

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN VILLA ALIAS “WANTOY,” DEFENDANT-APPELLANT.

G.R. No. 94469. May 11, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

Juan Villa, a peryante, denies having perpetrated the murder of Roseller (Russeller) Barrera in Aurora, Zamboanga del Sur on that fateful night of June 5, 1988, on the pretext that he was then attending to his "hantak" game at the perya in another town. Arrested on April 24, 1989 in Bonifacio, Misamis Occidental where he had earlier been apprehended for the crime of robbery,[1] Villa was charged with murder for the killing of Barrera in an information dated July 21, 1989 and filed with the Regional Trial Court in Pagadian City. The information reads:

"That on or about June 5, 1988, at about 8:30 o'clock in the evening, at Purok Imelda, Poblacion, Municipality of Aurora, Province of Zamboanga del Sur, Republic of the Philippines, within the jurisdiction of the Honorable Court, the said accused did then and there, with treachery and evident premeditation, taking advantage of the night to better accomplish his purpose with intent to kill and armed with a Cal. 30 pistolized carbine, willfully, unlawfully and feloniously assault and shot the person of Russeller Barrera alias "Kano" with the use of the firearm that he was armed with, thereby inflicting a mortal wound on the body of the said Russeller Barrera alias "Kano," which caused his instantaneous death, to the damage and prejudice of the heirs of the said Russeller Barrera.

CONTRARY TO LAW."[2]

On arraignment, Villa pleaded not guilty to the offense charged. The prosecution thereafter presented evidence proving the following:

Emedio Baraquia, a neighbor of both the victim and the accused, was alone at home in Purok Imelda in Aurora, Zamboanga del Sur, when, at around 7:00 o'clock in the evening of June 5, 1988, Juan Villa arrived. As Villa asked for supper, he led him to the kitchen where Villa placed the gun he was carrying on the table before he partook of the food served him by Baraquia. After eating, Villa told Baraquia that the carbine he was carrying would "silence" someone.

When Villa left Baraquia's house, he did not attempt to hide his carbine as he was wearing an army jacket. Some thirty minutes later, Baraquia heard two gunbursts coming from the direction of the theatre. As he was about to leave his house to inquire about the gunfire, he met his wife Norma who told him that "Kano" or Roseller Barrera had been shot.

At around 6:00 o'clock the following morning, Baraquia was on his way to work when he met Villa. The latter told him that the man who had "squealed" on him had been "silenced." Before Baraquia could answer, Villa left him, taking the trail from the highway of barangay Tabilinan towards the provincial hospital.[3]

When the shooting occurred, Allan Muñasque, then an eighteen-year-old, barely out of his teens, was in the house of Jorge Erongan sitting by the door while talking to his girlfriend, Hermie Galo. When he heard a gunburst, he looked back. After he heard the second shot, he saw Villa by the side of the store of Nene Cadotdot which was around six meters from where he was seated.[4] He saw Villa at the left side of Barrera pointing a pistolized carbine at the latter.[5] Muñasque then hurried to the scene of the crime, but Villa had disappeared. He was unable to be of help to Barrera as the other people in the vicinity had loaded Barrera in a tricycle and rushed him to the hospital.

According to Muñasque, when the incident occurred, Barrera was talking with Tita Misal.[6] He saw Villa because the latter was around ten meters away from him and Villa was illuminated by light in front of him.[7] Muñasque knew that the firearm Villa was carrying was a pistolized carbine because it was like the one issued to members of the CHDF.[8]

At the Aurora General Hospital where Barrera was brought, Dr. Pamela Cortes found that the victim was already dead due to hemorrhagic shock.[9] Her medical report shows that Barrera sustained a gunshot wound on the chest with the entrance wound located at the 8th intercostal posterior axillary line and the exit wound at the 4th intercostal mid-axillary line.[10]

By way of introduction to Villa's own testimony, the defense presented Aida Chavez and Tita Villa at the witness stand. According to Aida Chavez, she was at the store of Dolores Chavez which was around thirty meters from the store of Nene Cadotdot when the incident occurred. She saw a man running across the drier but could not identify him due to the darkness although a mercury lamp thirty meters away lighted the back part of Nene Cadotdot's store.[11]

For her part, Tita Misal testified that when the incident occurred, Barrera was seated with his wife on a bench, while Nene and Tita's husband were inside the store. Barrera and his wife were facing the same direction while Tita Misal, who was seated outside of the store was facing the road. The light inside the store illuminated its frontage, but the back was lighted by the mercury bulb. She did not notice where the shot which killed Barrera came from but she heard the gunburst coming from the side of the store.[12]

Testifying in his own defense, Villa affirmed that on June 5, 1988, he was in San Francisco, Agusan in anticipation of the town fiesta on June 18 and 19. In fact, being a peryante, he had been in San Francisco since May and went home only by the end of June.

He learned about the death of Roseller Barrera only upon arriving home from the conversations of the townspeople. He learned that the crime was committed in a particular store whose owner he did not know. He knew, however, that at the back of the store was a drier and behind the drier were houses, one of whom belonged to Hermie Galo. Although it is facing the site of the incident, there is still another store behind the drier in front of Hermie's house. He estimated the distance between Hermie's house and the store where Barrera was killed to be fifty meters.

Villa denied having eaten in the house of Baraquia on June 5, 1988 arguing that he could not have done so inasmuch as he has his own house. He admitted having been arrested on April 8, 1989 in Bonifacio, Misamis Occidental on a robbery charge by a policeman from Aurora who told him of the murder charge against him.[13]

In its decision of June 4, 1990, the trial court[14] laid emphasis on the "positive and conclusive identification" of the accused by witness Muñasque and brushed aside defendant's alibi. Noting that Muñasque was at a strategic vantage point when he witnessed the crime, the court underscored the fact that the site was well-lighted as there was a mercury lamp which illuminated both the front and back of Nene Cadotdot's store. Giving credibility to the

testimony of Baraquia, particularly the part that states that Villa was wearing a jacket on that date which dovetails with the sworn statement of Aida Chavez that the man she saw running in the dark was wearing a jacket,[15] the trial court considered said testimony to have corroborated Muñasque's "unwavering identification" of the assailant. Appreciating nocturnity as the only attending circumstance, the lower court disposed of the case thus:

"WHEREFORE, finding the prosecution's case to have been proven beyond reasonable doubt, the Court finds the accused Juan Villa alias Wantoy-guilty of the crime of Murder as charged in the information, and hereby sentences the said accused to suffer an imprisonment of RECLUSION PERPETUA.

The accused is further ordered to indemnify the heirs of the deceased Russeller Barrera in the amount of P40,000.00.

With costs.

SO ORDERED."

Villa interposed the instant appeal on the sole allegation that the court below erred "in passing a judgment of conviction in the clear absence of evidence to prove the guilt of the accused beyond reasonable doubt." [16] We find, however, that appellant's contention is without merit.

Appellant bewails the fact that it took almost a year before prosecution witnesses Baraquia and Muñasque executed sworn statements pointing to him as the culprit in the killing of Barrera. However, the ten-month delay in executing such statements was explained away by both witnesses, thus: Baraquia testified that when the news that Villa had been arrested in Bonifacio broke out, he and several people gathered together and he told the crowd that it was Villa who killed Barrera. He had been afraid that Villa might kill him and hence, when he learned of Villa's arrest in Bonifacio, he decided to divulge what he knew to the police.[17] Muñasque likewise testified that he did not issue a statement immediately after the commission of the crime because he was afraid of Villa. Even when Villa had left Aurora, Muñasque could not point an accusing finger at him because he was afraid that Villa might come back.[18] Indeed, these witnesses' failure to promptly accuse Villa of the crime should not affect their credibility, as well as that of their respective testimonies. Self-preservation, being a basic instinct, any initial reluctance on the part of a witness to be involved in criminal investigations is common place. Such fact, however, has been judicially declared as not affecting the credibility, of a witness.[19]

Appellant contends in his brief that credibility is a paramount determining factor in this case.[20] Such contention is correct. However, the factual findings of the trial court which had all the opportunity to observe the demeanor of the witnesses and to weigh all the evidence presented, is accorded great respect in the absence of a clear showing of arbitrariness and misapprehension of facts.[21] No such showing is present in this case.

The attempt of the defense to prove that Muñasque had a grudge against the appellant who was the suspected killer of Muñasque's brother[22] was deemed baseless. There is, therefore, reason to give full faith and credit to Muñasque's testimony, as the defense failed to show any motive on his part to testify against appellant other than to tell the truth.[23] The fact that Muñasque's testimony was uncorroborated does not affect its evidentiary value. Indeed, the oft-repeated truism that "the testimony of a single witness, if positive and credible, is sufficient to support a conviction even in a charge for murder"[24] applies in the case at bar.

In view of the positive identification of appellant as the perpetrator of the crime, his defense of alibi is lame, especially because it is uncorroborated and no motive to falsify against the accused has been established.[25] He even failed to prove by clear and convincing evidence that he was at some other place and for such a period of time as to negate his presence at the time when and the place where the crime was committed[26] or that he could not have gone to the locus criminis where he resides.[27]

Neither may appellant invoke his acquittal of the crime of illegal possession of firearms filed against him as a result of the finding that he used a pistolized carbine in perpetrating the murder of Barrera.[28] As shown by the decision in said case[29] which was appended to appellant's brief herein, the acquittal was due to the failure of the prosecution to present the firearm as an indispensable evidence in the case. Needless to say, his acquittal in said case, has no bearing in the instant murder case which was proven beyond reasonable doubt by the prosecution to have been committed by him. The presentation by the prosecution of the weapon used in killing Barrera is not an indispensable ingredient in arriving at the finding of guilt in the instant murder case.

Quite obviously, the testimonies of defense witnesses Aida Chavez and Tita Misal proved nothing but that appellant could not have been identified as the perpetrator of the crime. Said testimonies, coupled with appellant's alibi, constitute negative testimonies which cannot by any stretch of judicial discretion save the appellant from conviction. For it should be recalled, judicial discretion is circumscribed by the principle that in assessing the credibility of witnesses and that of their testimonies, greater weight is given to positive testimonies than to negative ones.[30]

The testimonies of both the prosecution and the defense having clearly established that the attack was sudden and unexpected and without the slightest provocation on the part of the victim,[31] treachery attended the commission of the crime. This circumstance qualified the killing as murder under Art. 248 of the Revised Penal Code.

However, the trial court erroneously appreciated the aggravating circumstance of nocturnity. It should have been considered as absorbed by treachery or alevosia.[32] Evident premeditation, which was alleged in the information, had not been proven beyond reasonable doubt in this case. It must have been suggested by the testimony of Baraquia that appellant went to his house telling him that appellant was out to "silence" Barrera. However, such portion of Baraquia's testimony being uncorroborated, it cannot be given any evidentiary value.

In the absence of any aggravating or mitigating circumstances, the correct penalty is reclusion perpetua.[33] However, pursuant to current jurisprudence, the indemnity should be increased to fifty thousand pesos (P50,000.00).[34]

WHEREFORE, the decision of the lower court convicting appellant Juan Villa alias "Wantoy" of the crime of murder for the killing of Roseller Barrera and sentencing him to reclusion perpetua is hereby **AFFIRMED**, subject to the modification that appellant should **INDEMNIFY** the heirs of Roseller Barrera in the amount of fifty thousand pesos (P50,000.00) instead of forty thousand pesos (P40,000.00). Costs against the appellant.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Melo, JJ., concur.

[1] Record, p. 21; TSN, December 13, 1989, p. 20.

[2] Record, p. 1.

[3] TSN, November 10, 1989, pp. 4-10.

[4] TSN, November 8, 1989, pp. 45 and 20.

[5] Ibid, pp. 21 and 25.

[6] Ibid, pp. 40-41.

[7] Ibid, pp. 33, 39 and 46.

- [8] Ibid, p. 36.
- [9] Ibid, p. 9.
- [10] Exh. A; TSN, November 8, 1989, pp. 7-8.
- [11] TSN, December 13, 1989, pp. 5-8.
- [12] Ibid, pp. 13-14.
- [13] Ibid, pp. 16-20.
- [14] Presided by Judge Fausto H. Imbing.
- [15] Exh. 4.
- [16] Appellant's Brief, p. 1; Rollo, p. 31.
- [17] TSN, November 10, 1989, pp. 13-16.
- [18] TSN, November 8, 1989, pp. 28-29.
- [19] *People v. Riego*, G.R. No. 90256, September 12, 1990, 189 SCRA 445.
- [20] Appellant's Brief, p. 10; Rollo, p. 40.
- [21] *People v. Diaz*, G.R. No. 100752, August 4, 1992, 212 SCRA 147.
- [22] TSN, November 8, 1989, pp. 30-31.
- [23] *People v. Wenceslao*, G.R. No. 95583, August 12, 1992, 212 SCRA 560; *People v. Ornoza*, G.R. No. 56283, June 30, 1987, 151 SCRA 495.
- [24] *People v. De la Cruz*, G.R. No. 71044-46, March 16, 1987, 148 SCRA 582.
- [25] *People v. Bechayda*, G.R. No. 72001, August 7, 1992, 212 SCRA 336.
- [26] *People v. Riego*, G.R. No. 90256, September 12, 1990, 189 SCRA 445.
- [27] *People v. Repuela*, G.R. No. 85178, March 15, 1990, 183 SCRA 244.
- [28] Appellant's Brief, p. 11; Rollo, p. 41.
- [29] Criminal Case No. 8274 before the Regional Trial Court of Pagadian City, Branch 22, presided by Judge Avelino Q. Abiog.
- [30] *People v. Malonzo*, G.R. No. 91695, August 4, 1992, 212 SCRA 85.
- [31] *People v. Alacar*, G.R. Nos. 64725-26, July 20, 1992, 211 SCRA 580.
- [32] *People v. Necerio*, G.R. No. 98430, July 10, 1992, 211 SCRA 415.
- [33] Arts. 248 and 64 (1), Revised Penal Code.
- [34] *People v. Wenceslao*, *supra*.

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