

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMADO CLAVERIA ALIAS “ARMANDO”; ACCUSED-APPELLANT.

G.R. No. 94786. April 06, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

In an information dated April 5, 1984, Amado Claveria was charged with the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code of the Philippines, committed as follows:

"That on or about March 24, 1984, at about 7:00 o'clock at night, at Sitio Barit-barit, Barangay Villa Mercedes, in the municipality of San Quintin, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation and while armed with a 38 Caliber Revolver (unrecovered), did then and there wilfully, unlawfully and feloniously assault, attack and shot (sic) one Rosario Liberato, three (3) times hitting him on the back and on other parts of his body; which gunshot wounds caused his death shortly thereafter.

CONTRARY TO LAW with the aggravating circumstance of (1) nighttime."[1]

After trial, the court a quo rendered judgment as follows:

"WHEREFORE, the Court finds the accused guilty of the crime of murder qualified by treachery and evident premeditation punishable under Art. 248 of the Revised Penal Code and aggravated by nighttime and sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the family of the victim with the amount of P100,000.00, and to pay the costs of this suit.

SO ORDERED."[2]

The trial court made the following findings of fact, to wit:

"x x x that on March 24, 1984, shortly before 7:00 o'clock in the evening, the accused and the victim Rosario Liberato and other persons were drinking liquour (sic) in the store of Mrs. Primitiva Gaspar in Barangay Villa Mercedes, San Quintin, Abra. At about 7:00 o'clock that same evening, the drinking party broke-up and Rosario Liberato and the accused Amado Claveria went out of the store together into the road fronting the street. Liberato then mounted his borrowed motorcycle to go home. Just as when was (sic) backing out his motorcycle with his back towards the accused, the latter fired on (sic) Liberato at least three or four times with a Cal. .38 Revolver all bullets finding their marks at the back of the victim, most of whom (sic) were fatal as the victim's heart and lungs were hit. While this shooting was taking place, the younger brother of the accused, Pfc. Orlando Claveria, with whom the victim had differences in the past and were not in good terms with each other at the time of the incident, P/Lt. Jovito Dias, Pat. Amante Pascual and Pat. Julio Lumapag, all of the San Quintin Police Station, San Quintin, Abra, were all seated under a mango tree in front (sic) of the store of Primitiva Gaspar where the accused and the victim and some companion (sic) were drinking immediately before the shooting incident. But curiously, these so-called officers of the law never did anything, to prevent, or apprehend the gun wielder. The police lieutenant even gave the very inane and foolish testimony that he and his companions have (sic) to hide behind a wall as they thought they were the ones being shot at instead of

applying the established immediate action of anyone trained in weaponry to drop, returned (sic) fire and maneuver (sic). The hard fact about this whole incident is that a younger brother of the accused, Pat. Orlando Claveria was not in good terms with the victim as earlier mentioned in this decision and the police investigator, Pfc. Truman B. Gayyed of the Abra PC-INP and the Provincial Commander of the PC had strong suspicions about the possible participation of Pfc. Orlando Claveria with (sic) the killing of the victim and the possible involvement of all the members of the INP who were there but never did anything to apprehend the accused who was positively identified by at least one witness, Lorna Valera, sister of the victim to be the gun wielder. Unfortunately, these strong suspicions of the Provincial Commander and the Police Investigator were never pursued and so these police rogues are at-large (sic) and dreadfully still in uniform with their badges not as symbols of honor and duty but as abetors (sic) for the commission of crimes against the very people who are paying their salaries and whom they are to depend (sic) and protect and as useless guardians of the law and public order." [3]

The trial court gave full faith to the version of the prosecution and discredited the accused-appellant's defense of alibi as the latter was positively identified by witness Lorna Valera as the perpetrator of the crime. The accused-appellant claimed that it was when he had already gone some two hundred (200) meters away from the store where he and the victim, together with some other companions were drinking, or approximately eight (8) minutes after he had left, that he heard shots coming from the said vicinity. According to him it was only when he returned that he discovered that the victim had been shot and was then being assisted by his sister, Lorna Valera. [4]

Accused-appellant faults the trial court for having based its decision of his conviction on allegedly conflicting testimonies of the prosecution witnesses and not on the testimonies of witnesses for the defense which according to him, were consistent with human experience and behavior.

A careful review of the records of this case shows that the testimony of Lorna Valera in fact contains certain inconsistencies. The inconsistencies however concern only minor details which do not affect the credibility of the witness. [5] On the contrary, they may even be considered as badges of veracity [6] or manifestation of the truthfulness on material points in the testimony. [7]

The inconsistencies pointed out by accused-appellant, in sum are as follows: a) the reason why Lorna Valera happened to be at the scene; b) the exact place where she was when she witnessed the shooting; c) what exactly was it that the group was drinking; d) and her testimony that Emiliano Renon was drinking with the group. Apparently, none of these alleged inconsistencies pertain to the manner of the killing, moreso to the identification of the accused as the perpetrator of the crime. Lorna Valera, who testified that she was at the store buying cigarettes when the shooting occurred, positively identified accused-appellant as the assailant. [8] Her presence near the scene of the crime was corroborated by prosecution witness Bernardo Combis. [9] Although her exact location was not established, the fact remains that she was there when the shooting occurred.

Accused-appellant attempts to destroy the credibility of eyewitness Lorna Valera by imputing to her the improper motive of wanting to get back at him because allegedly the latter's younger brother, being a police officer, had filed several charges against the victim. To bolster this claim, accused-appellant emphasized the fact that he was not immediately arrested after the crime, purportedly because he was merely implicated as an afterthought by Lorna Valera.

No improper motive can be attributed to herein eyewitness who, as correctly appreciated by the trial court, testified clearly, coherently and in a forthright manner as to the actual shooting. Accused-appellant contends that his non-arrest could be attributed to Lorna Valera's reluctance to seek his immediate arrest. We cannot believe this allegation. On the contrary, Lorna Valera sought the immediate arrest of accused-appellant. However, Pfc. Julio

Lumapag refused to make the arrest because there was as yet no order from higher authority who happened to be Pfc. Orlando Claveria, the accused-appellant's brother.[10] Moreover, the most telling piece of physical evidence that would belie the claim of accused-appellant that herein eyewitness' account was improperly motivated, is Exhibit "B" -- the paraffin test results[11] which showed accused-appellant positive for nitrates in both hands -- indicative of accused-appellant having discharged a firearm.

Having discounted the fact that the testimony of the eyewitness was tainted with any ill motives and having established that the alleged inconsistencies were trivial and irrelevant, this Court is left with no other option but to uphold the credibility of Lorna Valera as an eyewitness. Where the considerations of visibility are favorable as was established during the trial, 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 a near relative, as in this case, the victim's sister, because such witnesses usually have a knack to remember vividly the face of the assailant.[12]

Accused-appellant interposed the defense of alibi and presented evidence to the effect that he was not present when the incident took place. Alibi, in order to prosper, must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of the commission.[13] The defense of alibi cannot stand against the positive identification of a credible witness.[14]

In the case at bar, there was every possibility that accused-appellant was present at the scene of the crime during the shooting incident. By his own testimony, he was just two hundred (200) meters away, which distance can be covered within two to three (2-3) minutes by running. Moreover, the prosecution witnesses testified that accused-appellant was seen leaving with the victim. Moreso, none of them mentioned the presence of Lauro Cantano who testified that it was he and certain Mariano Cabello who left Cabasan's compound together with the accused.[15] Thus, accused-appellant's defense of alibi must fall.

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.[16] Here there was employment of means of execution which insured the attacker's safety from any defensive or retaliatory act on the part of the victim.[17] In the case at bar, the victim was shot at the back while he was mounting on his motorcycle, preparing to leave. Indeed, it was clearly a sudden, unexpected and unprovoked attack and the trial court correctly appreciated treachery to have qualified the killing to murder.

However, evident premeditation cannot be considered as having qualified the crime. None of the elements of evident premeditation such as: (1) proof of the time when the accused decided to commit the crime; (2) proof of an overt act showing that the accused had clung to his determination to commit the crime; and (3) the lapse of time between the decision and the execution of the crime sufficient to allow the accused to reflect upon the consequences of his acts had been established by the prosecution.[18]

Nighttime was similarly erroneously appreciated by the trial court. This circumstance can only be considered when it was deliberately sought by the accused.[19] There was no evidence presented that herein accused-appellant purposely waited for nightfall before perpetrating the crime. Moreover, the ordinary rule is that nocturnity is deemed absorbed in treachery and as such is not to be appreciated separately.[20]

WHEREFORE, except for the modification reducing the indemnity awarded to P50,000.00, consonant with prevailing jurisprudence, the appealed judgment is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[1] Rollo, p. 2.

[2] Decision dated July 12, 1990, penned by Judge Benjamin A. Bongolan, Branch 2, Regional Trial Court, Bangued, Abra. Rollo, p. 18.

[3] Rollo, pp. 16-17.

[4] TSN. July 24, 1985, pp. 17-18.

[5] People vs. Sison, 189 SCRA 643 (1990).

[6] People vs. Balmaceda, 87 SCRA 94 (1978).

[7] People vs. Barba, 203 SCRA 436 (1991); People vs. Manzanares, 177 SCRA 427 (1989).

[8] TSN, September 26, 1984, pp. 6 & 9.

[9] TSN, December 5, 1984, p. 19.

[10] TSN, September 26, 1984, p. 10.

[11] Records, p. 123.

[12] People vs. Pascua, 206 SCRA 628 (1992).

[13] People vs. Lacao, Sr., 201 SCRA 317 (1991).

[14] People vs. Bustarde, 182 SCRA 554 (1990).

[15] TSN, April 10, 1985, p. 71.

[16] People, vs. Alcantara, 206 SCRA 662 (1992).

[17] People vs. Toribio, 198 SCRA 529 (1991).

[18] People vs. Nabayra, 203 SCRA 75 (1991).

[19] People vs. Aspili, 191 SCRA 530 (1990).

[20] People vs. Clamor, 198 SCRA 642 (1991).

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