masbate to lay bets on a cockfight being sponsored by the Barangay Captain, one of the accused herein, Ramon Atendido. Alicia Bulan and Rodito Alutaya were already there, participating in the "hantak" and in the cockfight. At about 5:00 o'clock in the afternoon, the witness invited Bulan and Alutaya to go home with him. As they were about to leave, Bulan was suddenly hit on the face by a stone thrown by Gregorio Sagadsad. As Bulan staggered, Aliner Atendido struck him at the back of his head with a bamboo pole about two arms length. Bulan fell to the ground face down, then Osias Atendido hacked him at the side of the right temple with a bolo. At this point, Barangay Captain Ramon Atendido told a group "to kill him (Bulan) and I will take care of everything." Thus, Manuel Atendido stabbed Bulan with a hunting knife. Fortunato claimed that he saw all these from a distance of about twenty meters. Then he heard Osias say, "where are the companions of the victim and we will kill them so that they could not report the incident." Scared, Fortunato ran and upon reaching his home, he and Rogelio Tamayo went to Andresito Tamayo to summon the police authorities.

On cross-examination, Fortunato stressed that the incident occurred at the yard of Ramon Atendido's residence. (tsn, July 25, 1983, pp. 10-29).

Cpl. Ariel Batiancela, a member of the Integrated National Police assigned at Palanas Police Station, testified that on the night of April 16, 1981, he conducted an investigation of the same incident during which Ramon Atendido voluntarily surrendered to him after admitting that he alone killed the victim. Except for the said accused and his mother, Cpl. Batiancela was not able to interrogate any other person. Thereafter, he brought Ramon Atendido to the police station. He did not, however, file the case at the Fiscal's office.

When cross-examined, Cpl. Batiancela stated that according to Ramon Atendido, there was no "hantak" or cockfight on that fateful day; that the victim Alicio Bulan and Fortunato Tamayo went to his (Ramon Atendido's) house to retrieve the machete which was confiscated during a dance, and that the other accused were not around when Ramon hacked the victim to death. (tsn, August 29, 1983, pp. 32-39).

Gregorio Bulan, the father of the victim, declared that Andresito Tamayo informed him of his son's fate at the hands of Gregorio Sagadsad and the brothers Ramon, Jesus and Aliner Atendido. He immediately verified the incident and he found out that his son was hacked, stoned and stabbed to death. The witness admitted that he was not able to report the same to the police authorities because his wife fainted and he had to attend to her. The witness also mentioned that Pat. Batiancela, a nephew of the accused Atendidos and a policeman assigned at Palanas Police Station, approached him and his wife and proposed to settle the case amicably, saying that the accused were offering the sum of P3,000.00 for the death of their son. At that time, the accused were already in jail.

In court, the witness specifically asked for the sums of P18,000.00, P1,000.00 and P500.00 for damages, attorney's fees and litigation expenses, respectively. (tsn, June 8, 1984, pp. 41-48).

The defense, on the other hand, interposed denial and self-defense (only with respect to Ramon Atendido) and presented seven witnesses.

Gregorio Sagadsad, one of the accused, strongly denied the charge. He said that he went to Yati, Liloan, Cebu City on April 9, 1981 with Jesus Atendido to sell buri midribs. He stayed there for about three weeks and returned to Matugnao in the month of May. He surmised that he was implicated in the crime because he was the barangay

tanod who confiscated the weapon Bulan used in stabbing a person during a benefit dance sometime in February, 1981.

When cross-examined, Sagadsad admitted, however, that he did not actually see Bulan stab a certain Buscay but that the latter's uncle merely told him so. Under threats of arrest, Bulan surrendered the knife to him. Sagadsad affirmed that the Barangay Captain did not bring Bulan to the police station but merely turned over the said knife to the authorities.

Further, Sagadsad declared that he had no misunderstandings with Fortunato Tamayo and wondered what prompted the latter to testify against him. (tsn, June 16, 1986, pp. 51-60).

Vicente Caayon, a fisherman and a resident of Magtugnao, averred that on the day in question, he was gathering tuba from a coconut tree inside Ramon Atendido's yard. At about 6:00 o'clock in the evening, Bulan arrived, together with Ramon Tamayo, shouting "who is brave?" and demanding the return of his weapon which Ramon allegedly confiscated from him. The latter simply replied that the said weapon was already turned over to the Station Commander. Angered, Bulan who was armed with a bolo, attempted to go up the stairs of Ramon's house but he was hit by a stone and fell down. He immediately stood up as Ramon had also armed himself with a bolo. Gregorio Sagadsad, Manuel and Jesus Atendido were not around by then. Caayon said that one Nemesia Alforon also witnessed the incident because she was inside Ramon's house at that time.

On cross-examination, Caayon stated that while atop the coconut tree, he saw all that transpired inside the house through the open door. Ramon's wife and children including Alforon were crying and shouting for help. Ramon then accepted Bulan's challenge and was not wounded at all during the fight. Bulan, however, was hit on the head and was consequently killed inside Ramon's house. After a week, Ramon came to him and told him to testify in court (tsn, November 4, 1986, pp. 62-78).

Nemesia Alforon, a resident of Lipata, Palanas, Masbate, corroborated Caayon's testimony as to the time of arrival of the victim and his encounter with Ramon Atendido. Alforon also asserted that she did not see Gregorio Sagadsad and Jesus and Osias Atendido during the incident.

When cross-examined, she said that on that fateful day, her neighbor's cornmill which she normally used to grind her corn, was out of order so she went to Ramon Atendido's house in Matugnao, about a kilometer away from Lipata. Alforon added that the incident took place in the yard. When Ramon hacked the victim, Ramon Tamayo fled and she, too, jumped over the window where she was watching the brawl, and ran away. Upon reaching her home, she narrated the event to her husband. The following morning, she learned that Bulan was already dead and that Ramon Atendido had surrendered to the authorities. Eventually, Ramon came to see her and asked her to testify in court. (tsn, December 9, 1986, pp. 80-93).

Jesus Atendido, another accused in the instant case, testified that he lived in his own house in Matugnao about 100 meters from the house of his elder brother Ramon. On April 9, 1981, he left for Cebu City to work at Pier 4. He stayed there for two months and then returned to Matugnao in June.

Upon cross-examination, Jesus maintained that since 1979, he had been employed by Pepsi Cola Bottling Co. to load and unload softdrinks to and from any vessel. When he got married in 1980, he still continued his work therein while his wife remained in Matugnao. Jesus said he went home only after he received his salary on a weekly, sometimes monthly or bi-monthly basis. As he did not receive his salary for the month of April, he worked for two more months before he went back to Matugnao. Jesus claimed that his manager Tomas Codera could attest to his declarations. Finally, Jesus denied being acquainted with Fortunato Tamayo, thus he was surprised at his implication in the crime charged. (tsn, December 9, 1986, pp. 93-102).

Osias Atendido, an elder brother of Jesus and also one of the accused, likewise refuted his involvement in the crime. He said that for over a month beginning on April 2, 1981, he was in Nursery, Masbate, Masbate, helping Wilfredo Halili, a mason, in the construction of a health center. He admitted though, that he went home to Matugnao on weekends. Osias claimed that he came to know of the incident when he was already arrested.

When cross-examined, he said that his house was about a kilometer away from his brother Ramon's house. Osias also added that he had no previous quarrels with Fortunato Tamayo, said to be the victim's uncle. (tsn, February 11, 1987, pp. 104-109).

Ramon Atendido, the self-confessed assailant herein, branded Fortunato Tamayo's version as a blatant lie. On the other hand, he affirmed the testimony of both Caayon and Alforon. Ramon further stated that Bulan remarked, "Captain, get down, I will kill you." Intending to frighten him off, Ramon threw a stone at Bulan. Undaunted, the latter went up to the porch and Ramon was then compelled to fight back in self-defense. Ramon emphatically stressed that his brothers Jesus, Aliner, and Osias as well as Gregorio Sagadsad were not present at that time. After the incident, he surrendered to Cpl. Ariel Batiancela.

On cross-examination, Ramon said that Bulan got angry upon learning that his weapon was already turned over to the authorities. It was then that Bulan issued the challenge which Ramon eventually accepted. In the Meantime, Ramon Tamayo, Bulan's alleged companion, stayed at the yard and did nothing at all while the fight was going on. Ramon confessed that he made sure Bulan would die and not leave that place alive. He also explained that he sustained no injury because Bulan missed his thrusts owing to the blood oozing from him. Upon his surrender, he told the police that he killed Bulan because the latter challenged him to do so. (tsn, March 18, 1987, pp. 111-126).

Wilfredo Balile, the last defense witness, testified that Osias Atendido helped him in carpentry works at the construction of a health center at Nursery, Masbate, Masbate. They were both engaged in the said task from February until the completion of the center in May, 1981. Specifically on April 16 of the same year, a Holy Thursday, he and Osias worked only up to 2:00 o'clock in the afternoon, after which he (Wilfredo) proceeded to the place of a certain Pabling Verano. There was no available transportation the next day so he went home to Nabangig, Palanas, Masbate, on Saturday, April 18, 1981. (tsn, March 14, 1988, pp. 128-134).

On July 5, 1988, the trial court rendered its decision finding all the accused guilty beyond reasonable doubt of the crime charged (pp. 20-29, Rollo). Their subsequent motion for reconsideration was denied (p. 4, *ibid.*). Hence, the instant appeal.

The pivotal issue in the case at bar hinges on the credibility of witnesses, thus Our effort to synthesize their testimony.

In praying for a reversal of the trial court's decision, counsel for appellants assails the same by contending that a) Fortunato Tamayo's testimony was not corroborated and thus, is not credible at all as it was Ramon Tamayo who was actually the victim's companion on that fateful day; b) Ramon Atendido killed the victim in self-defense; c) the alibis of the other accused as well as the testimony of Cpl. Batiancela should have been considered by the court; and lastly, d) conspiracy was not established by sufficient proof.

It is readily evident that these are factual concerns, and in this regard, it is essential to recall the principle that the findings of the trial court are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which, if considered, would have affected the result of the case. (*People v. Florida*, G.R. No. 90254, September 24, 1992 and other cases cited therein).

A careful scrutiny of the records reveals that the case at bar is not an exception. The appeal, therefore, must fail.

Firstly, We find the testimony of Fortunato Tamayo to be candid, frank, and straightforward. There is nothing therein that appears to be unnatural or illogical. More importantly, Fortunato's positive identification of accused-appellants and their respective participation in the gruesome crime have not been overturned as the consequences thereof were corroborated by the medical findings of Dr. Ernesto Tamayo, another prosecution witness. Nevertheless, in an attempt to discredit him, the defense states that Fortunato should not be believed because he is an uncle of the victim. It has long been settled though that relationship between the victim and the witness does not necessarily undermine the credibility of the witness. It is an established and conceded rule that the mere fact that the witness is a relative 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 any ill motive. (*People v. De Guzman*, 194 SCRA 628 [1991]). Since there was no evidence as to the existence of such motive, Fortunato's testimony was rightfully given full faith and credit. (*People v. Manzanares*, 179 SCRA 427 (1989)). In yet another attempt to impeach Fortunato, the defense likewise asserts that had the prosecution presented Ramon Tamayo, allegedly the true companion of the victim, he could have strongly bolstered the account of accused-appellants. If this is so, why then did the defense not call Tamayo to testify as its own witness? The fact that it did not, reflects on its own negligence or probably apprehension that Ramon Tamayo's testimony would not really advance the cause of accused-appellants. (*People v. Abaya*, 185 SCRA 422 [1990]).

Secondly, Ramon Atendido's invocation of self-defense is negated by the physical evidence in the case. Specifically, the number of wounds indicates that his act was no longer an act of self-defense but a determined effort to kill his victim (*People v. Maceda*, 197 SCRA 502 [1991]). Even more incriminatory is the testimonial evidence at hand. Thus, We find the following categorical statements in Ramon Atendido's testimony:

"Q. And that alone could kill Alicia Bulan? The wound that he sustained on his stomach could kill him, is that correct?

A. When I started to hack him, I made sure that he will die, so that he could not retaliate because he might kill the members of my family.

Q. So you really make (sic) sure that he could not get out (sic) that place alive?

A. Yes Sir.

(tsn, March 18, 1987, pp. 123-124; Underscoring supplied.)

Certainly, a man who has set in his heart the decision to take away another man's life does not deserve the benevolence of this Court.

We shall now proceed to evaluate the alibi of the other accused. The rule is that the defense of alibi is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated. For alibi as defense to overcome the positive identification of the prosecution, it 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 v. Valiente*, G.R. No. 103269, September 2, 1992). This, the defense failed to demonstrate. No evidence was presented to prove that it was virtually impossible for the accused-appellants to have been at the scene of the crime on the day in question. Even the explanation proffered by Gregorio Sagadsad and Osias Atendido appears to be too superficial to be considered worthy of belief. Gregorio Sagadsad's alleged stay with his brother at Tabuan, Cebu City, seems to be more of an afterthought as it was unsubstantiated by any proof. On the other hand, Wilfredo Balile who testified in favor of Osias Atendido, distinctly stated that on that fateful day, their work at the construction site in Nursery, Masbate, was only up to 2 o'clock in the afternoon, being a Holy Thursday. From such time onwards, Osias' whereabouts

remained unconfirmed. It was highly probable that he had already gone home to Matugnao by then. Certainly, it is more likely for Gregorio and Osias to have spent the rest of the Holy Week with their respective families. Indeed, evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. (People v. Nabayra, 203 SCRA 81 [1991]). The situation is different, however, in the case of Jesus Atendido. We agree with the Solicitor General's Comment in this regard:

"The trial court found Jesus Atendido in conspiracy with the other appellants. It must be observed, however, that there is no evidence on record to prove even his presence at the scene of the crime. He should, therefore, be acquitted. (p. 84, Rollo).

Anent Pat. Batiancela's testimony, suffice it to say that the same is purely hearsay as his knowledge of the incident was entirely supplied by the accused Ramon Atendido.

Finally, We hold that as far as Gregorio Sagadsad and Ramon and Osias Atendido, are concerned, conspiracy has been sufficiently established. No proof is more eloquent than the multiple wounds they inflicted in their simultaneous attack on the hapless victim. Treachery and abuse of superior strength unmistakably attended the commission of the offense.

WHEREFORE, premises considered, the appealed judgment is AFFIRMED subject to the following modifications: a) Jesus Atendido is hereby ACQUITTED; and b) the civil indemnity is increased from P30,000 to P50,000 in accordance with Our latest pronouncements.

SO ORDERED.

Gutierrez, Jr., Acting C.J., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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