

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MOISES MOKA ALIAS 'MOISES FERNANDEZ', FLORENTINO DALMATAN ALIAS 'TINO', MODESTO MONGKIL ALIAS 'DET', AND EMILIO MANIB ALIAS 'BITONG'...

G.R. No. 88838. April 26, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

For the death of Francisco Miguel on October 10, 1982, eight (8) persons were charged with the crime of Robbery with Homicide for purposes of preliminary investigation before the Municipal Circuit Court of Hagonoy-Matanao, Hagonoy, Davao del Sur. Among the accused were: Moises Moka alias "Moises Fernandez", Florentino Dalmatan alias "Tino", Modesto Mongkil alias "Det" and Emilio Manib alias "Bitong", alias "Doming", alias "Gabriel" alias "Antes", and alias "Brahim".

Accused alias "Doming", alias "Gabriel", alias "Antes" and alias "Brahim" could not be arrested. Hence, only accused Moises Moka alias "Moises Fernandez", Florentino Dalmatan alias "Tino", Modesto Mongkil alias "Det", and Emilio Manib alias "Bitong" were included in the amended information which reads:

"The undersigned accuses MOISES MOKA, ALIAS 'MOISES FERNANDEZ', FLORENTINO DALMATAN, ALIAS 'TINO', MODESTO MONGKIL, ALIAS 'DET', AND EMILIO MANIB, ALIAS 'BITONG' of the crime of ROBBERY WITH HOMICIDE under Article 294 of the Revised Penal Code, committed as follows:

That on or about October 10, 1982, in the Municipality of Matanao, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually helping one another with four other John Does, taking advantage of their superior strength, and armed with guns and bolos, did then and there wilfully, unlawfully, feloniously by means of violence and with intent to gain, take, rob, and carry away rice and money from Francisco Miguel, and on the same occasion said accused, acting in concert and with intent to kill, attacked, assaulted and shot said Francisco Miguel hitting him which caused his death." (Appellee's Brief, pp. 2-3)

The said accused entered pleas of "not guilty." Hence, trial proceeded.

The trial court, after having weighed the evidence presented by both sides, found the accused guilty beyond reasonable doubt of the crime of Murder. The dispositive portion of the decision reads:

"Wherefore, the court finds accused Moises Moka alias 'Moises Fernandez', Florentino Dalmatan alias 'Tino', Modesto Mongkil alias 'Det' and Emilio Manib alias 'Bitong' guilty beyond any reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, and after appreciating the aggravating circumstances of nighttime and that they took advantage of their public positions, hereby imposes upon each of the accused the prison term of reclusion perpetua, to suffer all the accessory penalties provided for by law and to pay the costs.

They are hereby further ordered to jointly and severally indemnify the heirs of the late Francisco Miguel the

amount of Thirty Thousand (P30,000.00) Pesos." (Rollo, p. 92)

The accused-appellants now raise on appeal the following as errors committed by the trial court:

I

THE TRIAL COURT ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE DEFENSE WITNESSES AND NOT GIVING DUE CONSIDERATION TO EXHIBITS "1" AND "2" OF THE DEFENSE.

II

THE TRIAL COURT ERRED IN NOT REJECTING THE INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER. (Rollo, p. 63).

The basic issue in the case before us is the determination of which version should be given full faith and credit - that of the prosecution or that of the defense.

The evidence for the defense shows the following facts:

"Hilarion Bentalanon, a policeman of Matanao, Davao del Sur testified that on October 10, 1982, he came across the entry in the police blotter about the shooting incident in Dongan Pekong, Matanao, Davao del Sur. After he was informed by the desk officer that Rosario Miguel, the victim's wife, was being treated at the health center, he went there to investigate. Mrs. Miguel gave her the information that an encounter took place between Barangay Captain Moises Moka and ICHDF members and a group of NPA elements and her husband Francisco Miguel was fatally hit in the crossfire. (TSN, September 29, 1986, pp. 2-3) He then reduced the statements of Mrs. Miguel into an affidavit form which she signed by thumbmark in the presence of Asst. Provincial Fiscal Armando Cortez. (Ibid, pp. 5-6) The said document was also signed by Fiscal Cortez whose signature therein was identified as genuine by the prosecuting Fiscal Levitos. (Ibid, p. 11)

Mrs. Escolastica Bayukbok testified that before the shooting incident, she observed that there were many people inside the house of the late Francisco Miguel conversing with each other and then at about dawn she heard gunfires coming from the house of Francisco Miguel. (TSN, July 14, 1987, pp. 3-4) After the gunfire ceased, Eutano Miguel went to their house and told her that an NPA is lying dead in their house. (Ibid, p. 4) At about 6:00 A.M. of October 10, 1982, she came to know the dead person to be Francisco Miguel. (Ibid, p. 5) In the sworn statement she gave to the police, she declared that she heard one of the visitors of Francisco Miguel that they were going to kill Tino (accused Florentino Dalmatan), immediately after which she heard a burst of gunfire and she immediately dropped to the floor. (Ibid, p. 6)

Lt. Romeo Juntilla, INP Station Commander of Matanao, testified that after Councilman Ornales reported the exchange of gunfire in Dongan Pekong, he formed a team to verify the report. At the scene of the incident and beside the dead body of Francisco Miguel, he and his men recovered a 12-gauge homemade handgun and a half-ganta of corn grits as well as one live ammunition. (TSN, July 15, 1987, pp. 4-6) After the incident, he recommended the giving of commendation to Barangay Captain Moises Moka and the other ICHDF team members for ably subduing the rebel enemies. (Ibid, p. 13)

The accused Moises Moka testified that at the time of the incident, he was the barangay captain of Dongan Pekong, Matanao. (TSN, September 30, 1987, p. 2) On the night of October 9, 1982, he met with his ICHDF members and told them that because of intelligence reports that armed people were passing by their barangay, they were going to conduct surveillance that night. At about 1:00 A.M. of October 10, 1982, he and his

co-accused went on their patrol and left one ICHDF member to guard his house. (Ibid, p. 4) After two hours of patrolling, they came upon a lighted house from where they heard voices and so he and his group went near the said house and laid flat on the ground about 15 meters away. They then overheard that the people inside the house were looking for Tino Dalmatan whom they suspected of having killed their companion. After being informed that Tino was in the barrio and that they could be led to his house, the group inside the lighted house bade goodbye as their Commander Coring was waiting for them. When the door opened, five men went out and he then shouted for them to halt, at the same time informing them of his authority. Suddenly, a burst of gunfire came from the direction of the five armed men coming out of the lighted house and so he ordered his men to fire back. The exchange of fire did not last two minutes. After the firing ceased, they heard Mrs. Miguel's shout for help and when they came near he saw the body of a person lying face downwards on the ground who was identified to be that of Francisco Miguel by Paul Ornales later in the morning. (Ibid, pp. 7-11) He then ordered Paul Ornales to report the incident to the municipal authorities. The police authorities arrived at about 8:00 A.M., October 10, 1982. (Ibid, p. 11)

Anatolio Bayukbok testified that about 1:00 A.M. of October 10, 1982, the late Francisco Miguel came to his house to ask rice of two 'chupas' in order to feed his visitors. (TSN, November 10, 1987, pp. 4-5) After giving the rice to Francisco, he overheard from the latter's house that his visitors were asking if the barangay captain and the ICHDF were good and Francisco answered that they were not. After a while, he heard somebody say 'Halt... these are authorities' and then followed by an exchange of gunfire. In the early dawn, he learned from Eutano Miguel that a rebel had died in their yard who was later identified to be Francisco Miguel. (Ibid, pp. 5-7). On cross-examination, this witness told the court that the first burst of gunfire came from below the house of Francisco Miguel, followed by an exchange of gunfire from across the road. (Ibid, p. 15)" (Rollo, pp. 66-68)

On the other hand, the prosecution evidence shows the following circumstances to have attended the commission of the crime:

"At dawn on October 10, 1982, while the spouses Francisco and Rosario Miguel were sleeping at their house located at Dongan Pekong, Matanao, Davao del Sur, they were awakened at around 3:30 in the morning by the knocking on their door made by herein accused-appellants and four others, who are members of the Integrated Civilian Home Defense Force (ICHDF) (TSN, August 13, 1984, p. 4). The latter, who allegedly wanted to recruit them as 'masa', upon orders of a certain 'Commander Goring' (Id., p. 7). Besides, the accused Moises Moka is a cousin of the victim, Francisco Miguel, and a barangay captain in the area, while the rest are neighbors who are members of the ICHDF (Id., p. 6; Sept. 30, 1987, p. 13) and, therefore, known to the Miguel family.

The herein accused-appellants threatened to burn the house of the Miguels if they refused to come outside. Francisco, however, adamantly refused to be recruited (Id., August 13, 1984, pp. 66-7). Subsequently, appellants asked for one chupa of rice and P1.00 from the couple. But when Rosario handed the goods to appellants through an opening of their wall, Florentino Dalmatan and his companion forcibly opened the door and pulled her husband who was then brought to the yard, ordered to kneel, then brutally shot by Florentino Dalmatan with his garand rifle (Id., p. 8). The victim was further hacked with a bolo and when he fell to the ground appellant Moka placed a handgun near the abdomen of the deceased (Id., August 13, 1984, p. 8). When his husband was shot, Rosario was likewise hit by a stray bullet. After killing her husband, appellants then proceeded to strafe or fire at their house (Id. p. 9).

The incident was likewise witnessed by Eutano Miguel, a son of the deceased Francisco, who upon being awakened by the knocking at their door and upon seeing his father pulled outside their house, rushed towards the roof of their house, where he had a full view of the killing perpetrated by appellants (Id., December 6, 1984, p. 16). After his father was shot, Eutano proceeded to report the incident to the house of his brother, Hilario Miguel. The brothers immediately went to the scene of the crime, where they found appellants. Hilario was told by appellants to go back to his house since according to them, it was not 'his time' yet (Id., p. 18).

On the other hand, Rosario Miguel and another son were brought to the health center for treatment of their bullet wounds sustained during the shooting incident and the strafing of their house (Id., pp. 8-9). They managed to survive only because appellants heeded their plea to be spared their lives on condition that they must tell the authorities that Francisco was killed by NPA rebels (Id., p. 9). For fear of their lives, Rosario Miguel did as she was told by appellants. But when she was being made to sign before the mayor an affidavit prepared by a policeman named 'Larry' Bentalanon, she refused. However, said policeman threatened to kill her, hence she was forced to sign it at the Office of the Provincial Fiscal (Id., pp. 19-20). Subsequently, the Miguel family decided to give a true account as to what transpired on that fateful morning and filed the corresponding complaint against herein appellants and their companions." (Appellee's Brief, pp. 6-9)

Finding the version of the defense to be inconsistent and highly improbable we agree with the conclusions of the trial court. The defense version unlike the prosecution's version is not supported by convincing evidence. The trial court saw through the defense strategy which tried to pass off a cold blooded murder as the result of an encounter between law officers and communist rebels. As stated by the Judge, the victim may have had links with subversive elements. Even so, the lawless and summary execution without trial deserves strong condemnation.

Escolastico Bayukbok testified that according to Eutano Miguel, an NPA rebel was found dead inside their yard. Considering the lapse of time between the incident (3:00 a.m.) and the arrival of the investigators (8:00 a.m.), it is unbelievable that not a member of the victim's family recognized the dead man as the head of their family. For one, they would have noticed Francisco Miguel's absence prompting them to ascertain the identity of the dead man within their premises. Moreover, a cursory glance at the body of a family member would have yielded instant recognition.

It is likewise intriguing to note that under the theory of the defense, an alleged encounter with NPA rebels took place. The theory, is however, belied by the evidence on record. There were no empty ammunition shells despite the claim of gunbursts from both sides.

It is likewise incredible that the group of Moka who claimed he and his men were conducting surveillance in the vicinity would be able to hear the conversation taking place inside a house fifteen (15) meters away while a witness who resided eight (8) meters away from Francisco Miguel's house could not hear the same conversation.

The defense insists that the trial court should have admitted Exhibits 1 and 2, the affidavit of Rosario Miguel signed by her in the presence of Fiscal Cortez, and the Daily Record of Events of the Matanao Police Blotter, respectively.

We find no error in the trial court's decision to disregard the same as Exhibit 1 was recanted in open court by Rosario Miguel who instead narrated what she stated was the true story. The reason for her executing the affidavit was sufficiently explained. According to the widow of the victim, she did it out of fear for her life and of her children's. She could not do otherwise as she was told by the accused that their lives would be spared if she would adopt the version of the defense during the investigation of the case. They have every reason to fear that they would also be liquidated. Moreover, the affidavit was prepared by Larry Bentalanon, a witness for the defense who was present during the signing and who attested to the same.

Exhibit 2, on the other hand, cannot be relied upon to attest as to how the victim died because there was no signature of the person who reported the death which is a standard procedure in making entries in the police blotter. The report was part of the defense strategy in the event of an investigation.

The appellants failed to show any improper motive on the part of the prosecution witnesses to testify falsely against them. Hence, full faith and credit should be given to their testimonies (People v. Carpio, G. R. Nos. 82815-16, October 31, 1990 citing People v. Paco 170 SCRA 681 [1989]; and People v. Castillo 171 SCRA 30

[1989]).

The appellants also claim that the testimonies of the prosecution witnesses are inconsistent on substantial matters because they pertain to the respective participation of the accused-appellants in the commission of the crime.

We find the inconsistencies to be merely on minor matters. It has been invariably held that inconsistencies on minor details usually do not destroy the probative value of a witness' testimony because generally, they may be due to an innocent mistake and not to deliberate falsehood. (*People v. Lagota and Fernandez*, G. R. No. 85795, February 14, 1991 citing *People v. Bongo*, 55 SCRA 547 [1974]; and *People v. Resayaga*, 54 SCRA 350 [1973]).

The question of who shot the victim is immaterial because conspiracy has been established. We have ruled that respective acts of hacking and firing at the victim and strafing the house and setting it on fire show a unity of action and a singleness of purpose. It is not necessary that there be evidence of a previous plan or agreement to commit the assault. It is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack so that the act of one accused becomes the act of all (*People v. Gupo, et al.*, G. R. No. 75814, September 24, 1990 citing *People v. Masangkay*, 157 SCRA 320 [1988]; and *People v. Montealegre* 161 SCRA 700 [1988]).

Finally, we are one with the trial court and the Solicitor General in holding that the crime committed by the accused-appellants is one of Murder and not Robbery with Homicide.

The intent of the accused to gain is not borne by the evidence. As the trial court had pointed out, the asking of the one (1) chupa of rice and P1.00 is either a ploy to convince the occupants of the house to believe that the accused were NPA rebels, or it can be planted evidence to lend credibility to the defense version of the story. It can also be, as the Solicitor General had pointed out, a means to enable the appellants to enter the house and take away the victim.

Moreover, the idea of robbery is inconsistent with the defense' version where they claimed that they heard the alleged NPA rebels and the victim conversing about Florentino Dalmatan whom the former were looking for.

The crime, although designated as Robbery with Homicide in the information should be Murder absent a showing of intent to gain provided there is a qualifying circumstance present under the information which could be proven. Under the amended information, the circumstance of taking advantage of superior strength qualifies the crime to murder (Art. 248, Revised Penal Code). The number of the assailants and the firearms and bolos which they used on the victim show notorious inequality of forces between the victim and the aggressor. This circumstance depends on the age, size, and strength of the parties. It is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assuring a superiority of strength notoriously advantageous for the aggressor which is selected or taken advantage of by him in the commission of the crime. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of the defense available to the person attacked (*People v. Cabato*, 160 SCRA 98 [1988]).

As held in the case of *People v. Dueño* (90 SCRA 23, [1979]), one attendant circumstance is enough to qualify the crime as murder and any other will be considered as generic aggravating. Hence, any other circumstances such as taking advantage of public position and nocturnity are considered as merely aggravating circumstances.

Since the penalty for murder is a single indivisible one, we apply Article 63 of the Revised Penal Code, which provides that when the law proscribes a single indivisible penalty, it shall be applied without regard to the mitigating or aggravating circumstances that may have attended the commission of the crime (*People v. Quiñones*, G. R. No. 80042, March 28, 1990).

WHEREFORE, PREMISES CONSIDERED, the decision of the trial court is hereby AFFIRMED with the MODIFICATION that the indemnity to be given to the heirs of the victim shall be increased to FIFTY THOUSAND PESOS (P50,000.00) in accordance with the rulings in recent cases.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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