

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUVENAL KYAMKO, ACCUSED-APPELLANT.

G.R. No. 95263. December 18, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In the early evening of December 1, 1986, Rosendo Cabalida and his wife, Patricia went to the store of Oscar Nalzaro, not far from their house at Sta. Filomena, Dipolog City, where they played domino. While the game was in progress, Patricia, who merely watched the game with the neighbors, noticed Juvenal Kyamko with some companions buying rum and cigarettes from the store while the game was played.

At about 11:00 o'clock in the evening the couple went home. While the two were walking on the gravel road towards the house, and upon reaching the house of one Maluto, Patricia, who was walking behind her husband, saw Kyamko emerge from the clump of banana trees on the side of the road and from a distance of an arms length, shoot her husband on the head after which her husband fell face up. She held her husband at the same time shouting and crying in the Visayan "Now, finish off my husband, the time has come to realize your desire. Sendo, it is now accomplished that your skull be broken," (referring to a quarrel which her husband previously had with Kyamko who vowed to break his skull).

The quarrel arose when in March, 1986 Rosendo Cabalida demanded payment from Kyamko for one (1) cavan of seed palay which the latter borrowed from the former in November, 1985. In that quarrel, Kyamko vowed to break the skull of Cabalida and since then they had not been in good terms.

After firing the shot, Kyamko ran into the bushes and disappeared. Loreto, son of the couple, arrived and Patricia addressed him, saying "Loy, the wish to break the skull of your father had already been accomplished." Loreto then went to the police station in the city proper to report the killing.

About an hour later a policeman arrived and when they asked Patricia who killed her husband, she said it was Venal (referring to Juvenal Kyamko) and pointed to his house nearby with the light on the porch. The policeman proceeded the house but did not find the suspect there. They then took the cadaver to the Gamalinda Funeral Parlor in the city. The following morning, the doctors of the City Health Office performed an autopsy on the body of the victim with the grudging consent of the widow and removed the slug from his brain.

The findings of the autopsy report of the victim are as follows:

"External Findings

- "1. Face straight forward with bullet wound of entrance at right eye immediately below the lower lid about 1.5 cm. in diameter. No bullet wound of exit.
- "2. Coagulated blood on both nostrils and both left and right ear.
- "3. The chest and abdomen, no patent findings.

"4. The chest and abdomen, no patent findings.

"5. Legs shows no pertinent findings.

"6. Wound probably inflicted by gunshot from a .38 caliber revolver as shown by deformed lid extracted from cerebellum.

"Internal Findings

"1. Fracture of the rear orbital bone of the right eye socket.

"2. Tearing of the right lobe of the cerebellum.

"3. Hematoma of the parietal lobe of the right side of the cerebrum.

"4. Subdural hematoma right side of occipital area.

"Cause of death = Cardio respiratory arrest Shock, Traumatic, gunshot wound head."[1]

After the embalment of the body, it was brought back to Sta. Filomena and three (3) days after it was buried.

In the meanwhile, Kyamko fled and stayed with Capt. Molina in Sergio Osmeña, Sr. It was only in March, 1987 that the accused was finally arrested in the house of a sister-in-law in Turno, Dipolog City.

Thus, an information charging Juvenal Kyamko of the crime of murder was filed by the City Fiscal's office of Dipolog City in the Regional Trial Court of the same city. Upon arraignment the accused entered a plea of not guilty and thereafter the trial on the merits proceeded.

On August 18, 1989 a decision was rendered convicting the accused of the offense charged as follows:

"WHEREFORE, this court finds accused Juvenal Kyamko y Cagbabanua guilty beyond reasonable doubt of the crime of Murder as defined and punished under Art. 248 of the Revised Penal Code. Accordingly, he is hereby sentenced to an indeterminate penalty of eight (8) years and one (1) day of reclusion temporal, as maximum, with all the accessory penalties prescribed by law; to indemnify the heirs of Rosendo Cabalida in the sum of Thirty Thousand Pesos (P30,000.00) and to pay costs.

The aggravating circumstance of the offense having been committed at nighttime cannot be considered against accused, the same being absorbed in treachery and evident premeditation.

The period of his detention shall be credited fully in his favor if he shall agree in writing to abide by the rules promulgated for convicted prisoners, otherwise he shall be credited with only four-fifths (4/5) thereof.

SO ORDERED.

Given at Dipolog City, this 18th day of August, 1989."[2]

Not satisfied therewith the accused interposed an appeal to the Court of Appeals alleging as the sole error his conviction based on the testimony of a lone unreliable witness.

On September 25, 1990, the Court of Appeals rendered a decision affirming the appealed judgment with the modification that the penalty to be imposed on the appellant should be reclusion perpetua, but it certified the case to this Court for review, considering the nature of the penalty thus imposed.[3]

After careful examination of the records of the case, the Court concurs in the decision of the appellate court that the appeal is devoid of merit.

It is true that Patricia Cabalida, wife of the deceased victim, Rosendo Cabalida, was the sole eyewitness for the

prosecution. She however, positively identified the appellant as the assailant of her husband and she revealed the identity of the appellant immediately thereafter to the police investigator.

The contention of the appellant is that there is variance between the affidavit of Patricia wherein she stated that on that fateful evening, she and her husband were looking for their son, Alberto Cabalida, when the appellant waylaid them and shot her husband at close range in front of the house of Maluto,[4] and of her testimony in court that after she and her husband went home from the store they were waylaid by the appellant.[5] The Court finds no such inconsistency. While the couple may be on the way home on that evening, it is not improbable that they were also looking for their son Alberto Cabalida when they were ambushed by the appellant.

Moreover, the said alleged variance is only on a minor and immaterial matter and does not affect her credibility. On the contrary it is, if at all, an indication of her truthfulness and candor.

Appellant maintains that Patricia Cabalida was not present in the store and at the scene of the crime as the store owner was not presented to corroborate Patricia's testimony. The Court is not persuaded. If it was the intention of the appellant to prove this allegation, he should have presented the store owner himself for the purpose.

As it is, the record is replete with the testimony of Patricia showing her presence, with the victim, not only at the store when she watched the game but on the way home when they were ambushed, as follows -

“q How were you able to know that the person who shot your husband at a distance of one fathom was Benal Kyamko?

“a I came to know because I actually saw him, sir.

“q You said it was nighttime, as a matter of fact you estimated it to be at around 11:00 o'clock, what made you identify or see clearly the accused, Benal Kyamko?

“a I came to see him and recognize him because there was an electric light nearby and it was bright, sir.

“q The brightness that you described, came from what source?

“a That brightness came from the window of the house of Camaluto because there was a light from that place, sir.

x x x

“q From the store of Oscar Nalzar as you were walking with your husband towards home what was your relative position with him?

“a We were then following each other and it was my husband ahead of me, sir.

“q You said you were behind your husband what was your distance from him in going home?

“a The distance between my husband and I was about two fathoms, sir.

“q As you were walking towards home in that distance indicated by you, please inform us what happened?

“a When we reached the house of a certain Camaluto there is an electric light there and that is the place where this Benal Kyamko rushed at my husband and shot my husband on his eye, sir.

“q What was the distance of Benal Kyamko to your husband at the time that he fired upon your husband?

“a The distance from the place where Benal Kyamko fired my husband was about one fathom and at that time he came from the banana plants where he was hiding he shot my husband, sir.”⁶

The trial court was convinced and found the testimony of Patricia to be credible as it stated that "there was no reason for the court to perceive for Patricia Cabalida to impute to the accused the killing of her husband if accused did not commit the act. The shooting was in her immediate presence and she could not have made a mistake in the identity of the assailant and she immediately thereafter told the authorities who her husband's killer was following a time gap within which there was no more time to contrive."⁷

Too well-known is the rule that on the credibility of witnesses, the findings of the trial court should not be disturbed on appeal, unless some facts or circumstances may have been overlooked that may otherwise affect the result of the case. The appellant failed to show any justification to depart from this rule.

Appellant also argues that there was no proof of motive on his part in the killing of the victim. Again, it is a cardinal rule that motive is unnecessary when the assailant had been positively identified. At any rate, Patricia categorically stated that in March, 1986 her husband demanded payment from the appellant of an account of one sack of palay which the appellant borrowed, and that the appellant got mad and threatened that he will break the head of her husband.⁸

The defense of appellant is alibi. He claims that he was allegedly some 30 kilometers away at the Military Camp of the 44th Infantry Battalion at the municipality of Sergio Osmeña, Sr., Zamboanga del Norte then. He is corroborated by Sgt. Juanito Miniano who said that he last saw the appellant in the said place at 10:00 o'clock P.M. on December 1, 1986.

Suffice it to say alibi is a weak defense and could easily be concocted. Such defense cannot prevail over the positive identification of the appellant as the assailant by the prosecution witness. And even if it is assumed without admitting, that at 10:00 o'clock P.M. the appellant was 30 kilometers away in the municipality of Sergio Osmeña, Sr. on December 1, 1986, he has not demonstrated that it would be physically impossible for him to go to the scene of the crime and commit the murder at 11:00 o'clock in the same evening.

The conviction for murder as affirmed by the Court of Appeals is in order and the modification of the penalty to reclusion perpetua is in accordance with the settled decisions of this Court. However, the indemnity to the heirs of the deceased should be raised to P50,000.00.

WHEREFORE, with the above modification as to the penalty and the indemnity, the decision appealed from is AFFIRMED in all other respect with costs against accused-appellant.

SO ORDERED.

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

[1] Records, p. 55.

[2] Page 10, Decision, appendix to appellant's brief.

[3] Justice Segundino Chua was the ponente, concurred in by Justices Vicente V. Mendoza and Fernando Santiago.

[4] Exhibit 1 of appellant.

6 TSN., April 15, 1987, page 5.

7 Pages 6 to 7, Decision.

8 TSN., April 15, 1987, pages 2 to 3.

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