

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGEL FABROS Y SARMIENTO ALIAS BOY FABROS, AND DANILO FERNANDO, DEFENDANTS-APPELLANTS.

G.R. No. 90603. October 19, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

On July 1, 1988, at around half past seven in the evening, four armed men entered the house of Juan Siobal in Barangay Salcedo, San Manuel, Tarlac, and forcibly took him and his son Jovito outside, where they were shot in cold blood. Two of the men had covered their faces while the other two had not. More than four months later, these latter two were identified as Angel Fabros and Danilo Fernando and were subsequently prosecuted for double murder. After trial, they were found guilty as charged and sentenced to reclusion perpetua and to pay solidarily civil indemnity in the amount of P60, 000.00, the funeral expenses in the sum of P14,000.00, and the costs of the suit.[1] The accused-appellants are now before this Court to replead their innocence.

The star witness for the prosecution was Anita Siobal Fernandez, Juan's daughter. She testified that on that tragic night, four men knocked at their door and introduced themselves as Constabulary soldiers. They were not in uniform but were all armed. Each of the two accused carried a .38 caliber revolver while the masked men were carrying carbines. One of the men closed the doors and windows. The rest of the family was herded into a room while her father and her brother Jovito were tied and dragged out of the house into the MacArthur Highway. Minutes later, they heard five shots. As they feared, these shots had killed Juan and Jovito, whose lifeless bodies were found sprawled along the road.[2]

Anita's testimony was corroborated by her mother, Martina Castro Siobal. Like Anita, she explained that she had not spoken out earlier to denounce the accused because she was afraid, and it was only later, after she had composed herself and thought things over, that she decided to talk to the police. She said she had withheld her identification of the accused because of her fear of the threats she heard every night following the murders. The voices said that she herself would be killed if she exposed her husband's and son's assailants.[3]

Both Fabros and Fernando denied participation in the offenses, claiming they were somewhere else at the time the Siobals were killed. Fabros sought to show that he was then working at the Asian Engine Rebuilders, where he was employed as a machinist.[4] Fernando testified that from 9 o'clock in the morning of July 1 until about the same hour the next morning of July 2, 1988, he was playing mahjong in the house of Zenaida Delfin.[5]

Fabros was corroborated by Marian Soriano, payroll clerk of the said company, who presented the daily time record[6] of the former showing that on July 1, 1988, he punched out at 8:02 p.m. and the payroll record showing that he worked overtime for three hours that night.[7] Two other employees, Rufino Yee and Jael Honesto, declared under oath that Fabros worked until eight o'clock that evening of July 1, 1988.[8]

Fernando was corroborated by Zenaida Delfin and Basilio Delfin, who both testified that they were playing mahjong with him on the night in question.[9]

The appellants' brief seeks to cast doubt on the prosecution evidence and wonders why it took Anita and Martina more than four months to point to the accused-appellants as the killers. It also faults the trial court for rejecting their defense of alibi notwithstanding their clear showing that they were not at the scene of the crime when the victims were killed.

We have said often enough that the factual findings of the trial judge are conclusive even on this Court as long as they are supported by substantial evidence. The reason is that he is in a better position to assess the credibility of the witnesses, whom he can directly observe on the stand, and to ascertain by their demeanor whether they are telling the truth or spinning a tissue of lies. The telltale marks of deception are directly detectable by the trial judge but not discernible on appeal from the sterile record.

We have also said, no less frequently, that inconsistencies among witnesses testifying on the same incident may be expected because different persons may have different impressions or recollections of the same incident. One may remember a detail more clearly than another. Witnesses may have seen that same detail from different angles or viewpoints. That same detail may be minimized by one but considered important by another. Nevertheless, these disparities do not necessarily taint the witnesses' credibility as long as their separate versions are substantially similar or agree on the material points.

Thus, although it may be conceded that there are some variations in the separate testimonies of Anita and Martina, these do not, in our view, detract from the integrity of their declarations. On the contrary, they represent a believable narration, made more so precisely because of their imperfections, of what actually happened on the night of July 1, 1988.

The delay in the identification of the accused-appellants is attributable to the two women's apprehension that the accused-appellants might turn on them as the threats they heard in the night had intoned. The witnesses were not stout-hearted men but timid women whose kin had been murdered in cold blood. One would hope that they had come out earlier, to make their charge more credible, but the fact is that they did not because they were afraid. It was a natural reluctance. Fear inhibits and silences. At any rate, it has been remarked, and correctly, that different persons may have dissimilar reactions to the same incident.^[10] The fact that Anita and Martina were afraid when they could have been fearless does not mean that they are not telling the truth.

It is true that the alibis of both accused-appellants have been corroborated. As we have said, however, the findings of the trial court regarding the credibility of the defense witnesses deserve respect from this Court, for reasons already given. We shall not reverse His Honor if he has chosen to believe Martina and Anita rather than the friends of Fabros and Fernando who have supported their respective alibis.

The daily time and the payroll records are at best only persuasive and do not conclusively prove Fabros's presence at the shop on the night the Siobals were killed. The Bundy clock is not the most reliable timekeeper. Punching in or out for somebody else is a common problem in many establishments, including government offices. As for Fernando, it has been established that the Siobal house is only 750 meters away from the place where he was supposedly playing mahjong and so was within his convenient reach for the commission of the crimes.

The Court notes that the men who entered the Siobal house that night were bent on one and only one thing: murder. Not a single article was taken. None of the women was molested. All the intruders were motivated by only one purpose, and that was to take out Juan and Jovito Siobal and to kill them as planned. Thus, upon entering the house, they closed the door and windows. They forced the rest of the family, unharmed, into a room. Then they dragged out the father and the son and killed them. They knew what to do and they did it.

Given these circumstances, the Court can only connect the killing to an earlier one, where the victim was

Dominador Fernando, Danilo's brother and Fabros's nephew. The suspected killer was Carlito Siobal, Juan's son and Jovito's brother. It is evident that the motive for the killing was vengeance for the slain Dominador. That motive can be imputed to the accused-appellants, whose kin had been killed, as they believed, by Carlito's kin, who must therefore be punished for his sin.

The factual conclusions of the trial judge must stand, there being no clear showing that they were reached arbitrarily or in disregard of the evidence of record. We agree that the accused-appellants acted in concert in pursuing their evil purpose and so are liable under their conspiracy to the same and equal penalty. We also find that the killings were attended by treachery and evident premeditation as above discussed.

Where treachery has already been used to qualify the crime as murder, evident premeditation should be considered only as a generic aggravating circumstance.[11] And as there is no other modifying circumstance, the penalty properly imposable is reclusion perpetua, in view of the prohibition of the death penalty by the Constitution.

The Court notes that the appellants were charged with double murder in one single information. This was violative of Section 13, Rule 110 of the Rules on Criminal Procedure, which provides that "a complaint or information must charge but one offense except only in those cases in which existing laws prescribe a single punishment for various offenses."

But as this section was not invoked at the trial, the defect cannot be belatedly questioned on appeal. The consequence of such omission is that the accused-appellants may be convicted of as many offenses as are charged in the said defective information.

The trial court erred in ruling that "in essence, a complex crime was charged which carries only a single penalty." Under Article 48 of the Revised Penal Code, a complex crime exists "when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other." We have held that where the killing are not shown to have been committed by a single discharge of firearms, the crime cannot be complexed.[12] In the case at bar, the evidence shows that the victims were killed separately with five gunshots.

The two other men who covered their faces with handkerchiefs have not been apprehended and remain unpunished. Why the accused-appellants did not choose a similar precaution is a question the Court does not have to answer, short of saying that their recklessness is not proof of their innocence.

WHEREFORE, the decision of the lower court is hereby MODIFIED. The accused-appellants are found guilty of two murders and sentenced for each murder to the penalty of reclusion perpetua and to pay jointly and severally to the heirs of the victims the sum of P100,000.00, in accordance with the existing policy of the Court. Conformably to Article 70 of the Revised Penal Code, the duration of the two penalties of reclusion perpetua shall not exceed 40 years. The appeal is DISMISSED, with costs against the accused-appellants.

Griño-Aquino and Bellosillo, JJ., concur.
Padilla and Medialdea, JJ., on leave.

[1] Decided by Judge Romeo D. Magat

[2] TSN, May 16, 1989, pp. 4-8.

[3] TSN, August 15, 1989, pp. 27-29.

[4] TSN, August 23, 1989, p. 39.

[5] TSN, August 28, 1989, pp. 4-5.

[6] Exhibit "7."

[7] Exhibit "8."

[8] TSN, August 23, 1989, pp. 10, 28.

[9] TSN, August 28, 1989, pp. 24, 27.

[10] People v. Sabellano, G.R. 93932-33, June 5, 1991; People v. Aldeguer, G.R. 47991, April 3, 1990; People v. Caringal, G.R. 75368, August 11, 1989.

[11] People v. Diaz, 55 SCRA 178.

[12] People v. Peralta, 193 SCRA 9.

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