

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO MANANSALA Y PALISOC, ACCUSED-APPELLANT.

G.R. No. 88752. July 03, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

On March 17, 1986, at about 9:30 o'clock in the evening, Pat. Hector Colmo and his girl friend, Fe Nisperos, were sitting at one end of a bench in a shed located at the Food Terminal Compound in Bicutan, Taguig, Rizal. They were waiting for a ride home. Seated at the other end of the bench were three men who were talking among themselves. Nisperos was looking at the approaching bus they were to take when suddenly she heard a shot that made her scamper in fright. She realized seconds later that she had left her boy friend behind, and so she turned back. She froze in horror. Colmo was slumped on the ground with a bleeding head. She rushed to aid him, but one of the three men jumped over the bench and pointed a gun at her. She stopped short. He took the pistol from the fallen victim. She looked at the man but he did not harm her or even speak to her. As he fled with his two companions, she started shouting for help. Some people succored her but it was too late. Colmo expired from "cardio-respiratory arrest due to shock and hemorrhage as a result of the gunshot wound in the head." [1]

Danilo Manansala was in due time picked up and investigated for the offense. Subsequently, he was charged with the crime of robbery with homicide committed in conspiracy with two unidentified persons and with the aggravating circumstances of evident premeditation and treachery. [2] After trial, he was found guilty and sentenced to reclusion perpetua. He was also required to pay the victim's heirs P30,000.00 as civil indemnity for his death; P50,000.00 for loss of his earning capacity; P20,000.00 as moral; and P20,000.00 as exemplary damages, as well as the costs of the suit. [3]

The accused-appellant is now before us to challenge his conviction. He faults the trial court for giving undue credence to the evidence of the prosecution and for disbelieving his defense as bolstered by the constitutional presumption of innocence in his favor.

The principal witness for the prosecution was Fe Nisperos, who testified on the details of Colmo's shooting as above narrated. The defense now questions her credibility and claims that when she was taken to the detention cell and later to the fiscal's office to identify Manansala, she hesitated and could not readily point to him as the assailant. In short, her subsequent identification of the accused-appellant at the trial was not positive enough or credible enough to dispel the doubt that should have been resolved in his favor.

The contention is not acceptable. Nisperos was quite definite when she testified that it was the accused-appellant whom she saw clearly by the several lights in the FTI compound as he aimed his gun at her and took the pistol from the dying Colmo. Thus she said in no uncertain terms:

"Q When you were approaching your boy friend, did you take a good look at the gunman when he came near you and took the gun of your boy friend?

"A Yes, sir.

"Q How long?

"A I cannot remember for how long I had a look at the gunman but I was able to see his face.

"Q If you are going to see the face of that gunman, will you be able to recognize him?

"A Yes, sir.[4]

x x x

"Q Was the accused Danilo Manansala one of the persons seated in the waiting shed?

"A Yes, sir.

"Q Where was he seated?

"A He was the one seated nearest to me.

"Q The one according to you who was trying to hide his face?

"A Yes, sir.

"Q And how many times were you able to look at him?

"A 3 to 4 times sir.

"Q How many seconds?

"A Not only for seconds, sir, it's quite sometime.[5]

x x x

"Q When you went to the jail, how many persons were present?

"A Seven (7) or eight (8), sir.

"Q Where you able to point the identity of the accused?

"A I readily pointed to him, sir.[6]

x x x

"Q Are you positive that the person you identified earlier is the same person who shot your boyfriend?

"A I am sure, sir.

"Q Can you not be mistaken about that?

"A Yes, sir.

"Q What was your basis when you said that he was the person who shot your boy friend?

"A His face, sir.[7]

Indeed, even if it be supposed that she had hesitated when she identified Manansala to the police investigators, such hesitation would not necessarily vitiate her credibility. After all, more than five months had elapsed when she was taken to the detention cell and then to the fiscal's office to pinpoint Manansala from several other persons. It was necessary for her to think back on the night when her fiance died before her eyes and to focus once again on her remembrance of the face of the man who had confronted her then.

For his part, Manansala testified that at the time of the incident in question, he was not in Bicutan but in Caloocan City. At eight o'clock that evening, he was in the house of Fely Bodomo with his father, his stepmother and his brothers and sisters. At ten o'clock, he went to sleep. He stated categorically that he did not leave the house from that hour until he awoke between 5 and 6 o'clock the following morning.[8]

Despite the many companions he had at that time, only one of them was presented to corroborate his testimony, namely, Bienvenida Bodomo Manansala. This witness testified that at the time of the shooting in Bicutan, the accused-appellant was in her sister-in-law's house, which was near her own house.[9] Curiously, this sister-in-law, who was in the best position to affirm this statement, was not called to the stand. Bienvenida added that Manansala returned home at 10 o'clock that night and went to bed, where he stayed until morning. Yet she herself, as she also said under oath, retired at 9:30 o'clock that evening.[10] She therefore could not have known of Manansala's return a half-hour later, when she was already asleep.

Alibi is an inherently weak defense. And it becomes more so in the case at bar not only because of the positive identification of the accused-appellant by eyewitness Nisperos. No less importantly, the testimonies of the accused-appellant and of his lone corroborating witness are themselves so conspicuously flawed as to invite rejection.

The defense makes much of the fact that after the shooting of Colmo, Manansala changed his residence from Caloocan City to Bicutan. The suggestion is that he would not have done this if he were really guilty as he would be exposing himself to the danger of being recognized by the witnesses to the shooting and robbery. It is true that "the wicked flee when no man pursueth but the righteous are as bold as a lion," as the defense points out. The circumstances of this case, however, do not indicate that Manansala dared to be in Bicutan because of his "righteousness," as it appears that he had other reasons.

It is noted, to begin with, that Manansala did not really transfer but in fact returned to Bicutan, where he had grown up and was more "at home." Secondly, it was convenient for him to be in this place because it was in Bicutan where he was working; indeed, he said he was picked up there when he was walking to his place of work.[11] A third reason may be that he did not feel his presence in Bicutan would be dangerous to him, considering that none of the persons who had actually seen the shooting incident months before had dared to come forward and denounce him or his companions. Rightly or wrongly, Manansala did not feel threatened because he was in his own turf, so to speak.

It was not necessary to pinpoint Manansala as the person who actually shot Colmo because it has been established that Manansala acted in concert with his two companions in killing and robbing their victim. The culprits evidently knew Colmo to be a policeman (although he was in civilian clothes at the time) and killed him because of the firearm he was carrying. In a conspiracy, the act of one is the act of all, and every co-conspirator is equally liable for the offense committed.[12] Hence, even if it was not Manansala but one of his co-conspirators who fired the gun that killed Colmo, Manansala would still be subject to the penalty imposed by the Revised Penal Code for the crime they had all committed.

The killing was aggravated by treachery as the victim was shot from behind. Dr. Desiderio Moraleda, who performed the autopsy on the cadaver, testified that the fatal bullet entered the back of Colmo's head and passed through his mouth.[13] "There is alevosia when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and especially to insure its execution, without risk to himself arising from any defense which the offended party might make." [14] Colmo never knew what hit him and was totally unprepared for the attack that caused his death.

Evident premeditation is not inherent in robbery with homicide.[15] In such an offense, the evident premeditation

must relate to the killing and not to the robbery. According to Chief Justice Ramon C. Aquino:

Under normal conditions, where conspiracy is directly established, with proof of the attendant deliberation and selection of the method, time and means of executing the crime, the existence of evident premeditation can be taken for granted. But in the case of implied conspiracy, evident premeditation may not be appreciated, in the absence of proof as to how and when the plan to kill the victim was hatched or what time elapsed before it was carried out, so that it cannot be determined if the accused had "sufficient time between its inception and its fulfillment dispassionately to consider and accept the consequences." There should be a showing that the accused had the opportunity for reflection and persisted in effectuating his criminal design.[16]

Such a showing being absent in the case at bar, this aggravating circumstance should be rejected.

We find that the guilt of the accused-appellant has been clearly established and that the penalties imposed upon him, save for the civil indemnity, are in accordance with law. The evidence of the prosecution was strong enough to overcome the constitutional presumption of innocence. The defense has failed to refute that evidence. Hence, the accused-appellant must remain in prison for the rest of his life unless age or sincere remorse unfastens his bonds.

WHEREFORE, the appeal is DISMISSED and the challenged decision AFFIRMED except for the civil indemnity which is increased to P50,000.00, with Costs against the accused-appellant. It is so ordered.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Orig. Rec., p. 133.

[2] Ibid., p. 1.

[3] Decided by Judge Maria Alicia M. Austria, Regional Trial Court, Pasig; Orig. Rec., pp. 235-240.

[4] TSN, December 15, 1986; p. 20.

[5] Ibid., p. 21.

[6] TSN, March 25, 1987; pp. 40-41.

[7] TSN, December 15, 1986; p. 23.

[8] TSN, November 16, 1987; pp. 99-101.

[9] TSN, May 24, 1988; pp. 110-111.

[10] TSN, May 24, 1988; p. 116.

[11] TSN, November 11, 1987, p. 95.

[12] People vs. Pasco, 181 SCRA 233; People vs. Quinones, 183 SCRA 747; People vs. De la Cruz, 183 SCRA 763; People vs. Baybayon, 184 SCRA 13.

[13] TSN, August 10, 1987, pp. 83-84.

[14] ART. 14, par. (16) of the Revised Penal Code.

[15] U.S. vs. Landasan, 35 Phil. 359; People vs. Valeriano, 90 Phil. 15.

[16] Aquino, The Revised Penal Code, Vol. I, 1976 Ed., pp. 338-339.

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