

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRED JACOLO AND NOEL CABILOGAN, ACCUSED, FRED JACOLO, APPELLANT.

G.R. No. 94470, December 16, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

In an information dated 20 May 1988, Fred Jacolo and Noel Cabilogan were charged with the crime of MURDER committed as follows:

"That on or about the 18th day of March 1988 in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, said accused, armed with a knife, conspiring, confederating and helping one another, with a decided purpose to kill and with treachery, did then and there wilfully, unlawfully and criminally stab, hit and wound Sifronio Belandres with a knife, which said accused Fred Jacolo was then provided (sic) at the time, causing upon said Sifronio Belandres injury on a vital part of his body which cause (sic) his death (a) few moments thereafter.

CONTRARY TO LAW"[1]

When arraigned, both accused assisted by counsel de officio pleaded not guilty.

The evidence for the prosecution, based on the testimony of Josephine Belandres, the widow of the victim, was summarized by the trial court as follows:

"x x x at about six o'clock in the evening of March 18, 1988, she and her husband Sifronio Belandres, took a passenger jeepney to go home to Molo, Iloilo City. When the jeepney on which they were riding passed by the Supermarket at Iloilo City proper, three persons boarded it who thereafter tried to block each and every passenger who alighted therefrom. Upon reaching Fundidor, Molo, Iloilo City, the three men alighted. When Sifronio Belandres and his wife Josephine tried to alight, one of the three men, whom she identified as the accused Fred Jacolo, blocked her husband. Sifronio Belandres could not pass by way of the driver's seat because one of the three, nicknamed Bolibal, was seated there. The third one, identified as the accused Noe Cabilogan, was then standing by the driver's side. Suddenly, and without any warning, Fred Jacolo stabbed Sifronio Belandres right at the chest with clinical precision, leaving his knife buried to the hilt at the breast of his victim, after which, he and his companions scampered away. The victim was declared 'Dead on Arrival' by the Iloilo Doctor's Hospital."[2]

Fred Jacolo, on the other hand, while admitting that he and his co-accused were on board the same jeepney on that fateful night, denied having stabbed the victim. Jacolo testified that he and his co-accused had already alighted from the jeepney when they heard someone shout that a man had been stabbed.[3]

The trial court rendered a decision on 11 May 1990, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, this Court finds the accused FRED JACOLO guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, and, in

the absence of neither mitigating nor aggravating circumstances which may be considered in the imposition of the penalty, and conformably to the doctrine laid down in *People vs. Munoz*, 170 SCRA 107, this Court hereby sentences said Fred Jacolo to suffer the penalty of reclusion perpetua, to pay the heirs of Sifronio Belandres the sum of P30,000.00 as civil indemnity, to suffer the accessory penalties provided for by law, and to pay the costs. x x x"[4]

Noel Cabilogan, the other accused, was acquitted for insufficiency of evidence to establish conspiracy.

In his appeal, Fred Jacolo assigns the following errors to the trial court:

"x x x IN FINDING THAT PROSECUTION WITNESS JOSEPHINE BELANDRES POSITIVELY IDENTIFIED ACCUSED-APPELLANT, AND IN RELYING HEAVILY ON HER UNCORROBORATED, INCONSISTENT AND UNRELIABLE STATEMENT.

x x x IN RELYING ON THE WEAKNESS OF THE DEFENSE RATHER THAN ON THE STRENGTH OF THE PROSECUTION'S EVIDENCE.

x x x IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."[5]

Appellant seeks to discredit the testimony of Josephine Belandres on the ground that her credibility was impaired by alleged "serious inconsistencies" and "irreconcilable and unexplained contradictions" regarding certain events which transpired on 18 March 1988. Appellant points out that on direct examination, Josephine testified that her husband could not get away from his attacker through the front seat because someone was seated there but on cross examination she stated that no one was seated in front except the driver.[6] Appellant further states that Josephine testified on direct examination that Noel Cabilogan tapped her on the back, inside the jeepney, while she said on cross examination that Cabilogan was just standing outside the jeepney at the driver's side.[7] Finally, it is alleged that Josephine's identification of the appellant as her husband's assailant is "highly unreliable." Appellant claims that Josephine first stated that they [meaning she and her husband] did not know the two (2) accused before 18 March 1988 and that she first came to know about Fred Jacolo and Noel Cabilogan from their neighbors, particularly from a certain Tiya Bella; however she later on stated that her husband had named Fred Jacolo before he died. Appellant insists that it would have been impossible for the victim to identify him since Josephine had testified that they did not know the two (2) accused. Appellant then concludes that Josephine's identification of Fred Jacolo as the killer is seriously inconsistent, unreliable and thus cannot support a conviction, specially since the trial of this case was held two (2) years after the event, when it would be improbable that Josephine could remember the faces of the assailants.[8] In the alternative, the accused prays that he be held guilty for the lesser offense of homicide based on the theory that treachery was not adequately proven since it was not shown that the victim was unaware of the attack and that he had no means to defend himself or retreat.[9]

A careful review of the records of this case shows that the testimony of Josephine Belandres in fact contains certain inconsistencies. The inconsistencies however concern only minor details which do not affect the credibility of the witness.[10] Josephine Belandres had testified that she was only on arms-length away from her husband when the latter was stabbed. She positively identified Fred Jacolo as the assailant. The alleged inconsistency regarding the identification of the appellant is easily explained. Josephine testified that they did not know the appellant prior to the stabbing. This was the reason why she could not immediately name the appellant. The Solicitor General correctly points out that there is no inconsistency when the husband named the appellant Fred Jacolo before he died, while the wife had stated that they did not know Fred Jacolo, since her testimony would be hearsay insofar as her husband's knowing the accused is concerned. Josephine's positive identification of the appellant, Fred Jacolo, as the person who stabbed her husband was correctly given credence by the trial court, notwithstanding the lapse of two (2) years from the date of the incident, for how could a wife forget the person

who caused her such suffering and grief? This Court has previously ruled that where the considerations of visibility are favorable and the witness does not appear to be biased against the accused, his assertions as to the identity of the malefactor should be normally accepted. This is more so when the witness is the victim or his near relative because these witnesses usually strive to remember the face of the assailant.[11]

Regarding the presence of treachery, this Court has held that a sudden and unexpected attack, without the slightest provocation on the person of the one attacked, is the essence of treachery.[12] In the case at bar, the wife Josephine testified that the appellant Fred Jacolo had alighted from the jeepney when he went back and stabbed the victim.[13] It was clearly a sudden, unexpected and unprovoked attack and the trial court correctly considered treachery to have qualified the killing to murder.

The civil indemnity awarded by the trial court to the heirs of Sifronio Belandres is increased to Fifty Thousand Pesos (P50,000.00) following the latest pronouncements of this Court.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** with the modification above stated.

SO ORDERED.

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

[1] Rollo, p. 4

[2] Rollo, p. 14

[3] TSN, 10 May 1990, p. 3

[4] Rollo, p. 17

[5] Rollo, p. 29

[6] Rollo, pp. 35-36

[7] Rollo, pp. 36-37

[8] Rollo, pp. 37-39

[9] Rollo, p. 40

[10] *People v. Sison*, G.R. No. 86455, 14 September 1990, 189 SCRA 643

[11] *People v. Pascua*, G.R. No. 100990, 27 February 1992, 206 SCRA 628

[12] *People v. Alcantara*, G.R. No. 95957, 28 February 1992, 206 SCRA 662

[13] TSN, 26 April 1990, p. 9

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