

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS VILLANUEVA, RESPONDENTS.

G.R. No. 94133. May 08, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review of the decision dated March 5, 1990 of the Regional Trial Court of Surigao del Norte, Branch 32, at Surigao City, finding Carlos Villanueva guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of reclusion perpetua.

The information which was filed against the appellant on May 18, 1988 by the 1st Assistant City Fiscal of Surigao del Norte reads as follows:

"The undersigned First Assistant City Fiscal hereby accuses CARLOS VILLANUEVA of the crime of Murder, committed as follows:

"That on or about the 11th day of April 1988, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation and with the intent to kill, did then and there willfully, unlawfully and feloniously attack and assault one P/Sgt. ARTURO J. PELOS by suddenly shooting him twice with the use of a hand gun directed towards the vital parts of his body, thus causing said P/Sgt. Arturo Pelos to sustain gunshot wounds on his back and abdomen, which injuries caused his instantaneous death, to the damage and prejudice of the heirs of the deceased in such amount as may be allowed them by law.

"Contrary to Article 248 of the Revised Penal Code with the qualifying circumstance of treachery.

"Contrary to Article 248 of the Revised Penal Code." (p. 10, Rollo.)

Upon arraignment, Villanueva pleaded not guilty.

The facts of the case, as found by the trial court, are the following:

The victim, Arturo Pelos, was a police sergeant assigned as the INP station commander of the island-town of Libjo (Albor), Surigao del Norte. In the morning of April 11, 1988, he boarded a passenger motor launch. M/L Jun Ryan, bound for Surigao City with his nephew, Leonor Pelos, Jr. One of the passengers of the motor launch was Alan Cabajes. The vessel reached Surigao City at about 12:30 noon. Upon arrival, Alan Cabajes got off the boat and took a motorized tricycle, to the apartment of his sister, Mary Grace dela Rama, in the interior of Kaimo Street. After a few minutes rest, he went to the next-door apartment building some 25 meters farther down Kaimo Street with a two-meter wide alley leading to it.

Arturo Pelos and Leonor Pelos, Jr. also got off the launch and rode a tricycle to the apartment of Arturo's father, Antonino Pelos. Upon reaching Kaimo Street, the two passengers proceeded down the alleyway leading to the apartment building. At the time of their arrival, Maribelle Galindo had just finished picking some flowers on the roadside behind the Bank of the Philippine Islands building. Upon seeing Sergeant Pelos and Leonor Pelos, Jr. enter the alley, she rushed to join them. Leonor Pelos, Jr. leading the way, Maribelle Galindo

walked about two meters behind Sergeant Pelos. When the three were almost at Antonino's apartment, Maribelle was suddenly pushed aside by a man from behind her. She looked at the man and saw that he was holding a handgun. The man pointed his gun and fired at the back of Arturo Pelos, hitting him. Arturo turned around and slowly fell on his back to the ground. The gunman fired again at the stomach of the prostrate victim, hitting him a second time. Then the assassin tucked his gun inside his waistband and turned back from where he came. As the gunman faced Maribelle Galindo, she looked directly at him as he ran out of the alley toward Kaimo Street where he disappeared. Later, she recognized and identified the accused, Carlos Villanueva, as the gunman who shot and killed Arturo Pelos.

After the killer had fled, several people converged on the scene including Mary Grace dela Rama, Alan Cabajes and Antonino Pelos. With the help of some onlookers, the victim was brought to the Surigao Provincial Hospital but was declared dead on arrival. An autopsy was later conducted by the City Health Officer, Dr. Adelina A. Cabarrubias, whose postmortem findings showed that Arturo Pelos sustained and died from two gunshot wounds on his upper back and abdomen (Exhs. E and F).

Mary Grace dela Rama testified that at about 12:45 in the afternoon of April 11, 1988 she was on the ground floor of her apartment in the interior of Kaimo Street, combing her hair before the mirror near the door preparatory to going back to her office. Suddenly she heard a gunshot outside the building. As she stood up to look outside she heard a second loud report. Peering through the partly-opened door, she saw a person lying on his back in the alley about five meters away. About two meters further away and facing her was another person who was pointing a gun at the fallen man. The gunman turned around and fled toward Kaimo Street. She approached the fallen man and recognized him to be Arturo Pelos, the son of her next-door neighbor Antonino Pelos. She also identified the accused as the gunman.

The testimonies of Maribelle Galindo and Mary Grace dela Rama were substantially corroborated by Alan Cabajes who declared that he saw the incident in question from the apartment of Antonino Pelos where he was visiting at the time. He also claimed to have seen the accused in Libjo before the incident although he did not then know his name.

The accused was positively identified at the City Police Station (where he was invited for interview) by the prosecution witnesses, Alan Cabajes, Maribelle Galindo and Leonor Pelos, who were all around when the incident occurred. (pp. 9 and 13, Records).

On March 5, 1990, the trial court rendered judgment finding the appellant guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the penalty of reclusion perpetua. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds the accused, Carlos Villanueva, guilty beyond doubt as a principal of murder under Art. 248, No. 1, of the Revised Penal Code, and there being no modifying circumstance to consider, hereby sentences him to reclusion perpetua and its accessory penalties; to pay civil indemnity to the heirs of the victim in the sum of P30,000.00, and reasonable expenses for burial of P10,000.00 with cost." (p. 37, Rollo.)

In this appeal, the appellant alleges that the court a quo erred:

1. In convicting him notwithstanding failure of the prosecution to adduce evidence and/or proof (of his guilt) beyond reasonable doubt.
2. In imposing on him the supreme penalty of life imprisonment.

The appeal is bereft of merit.

The only defense of the appellant is an alibi.

At the outset, it is important to stress that courts always receive with caution, if not suspicion, evidence of alibi, not only because it is inherently weak and unreliable, but also because of its easy fabrication. To overcome the evidence of the prosecution, an alibi, must satisfy the test of full clear, and satisfactory evidence. This test requires not only proof that the accused was somewhere else other than the scene of the crime, but clear and convincing proof of physical impossibility for him to have been at the place of the commission of the crime (*People vs. Baring*, 187 SCRA 629; citing *People vs. Gaddi y Catubay*, 170 SCRA 649).

Appellant's contention that he could not have committed the murder because he was nowhere near the situs of the crime, being then on his way to Barangay Timamana, Tubod, Surigao del Norte, failed to meet the test that there must be clear and convincing proof of physical impossibility for the accused to be at the scene of the crime, in order that his defense of alibi may prosper.

It was established beyond doubt, for it was admitted by the appellant himself, that he was in Surigao City at or about the time of the shooting of Arturo Pelos. The accused claimed that he arrived in Surigao City on the M/L Jun Ryan at about 12:30 P.M. on April 11, 1988. This was the very same boat the victim, Arturo Pelos, had taken to the city. The accused declared that at 12:45 P.M. he left the terminal in a jeepney for Barangay Timamana about 32 kilometers away. By this circumstance appellant wanted to show the physical impossibility of his being present at the scene of the crime and of his having committed it. However, the trial court took judicial notice of the proximity of the jeepney terminal at Kaskag District to the scene of the shooting at Kaimo Street which are both within the poblacion or town proper of Surigao City. The distance between these two points is about one-half kilometer only which can ordinarily be negotiated in less than five (5) minutes by a motorized tricycle. There was therefore, no physical impossibility for the appellant to be at the scene of the crime at the time it was committed for, as pointed out by the trial court, it would have been quite easy for the accused, upon arriving in Surigao City, to immediately proceed to Kaimo Street to ambush his intended victim and thereafter, to flee by tricycle to the jeepney terminal in a matter of minutes.

Moreover, the appellant was positively identified by the prosecution witnesses, principally Maribelle Galindo and Mary Grace dela Rama, as the man who shot Sgt. Arturo Pelos, the victim. The presence of the prosecution witnesses during the incident had been clearly established for they were living in the place where the shooting took place. More importantly, the prosecution witness, Maribelle Galindo, was actually behind the victim when the accused shoved her aside by the shoulder before shooting his target to death. It should also be noted that the crime was committed at high noon, in broad daylight. The gunman wore no disguise, hence, his face was clearly visible making it easy for eye-witnesses to accurately identify him.

In view of the positive identification of the accused by the prosecution witnesses, his alibi is futile. It is a settled doctrine that the defense of alibi cannot prevail over the positive identification of the accused by the prosecution witnesses who have no motive to testify falsely against him (*People vs. Espera*, 175 SCRA 728).

In this case, there is no showing whatsoever that the prosecution witnesses were motivated by some improper motives in testifying against the appellant. Therefore, their testimony is entitled to full faith and credit (*People vs. Carpio*, 191 SCRA 108).

Although the prosecution witnesses are relatives of the victim, such relationship does not render their testimony less credible. This Court has already ruled that the mere fact that witnesses are relatives of the victim is not sufficient reason to disregard their testimony nor does it render the same less worthy of credit. What is important is that they had positively identified the accused as the assailant (*People vs. Bocatcat, Sr.*, 188 SCRA 175).

Appellant's disclaimer that he has no motive to kill the victim is not important for motive is unnecessary when the assailant had been positively identified (*People vs. Kyamko*, 192 SCRA 374).

WHEREFORE, the appeal is dismissed. The decision of the trial court is **AFFIRMED** except the civil indemnity awarded to the legal heirs of the victim. Arturo Pelos, which is increased to Fifty Thousand Pesos (P50,000.00) (People vs. Sazon, 189 SCRA 700).

SO ORDERED.

Narvasa, C.J., Cruz, Medialdea, and Bellosillo, JJ., concur.

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