

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR ESPEJO Y ESPINO, PABLO PAPIONA Y CAHIPE AND GENARO AGUIRRE, ACCUSED. NESTOR ESPEJO, ACCUSED-APPELLANT.

G.R. No. 88662. June 18, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Only accused-appellant Nestor Espejo y Espino invokes our review in this appeal from the decision[1] of the Regional Trial Court of Bulacan, Branch 12, in Criminal Case No. 76-M-87 promulgated on May 29, 1989, finding him guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased in the amount of P30,000.00. For lack of evidence, the other accused, Pablo Papiona, was acquitted while the third accused, Genaro Aguirre, was not tried and has remained at large.[2]

The facts of the case as found by and stated in the decision of the court a quo are as follows:

"In the evening of June 12, 1986, at about 11:30, a man silently entered the house of Police Corporal Jose Salonga y Bernabe of San Jose del Monte Police Station of Bulacan, who was then sleeping in a bed with his wife Pilar and their three young children. The house was at the Barangay Dulong Bayan in the Municipality of San Jose del Monte, Bulacan. Cpl. Salonga and his family were lying in bed inside their bedroom without its lights on, next to the dining room where the light was open. Between him and his wife in the bed was their 6-year old child, their youngest.

"The intruder tip-toed inside the bedroom and, standing just at the foot of the bed, pointed an armalite rifle at the sleeping police corporal. It was then that his wife Pilar felt the presence of someone inside the room. As soon as she opened her eyes and saw him pointing an armalite at her husband, the gun fired. The burst drove several bullets in the body of Cpl. Salonga, killing him instantly. His wife and their second child screamed as the gunman fled from the house. She kept on shouting, 'Dios ko po, Dios ko po, ang akin pong asawa ay binaril! Dios ko, patay na po ang asawa ko!' Their child cried, 'Inang, Inang, ang Daddy ko namatay na!'

"Minutes later, the mother of Pilar from a neighboring house arrived, followed by Barangay Captain Bernardo Aguirre and Cpl. Eusebio German, both of whom were also of Barangay Dulong Bayan, the latter a co-police officer of her slain husband at the San Jose Police Station. Cpl. German was able to recover several empty bullet shells from the scene. After viewing the body of the victim and finding out from Pilar the time of the incident, the two officers left, as more people arrived that night, only to come back later on with Capt. Eleazar Jimenez, their Station Commander, and Mayor Reynaldo Villano of San Jose del Monte. Confused and crying Pilar was able to say that she saw her husband's assailant. Capt. Jimenez, however, told her that she had no evidence to prove what she said. So she just talked to Celso Reyes, her 'compadre' and also a police officer of that town who advised her to seek the help of the PC CIS, instead.

"That early morning of the following day, June 13, Capt. Jimenez brought Pilar to the police station for investigation. There at about 5:00 o'clock her written statement (Exh. '1') was taken by PFC Rudy L.

Pastores, the Asst. Chief of investigation and Intelligence Section. Among other things, said statement contained the following question and answer (Exh. '1-b'):

‘7. T Nakita mo ba ang taong bumaril sa asawa mo?’

S Nakita ko po ngunit, Hindi ko xxxxxxxx namukhaan.’

"That same day at about 5:00 in the afternoon, after having been informed on the telephone by Pat. Celso Reyes of the death of Cpl. Salonga, the former police station commander of San Jose del Monte, Major Romeo Maganto, came to the house of Pilar and talked to her about the incident. The said police major, the Chief of the Narcotics Division, Western Police District, thereafter formed a police team for the apprehension of the suspects whose identity and aliases were furnished by their so-called 'grapevine' or confidential police informer.

"So on the night of June 28, 1986, acting on a confidential information, Major Maganto and his team waited for the suspects at the Moravilla Disco Pub in Marilao, Bulacan, and apprehended Nestor Espejo y Espino and Pablo Paiona (sic) y Cahipe when the two arrived at about 10:00 with the police informer. They were brought to Metro Manila and turned over to the PC CIS in Quezon City for investigation the following day, but only after Major Maganto subjected them to his own investigation or questioning about the killing of Cpl. Salonga.

"At the PC CIS in Camp Crame, Q.C., Nestor E. Espejo gave a nine-page statement in Tagalog (Exh. 'C'-'C-9'; Exh.'2'-'2-1') to Police Corporal Avelino C. Abogado at 11:10 in the morning of June 30, 1986, inside the office of the Special Operations Group (SOG). In that unsworn statement there was the admission by suspect Espejo that he was the actual gunman who shot Police Corporal Salonga to death with an armalite, and his implication of the other suspect Paiona (sic) and a certain Aguirre and Pfc. Rudy Pastores of the San Jose del Monte Police Station as the brains behind the killing.

"At 8:38 in the evening of the same day, the widow, Pilar Salonga, gave her own statement under oath (Exh. 'A'-'A-4') to the same CIS investigator, Cpl. Abogado, wherein she pointed and picked out Nestor E. Espejo, 'in a line-up composed of S/Sgt. Alfredo Huggins, Nestor Espejo and Pablo Papiona', as the very same person she saw shoot her sleeping husband. She also said in that statement that when Espejo did the shooting, behind him was another person she could, however, no longer recognize.

"On July 1, 1986, Cpl. Avelino C. Abogado submitted to Lt. Col. Serafin V. Santos, Deputy Chief of the SOG, his investigation report (Exh. 'B'-'B-5') recommending 'the referral of the case (of MURDER) to the MTC, San Jose del Monte, Bulacan, in the case of Aguirre, Espejo, Papiona and a certain Cris, while of (sic) that of Pfc. Rudy Pastores x x x to the Staff Judge Advocate, Capcom'. On the same date Col. Santos signed the transmittal to the Municipal Trial Court of San Jose del Monte of the result of his Group's investigation 'requesting appropriate preliminary investigation relative to a case of MURDER (RPC 248) wherein the defendants are: Espejo and Papiona (both under custody) and Aguirre, Pastores and Cris Doe (all at large).'"[3]

Affirming the findings of said municipal trial court in its preliminary investigation of the case, the Provincial Fiscal of Bulacan filed an information against the appellant herein, Papiona and Aguirre, to wit:

"That on or about the 12th day of June, 1986, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Nestor Espejo y Espino, Pablo Papiona y Cahipe and Genaro Aguirre, together with Pfc. Rudy Pastores against whom proceedings are being taken by the military authorities, with intent to kill one Jose Salonga y Bernabe, conspiring, confederating together and helping one another, did then and there wilfully, unlawfully, and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and shoot with a firearm they were then provided the said Jose Salonga y Bernabe, hitting the latter on the different parts of his body, thereby causing him serious physical injuries which directly caused his death."[4]

After trial, the lower court declared the extrajudicial confession of appellant inadmissible, mainly because it was given in violation of the constitutional requirement that any person under investigation must be assisted by a competent and independent counsel, preferably of his own choice, which requirement the court noted was not complied with when appellant was put under custodial investigation.[5] This, however, did not prevent the court from rendering a judgment of conviction upon reliance mainly on the forthright testimony of Pilar Salonga, the victim's widow, who testified that she saw appellant shoot her husband.[6]

In traversing such finding, appellant's brief imputes error on the trial court for not giving more credence to the earlier statement of the lone eyewitness given the day following the shooting, which, as reproduced in the trial court's decision, reads:

"7. T Nakita mo ba ang taong bumaril sa asawa mo?

S Nakita ko po ngunit hindi ko xxxxxxxx namukhaan."

Moreover, appellant insists that it was impossible for the supposed eyewitness to have seen, much less to have recognized, the gunman because there was no light in the bedroom.[7]

The conviction must be upheld.

Firmly entrenched is the rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed, unless for strong and valid reasons, because the trial court is in a better position to examine as well as to observe the demeanor of witnesses while testifying in the case.[8] Although there are admitted exceptions to this rule, we find no cogent basis for their application in the present case. Contrary to appellant's submission, the conclusions of the trial court are fully substantiated and supported by the evidence on record.

The fact that the lone eyewitness gave an earlier statement that she saw but was allegedly not able to see the face of the gunman does not destroy the fidelity of her subsequent statement taken eighteen (18) days after the shooting where she identified the appellant as the assailant. At the time the first statement was taken, she really could not have been expected to give accurate and intelligible answers, as her condition then was nothing short of being in a state of mental and emotional shock considering her traumatic experience and the recency thereof. A woman and a wife and mother at that, it would too much to expect her to respond with equanimity after the harrowing attack to which she and her family had just been exposed. In fact, said witness testified that she was then so confused when that statement was read to her that she could not even remember having made that statement.[9]

As aptly observed by the trial court:

"x x x The witness, however, claims that when she was brought along to the police station to give that statement barely five (5) hours from the time her husband was peppered with bullets at her side lying asleep in bed with only their youngest child between them, she was still in a confused state of mind. She said during the trial that she signed the same after it was read to her, but she was not able to understand its contents (TSN, pp. 11, 23 & 24, March 19, 1987). Considering the trauma of that shocking experience she had just been through, that explanation she gives is not hard to accept. The Court can just imagine the bloody mess her husband had been turned into after being shot with a powerful automatic rifle right in their bed in her stark presence before her very eyes. And the realization of the great danger upon her own person and those of her young children of being themselves shot in the same bed, must have horrified her so much. It is reasonable, therefore, not to expect her to get over it in just a few hours and have the calm, sharpness and stability of mind to be able to relate the incident and tell what she saw to one and all with vivid detail and accuracy." [10]

Besides, there is no truth to appellant's averment that the witness never told any one of those who first came to the scene of the crime, among them the town mayor, Reynaldo Villano, a fellow officer of her husband, Corporal Eusebio German, the station commander and a certain Captain Jimenez, that she saw and recognized the gunman.[11] A perusal of her testimony on cross-examination, other than the truncated portion of her aforesaid statement to which appellant would want this Court to focus and limit its attention, reveals otherwise, as witness this exchange on the stand:

"Q According to you, the only question asked of you by Cpl. German was what time did the incident occurred (sic) and they asked you no other question even after he fetched the Station Commander. Did you not volunteer to him, either German or the Station Commander, that you saw who shot your husband?

A I told the Station Commander that the assailant passed this way and the Station Commander told me that I have no evidence on that, sir.

Q But you did not insist in telling him nor German that you saw the assailant?

A Cpl. German and myself were not able to talk with each other because he left immediately, sir.

Q Yes, but when he returned together with Capt. Jimenez, you did not tell him, for (sic) Jimenez, that you saw the assailant?

A I told him but Capt. Jimenez told me that I have no evidence for that, sir." [12]

Significantly, the statement which appellant would like to be accorded credence obviously appears to have been deliberately slanted and framed so as not to reflect what the witness really intended to impart. It is noteworthy that the answer of the witness which the defense would exploit was elicited from her by Pfc. Rudy L. Pastores, the investigator who is himself one of the accused and who, according to the decision of the court a quo has reportedly gone into hiding. The trial court also specifically noted that the word "makilala" or "nakilala" written immediately before the word "namukhaan" was crossed out with a series of the letter "x," and thereby replaced with the succeeding word "namukhaan." As it correctly observed, this was "(o)bviously done to change the impact of the answer and make it mean that the witness failed to see the face of the man" and thereafter "conveniently provide the opportunity to question the credibility of the victim's widow as far as the identity of the actual killer of her husband is concerned." We agree that what said eyewitness really meant was that she saw the person who shot her husband but she did not know him or who he was ("makilala" or "nakilala") but that she actually saw his face as she even remembered the shape thereof and the height of his nose.[13]

In any case, the defenses and explanations by appellant cannot stand in the face of his positive identification by the witness during the investigation at the CIS office and, later, at the trial. It is an established jurisprudential rule that as between the positive declaration of the prosecution witness and the negative denials of the accused, the former deserves more credence,[14] especially where, as in this case, there is no showing whatsoever why the witness would foist such a serious liability on appellant. It is also readily apparent that appellant's defense consists only of his sole uncorroborated and bare denial of participation in the crime.

Appellant's insistence that it was well-nigh impossible for the witness to have seen, much less to have recognized, the assailant is debunked by the salient portions of the witness' testimony thereon:

"Q Now that evening when this incident occurred you were already asleep, is that correct?

A I was awoken (sic) when I felt that somebody was standing near our feet, sir.

Q Is it not true that you were awoken (sic) by a burst of gunfire?

A No, sir, before the burst of that gun I was already awoken (sic).

Q And you saw Espejo before he fired at your husband?

A Yes, sir.

Q He was standing or approaching your husband when you saw him first?

A He was standing on the place where our feet was (sic), sir.

Q At that particular time he was not yet aiming the gun at your husband, is that correct?

A The gun was already pointed at my husband, sir.

Q You did not wake (sic) your husband?

A I was not able to wake him up anymore because the gun was already fired, sir.

Q And this shooting of your husband occurred right inside your bedroom?

A Yes, sir.

Q You and your husband were lying together?

A Yes, sir.

Q With your three children?

A Yes, sir.

Q And you, your husband and your children were occupying one bed?

A Yes, sir.

Q How many were you on bed on that evening?

A Five (5), sir.

Q And of course you were under a mosquito net?

A No, sir.

A Because our bedroom has screen.

Q And your windows were closed?

A The windows were open because there were screens, sir.

Q And of course there was no light in the bedroom?

A None, sir.

Q There being no light in the bedroom, it was quite dark inside the bedroom, is it not?

A It was bright because the light in our dining room was opened, sir.

Q And you are saying that you recognize the accused under that (sic) circumstances?

A I saw him, sir.

Q You saw him but you were not positive that you knew him?

A When we met at the CIS Office, sir, I recognized him.

Q Do you still recall how he was attired, how he was dressed that evening?

A He was wearing a maong jacket (long sleeves), sir.

Q How about the pants?

A As if it was also a maong pants because it is black, sir.

Q Was his face covered with mask?

A. No, sir.

Q Was he wearing a hat?

A No, sir.

Q Was he wearing a footwear?

A I was not able to see his feet, sir.

Q You did not notice Espejo entered (sic) your room?

A When I saw him, he was already standing towards our feet, sir.

Q How far was he, more or less, away from you?

A Near only because he was standing towards our feet, sir."[15]

Indeed, while evidence as to the identity of the accused as the person who committed the crime should be carefully analyzed, and we have exerted efforts to that end, the Court has consistently held that "where conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should normally be accepted. And this is more so where the witness is the victim or his near-relative, as in the case at bar, because these (people) usually strive to remember the faces of the assailants."[16]

Finally, the argument that the testimony of the lone eyewitness was uncorroborated, hence it is not sufficient to sustain the conviction of appellant, is belied by the records. In the first place, it is not uncorroborated. The unassailed testimony of prosecution witness Ruther Batuigas, a journalist who interviewed the accused upon their arrest, yields ample support to the eyewitness' testimony. Witness Batuigas categorically established the following facts:

"Q Who in particular, Mr. Witness, did you interview?

A Mr. Espejo and the other accused I forgot his name. They were two (2) of them.

Q You are referring to the two (2) accused in this case?

A Yes, sir.

x x x

Q What was - who did you interview first, Mr. Witness, if you still recall?

A I interviewed both of them at the same time, sir.

Q What was the tenor of your interview to both of them?

A Well, I asked them if it is true that they were the ones, especially Mr. Espejo, was the one being accused to

have murdered Cpl. Jose Salonga.

Q And what was the reply of accused Espejo?

A He admitted to me that he was the alleged gunman of Cpl. Salonga.

Q What about Papiona, did you bother to ask him about his participation?

A Yes, sir.

Q What was his reply?

A He admitted that he was with Mr. Espejo and the other guy but he pointed to Mr. Espejo as the only gunman, the only one who fired an armalite to (sic) the late Cpl. Salonga.

x x x

Q During the entire investigation, Mr. Witness, did you notice anything unusual, if you could recall?

A Well, nothing unusual because my observation with (sic) Mr. Espejo and his co-accused was that they were very willing witnesses at the first time I interviewed them. In fact as if they were bragging for what they have committed. In fact Mr. Espejo was bragging that he was the only one, he admitted to me that he was the one who fired an armalite to (sic) the victim, Mr. Salonga, while sleeping."^[17]

It will be noted that the interview testified to by Batuigas was not part of the formal investigation of the accused hence it is not within the proscription against extrajudicial confessions extracted without the assistance of counsel. Neither is the testimony of said witness barred by the hearsay rule since it establishes the fact that said statements were made to him by the accused in the tenor stated in his testimony.^[18]

Furthermore, the eyewitness' testimony itself was given unhesitatingly and in a very straightforward manner, devoid of any material flaws. Despite exhaustive interrogation, her credibility remained unshaken, indubitable proof of the veracity of her declaration. As such, even her lone testimony is sufficient to convict.^[19]

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Judge Crisanto C. Concepcion.

[2] Rollo, 24-25.

[3] Ibid., 17-19.

[4] Ibid., id.

[5] Ibid., 20.

[6] Ibid., 21.

[7] Ibid., 34.

[8] People vs. Pimentel, et al., 147 SCRA 25 (1987); People vs. Grefiel, etc., 125 SCRA 102 (1983); People vs. Fernandez, 124 SCRA 319 (1983).

[9] TSN, March 19, 1987, 23-25.

[10] Rollo, 21.

[11] Ibid., 35.

[12] TSN, March 19, 1987, 21-22.

[13] Rollo, 22.

[14] People vs. Macabenta, etc., 170 SCRA 298 (1989); People vs. De Jesus, 145 SCRA 521 (1986); People vs. Plaza, et al., 140 SCRA 277 (1985).

[15] TSN, March 19, 1987, 17-20.

[16] People vs. Alvarez, et al., 169 SCRA 730 (1989); People vs. Bernat, 120 SCRA 918 (1983).

[17] TSN, January 4, 1989, 15-20.

[18] People vs. Cusi, etc., et al., 14 SCRA 944 (1965).

[19] People vs. Trigo, G.R. No. 74515, June 14, 1989; People vs. Vengco, etc., et al., 127 SCRA 242 (1984).

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