

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BLAS AGUARINO, ALIAS "BOGOY" AND RICARDO TIAGAN, ACCUSED, BLAS AGUARINO, ACCUSED-APPELLANT.

G.R. No. 93199, May 17, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

Blas Aguarino, alias "Bogoy" and Ricardo Tiagan were charged with Robbery with Homicide, in Criminal Case No. 2772 of the Regional Trial Court, Branch 5, Kalibo, Aklan, committed as follows:

"That on or about December 9, 1988, in the evening, in Barangay Tina, Municipality of Makato, Province of Aklan, Republic of the Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, did then and there wilfully, unlawfully and feloniously and by means of force and violence, with intent of gain, and without the consent of the owner thereof, take, steal and carry away the following properties, to wit:

One (1) male dog P150.00

One (1) rooster 70.00

Three (3) hens 180.00

belonging to ROSALIA FERNANDO in the total amount of FOUR HUNDRED PESOS (P400.00), Philippine Currency, to the damage and prejudice of the said owner in the aforestated amount; that on the occasion of the said robbery, the above-named accused, without just motive, while armed with a knife and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, stab and wound the said ROSALIA FERNANDO, inflicting upon her a mortal wound, to wit:

"Stab wound at the upper right back, 1/2 inch length, 1.7 inches depth."

as per the Postmortem Finding signed by Dr. Nestor M. Luces, Rural Health Physician, Makato, Aklan, hereto attached and forming an integral part hereof, which wound directly caused the death of the said ROSALIA FERNANDO.

That as a result of the criminal acts of the above-named accused, the heirs of the deceased ROSALIA FERNANDO, suffered the following damages:

1. P30,000.00 for actual and compensatory damages;
2. P20,000.00 for moral damages; and
3. P15,000.00 for exemplary damages.

CONTRARY TO LAW." (Rollo, pp. 3-4)

In its decision promulgated on March 16, 1990, the trial court held that the crime of robbery had not been proven.

The trial court acquitted Ricardo Tiagan but found Blas Aguarino guilty of murder, qualified by treachery and attended by the aggravating circumstance of dwelling. Aguarino was sentenced to undergo "the penalty of Reclusion Perpetua" and ordered to pay the heirs of the victim the sum of P30,000.00. (Decision, p. 10; Rollo, p. 29)

In her lifetime, Rosalia Fernando farmed a parcel of land in Barangay Tina, Makato, Aklan, while her husband, Federico Fernando, farmed another parcel of land in Barangay Castillo of the same town. Rosalia stayed in Barrio Tina with their twelve-year old daughter, Jovelyn, while Federico stayed in Barrio Castillo with their two sons.

At about 8:50 p.m. of December 9, 1988, Rosalia and Jovelyn were awakened by the barking of dogs and the clacking of the chickens kept in their kitchen.

Rosalia, with a flashlight on one hand and a bolo on the other, went down the stairs leading to the kitchen. Jovelyn followed her mother but stayed upstairs by the window overlooking the kitchen.

When Rosalia surveyed the kitchen with her flashlight, Jovelyn saw that some of the bamboo slats on the kitchen wall were either missing or destroyed, and the kitchen door opened. Jovelyn also saw appellant about to enter the kitchen door.

Rosalia was about to go up the stairs when appellant stabbed her at the back. Appellant then fled. The wounded Rosalia was able to climb up the stairs and shout for help. As no one came to their rescue, Rosalia and Jovelyn left their house and went to Simon Tutol, a neighbor. Tutol informed his neighbor Florencio Tropa of the stabbing of Rosalia. The latter was able to tell Florencio Tropa that it was appellant who stabbed her.

Florencio Tropa asked Vicencio Tropa to go to the poblacion to inform Avelino Tajaran, the younger brother of Rosalia, of the crime. Learning of the stabbing, Avelino Tajaran reported the incident to the Makato police. The responding policemen found Rosalia's body on the side of the barrio road. Thereafter, they proceeded to the house of Rosalia, where they found fresh bloodstain on the stairs.

A policeman instructed Avelino Tajaran to go to Barrio Castillo to inform Federico Fernando about the death of his wife. While passing by the house of Isagani Tumbokon in Barrio Castillo, Tajaran heard appellant boasting to Tiagan that the woman he stabbed made a queer sound. Hearing this, Tajaran returned to Barrio Tina to report to the police investigators that the appellant was in the house of Tumbokon. The police rushed to the place, arriving there at about 3:00 in the morning. Appellant was then about to leave the house of Tumbokon. As soon as he opened the front door, the policemen told him to surrender. Appellant and Tiagan were able to escape in the darkness. The police-men found it futile to give chase as it was very dark.

Going to the house of Tumbokon instead, the policemen found dog meat in a bag. Tumbokon informed them that appellant and Tiagan went to his house in the afternoon of December 8 and drank tuba. The two left Tumbokon's house at about 5:50 p.m. and returned at 11:00 p.m., bringing a gallon of tuba and dog meat for "pulutan." The drinking bout ended at 3:00 p.m. of December 10, shortly before the policemen arrived.

Appellant chided the trial court for giving more weight to the testimonies of the prosecution witnesses, namely, Jovelyn Fernandez, Avelino Tajaran and Isagani Tumbokon, than to his testimony and that of his witnesses, namely, Ricardo Tiagan, Manuel Taladtad and Augusto Tibio. (Appellant's Brief, p. 11; Rollo, p. 76) Appellant branded the testimony of Jovelyn, the only eye-witness to the crime, as "shaky" and "the product of rehearsal and coaching." He based this charge on the testimony of P/Sgt. Lino Relasyon of the INP of Makato, Aklan, that when he interviewed Jovelyn immediately after the incident the latter merely kept on crying and could not say anything. Appellant claimed that Jovelyn testified in court that she told the police of what she saw when they went to her house the night of December 10. (Appellant's Brief, pp. 13-14; Rollo, pp. 78-79)

The contradiction between the two testimonies appears more apparent than real.

P/Sgt. Relasyon testified on his interview with Jovelyn immediately upon his arrival at the crime scene. It was human nature for a young girl to cry her heart out and be inconsolable when asked about the killing of her mother a few hours before. Appellant should have asked Jovelyn on cross-examination as to the particular policeman to whom she narrated what she saw and the time when she was interviewed. It appears that Jovelyn's testimony in court referred to a later interview by another police officer after she had regained her composure.

At any rate, Jovelyn's demeanor highly impressed the trial court, which had to acknowledge:

"This court had observed the demeanor of Jovelyn Fernando while she was testifying in court. Although grief was still manifest in her physical appearance, she could however fairly relate her perceptions of the incident when her mother was stabbed by the accused Blas Aguarino and the other circumstances surrounding it." (Decision, p. 7; Rollo, p. 26)

The particular testimonies of Isagani Tumbokon and Avelino Tajaran being questioned by appellant were their statements that they both heard appellant narrate to Tiagan how he killed the victim. According to the two prosecution witnesses, appellant told Tiagan that when he stabbed the victim at the back, she made a sound like "ik" or something similar to the sound made by a pig or chicken being slaughtered ("Pagbuno ko tumig ik ang"). (Appellant's Brief, pp. 5-11; Rollo, pp. 70-76)

Appellant admitted uttering those words. He claimed, however, that he was only narrating how he slaughtered the dog, whose meat they were eating. (Appellant's Brief, p. 12; Rollo, p. 77)

In attempting to show that Tumbokon was not able to hear the gist of what he narrated to Tiagan, appellant argued that Tumbokon could not recall what appellant and Tiagan talked about during the five hours they were drinking in his (Tumbokon's) house. (Appellant's Brief, pp. 12-13; Rollo, pp. 77-78). These lapses of memory may be explained by the fact that mundane topics which one overheard are hardly remembered, but not the narration as gruesome as the sound made by a person when fatally stabbed.

Appellant claimed that Avelino Tajaran harbored ill-feelings towards him. He testified that he was an eye-witness when Tajaran killed Edecio Napilitan. At the same breath, appellant claimed that he refused to testify in court against Tajaran. (Appellant's Brief, p. 14; Rollo, p. 79) If that was the case, Tajaran would be beholden to, rather than be harboring a grudge against, appellant. Besides, Avelino Tajaran and appellant were related, being second cousins. It is highly improbable that a person will testify falsely against a close relative in the absence of any showing of a motive to do so.

Aside from putting in issue the credibility of the prosecution witnesses, appellant raised the twin defenses of alibi and denial. He claimed that from 2:00 to 3:00 p.m. of December 9, 1988, he was in the house of Augusto Tibio. At 3:00 p.m., he went to the house of Isagani Tumbokon together with Tiagan. At about 6:00 p.m., appellant and Tiagan left the house of Tumbokon but before the two parted company appellant promised Tiagan that he would fetch him later that night to continue their drinking. Appellant claimed that he spent the rest of the evening in his house in Barangay Castillo, slaughtering and skinning the dog which he got from an uncle the day before. As promised, he fetched Tiagan and the two of them returned to the house of Tumbokon, arriving there at about 11:00 p.m. (Appellant's Brief, pp. 7-8; Rollo, pp. 72-73)

Alibi and denial are inherently weak defenses and can easily be defeated by the positive identification of the accused by a prosecution witness as the perpetrator of the crime for which he is charged (*People v. Arbolante*, 203 SCRA 85 [1991]; *People v. Bausing*, 199 SCRA 355 [1991]).

Finally, We need to stress that flight is inconsistent with innocence (*People v. Jutie*, 171 SCRA 586 [1989]).

When the policemen asked appellant to surrender, he ran away and it was only on July 14, 1989, or seven months later that he was arrested.

The trial court ordered appellant to pay the heirs of the victim the sum of P30,000.00 as indemnity. This Court has increased the indemnity to P50,000.00 (People v. Sison, 189 SCRA 643 [1990]).

WHEREFORE, the judgment appealed from is AFFIRMED, with the modification that the indemnity of P30,000.00 to be paid to the heirs of the victim be increased to P50,000.00.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Bellosillo, JJ., concur.

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