

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEFINO PASCUAL AND NORBERTO MAXIMO, RESPONDENTS.

G.R. No. 95681. September 08, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Josefino Pascual alias "Peter," Norberto Maximo alias "Ryan," Salvador Vista alias "William," Lamberto Maximo alias "Jimmy" and John Doe alias "Noel Sunio" were charged for the murder of Paquito Valguna y Vergola in Criminal Case No. 1660 of the Regional Trial Court, Branch 20, of Mambusao, Capiz.

Only Josefino Pascual and Norberto Maximo were arrested and arraigned while the others have remained at large.

When arraigned on August 29, 1989, Josefino Pascual and Norberto Maximo, assisted by their respective counsels, pleaded "not guilty" to the following information:

"That on or about October 5, 1987, at around 12:00 o'clock mid-night in Brgy. Guintas Jamindan, Capiz, Philippines, and within the jurisdiction of this court, the above named accused, conspiring and helping one another, with treachery and abuse of superior strength, wilfully and feloniously assault and stab one PAQUITO VALGUNA Y VERGOLA, thereby inflicting upon the latter a stab wound at the 4th intercostal space and a lacerated wound at the left parietal area, resulting in the death of said Paquito Valguna y Vergola.

"Josefino Pascual and Norberto Maximo are presently detained at the Capiz Provincial Jail while the rest of the accused are still at large." (p. 24, Rollo.)

The evidence of the prosecution established the following facts which are set out in the appealed decision:

"1. That Paquito Valguna was killed on October 5, 1987, at around midnight within the vicinity of his house at Brgy. Guintas, Jamindan, Capiz;

"2. That Paquito Valguna sustained the following wounds: 1) Stab wound at 4th Intercoastal (sic) space mid-clavicular line right chest in a medial upward direction to the left chest, 5 inches in length; 2 inches in depth; 2) Lacerated wound 3/4 inch in length, superficial, at the left parietal area of the head, Exhibit 'A;'

"3. That the cause of death of Paquito Valguna was stab wound, internal hemorrhage secondary to stab wound (tsn, Andion, page 4, November 6, 1989.

"The legal query that the court has to cross is: Were the two accused, Josefino Pascual and Norberto Maximo among the five persons who went up the house of Paquito Valguna at around 7:00 o'clock in the evening until midnight of October 5, 1987? Were the two accused responsible for the death of Paquito Valguna?

"Before the court could answer these questions, it is but necessary that the testimony of the prosecution's witnesses will be carefully dissected because the guilt or the acquittal of the accused hinges (sic). The accused are charged of the most grievous crime of murder which, if found guilty, would suffer an imprisonment for life, death penalty not being allowed by the 1987 Constitution.

"The eye-witnesses for the prosecution was (sic) the mother of the deceased and his son, Estrella, Valguna and Danilo Valguna, respectively. The mother of the deceased testified that at around 7:00 o'clock in the evening of October 5, 1987, five armed men went up their house looking for her son, and when the five men were informed that her son was out, they stayed and waited for her son to arrive. He (sic) did not ask more questions why they were looking for her son because she was already scared, she has already the feeling that something will happen to her son; that she claimed to have identified the three of the five men namely: the accused Josefino Pascual alias 'Peter' and Norberto Maximo alias 'Ryan' and a certain Salvador Vista alias 'William.' She could not be mistaken as to the identity of the accused because she used to see them passing near their (sic) house previous to the incident. The court feels that there was no reason for this witness to be (sic) pin-point the assailants of her son, no motive to falsify her testimony. While it was true that she did not report the identification of the assailants of her son when she reported to the police authorities together with her husband the following morning, because she justified that she was afraid to reveal the identity of the assailants of her son because she was warned not to report to the police authorities, otherwise, they will be coming back to kill all of them. It was only when the situation improved that she felt she could no longer be endangered of reprisal (sic) when she informed the police the identity of the assailants of her son.

"The identity of the accused Josefino Pascual and Norberto Maximo was clearly established by Estrella Valguna, mother of the victim, having been together with the accused from 7:00 o'clock in the evening until midnight of October 5, 1987, when the five persons were waiting for the arrival of her son. Mrs. Valguna was face to face with the accused for five (5) hours in that evening of October 5, 1987. Being the mother of the deceased Paguito Valguna and sensing danger of (sic) her son, the Court believes that her attention was focused to the identity of the five persons who were then in their (sic) house waiting for her son to arrive. She may not know the names of the five persons but definitely she can identify the faces of the five persons if she ever see (sic) them again.

"The identification of the accused, Josefino Pascual and Norberto Maximo was collaborated (sic) by the son of the deceased, Danilo Valguna, who was then 9 years old at the time of the incident and the court believes that Danilo Valguna has a photographic memory not only to related (sic) the incident but also has photographic memory of the assailants of his father. Danilo Valguna may not likewise, knew (sic) the names of the assailants of his father, but definitely, the Court believes that Danilo could not have mistaken the faces of the assailants of his father, he even identified the two accused, Josefino Pascual and Norberto Maximo, as two of the five persons who went up their house and waited for the arrival of his father; that when his father arrived at around 12:00 midnight, the latter was handcuffed and was brought to the ricemill and from the ricemill, his father was brought back to the house to get his gun and gave the same to the accused, and then his father was again brought to the ricemill; that the next (sic) time that his father was brought back in the frontyard of their house, his father was already dead." (pp. 30--32, Rollo.)

Three of the men, Josefino Pascual alias "Peter," and Norberto Maximo alias "Ryan" and William Vista, who has remained at large, were known to Estrella Valguna, because they were her neighbors and became her acquaintances before the incident. When the accused brought back the body of Paquito to the front yard of his house, the accused warned his family not to report the matter to the authorities, otherwise they would come back and kill them.

Nevertheless, the following day, on October 6, Estrella Valguna and her husband reported the killing to the authorities, but she did not disclose the names of his killers in view of the threat to their lives for they were still residing in the same barangay where their son's killers lived also. Fifteen (15) days after Paquito's burial, Estrella transferred to the Poblacion and did not return to Guintas for fear of the accused. Secretly, however, she supplied the names of the accused to the authorities, when she felt that she and her family were out of danger from possible reprisal. It was only then that this criminal case was filed against the accused.

Danilo Valguna, the eldest son of the victim, corroborated the testimony of his grandmother, Estrella. He was able

to identify the accused because he knew them prior to the incident as they used to pass in front of his parents' house.

Sonia Panuncio, the wife of the deceased, became mentally deranged after, and as a result of, the death of her husband.

Dr. Elrie Garcia, the Rural Health Physician and a resident of Jamindan, Capiz, who conducted the post mortem examination of the deceased on October 6, 1987, found that the deceased suffered the following injuries:

- 1) stab wound at 4th intercostal space mid-clavicular line right chest in a medial upward direction to the left chest, 5 inches in length, 2 inches in depth;
- 2) Lacerated wound 3/4 inch in length superficial, at the left parietal area of the head.

The first wound could have been caused by a sharp bladed instrument and the second wound by a blunt instrument. The wounds could have been inflicted by more than one person. Death was due to internal hemorrhage secondary to the stab wound.

The defendants' defense was alibi. They denied any liability for the death of Paquito Valguna, relying mainly on the Blotter Clerk of the Police Station of Jamindan, Capiz, whom they presented as defense witness and who testified that when Estrella Valguna reported the incident, she did not identify the persons who killed her son.

Lucibar Villa, a resident of Jamindan, Capiz, and a neighbor of the accused, testified that on the date and time in question, she and her husband, Federico Villa, went to the house of Pascual to buy liquor (Old Captain Rhum). Pascual did not have a store but the Villas knew he stocked liquor in his house. Together with the Pascual spouses, the Villas had a drinking spree. They consumed two bottles of liquor while they conversed until 2:00 o'clock in the morning. Pascual's house is located near an army camp. This testimony was corroborated by Lolita Pascual, wife of the accused.

The accused, Josefino Pascual, denied responsibility for the death of Valguna for he allegedly did not even know the deceased. He also denied knowing his co-accused, Salvador Vista alias "William" (who has remained at large), and Norberto Maximo alias "Ryan." He came to know Maximo only when both of them were detained in the provincial jail.

Norberto Maximo alleged that on the date and time of the murder of Paquito Valguna, he was in his "mother-in-law's" house in Rizal Pala-pala, Iloilo City. Being a "cargador" in the supermarket, he slept in the hut of his "in-law" (the mother of his common-law wife). At no time did he leave the place. He admittedly was not a stranger to his common-law wife's place in Brgy. Lucero, Jamindan, Capiz, but he visited there in April, 1987 yet. He was corroborated by his "mother-in-law."

On June 7, 1990, the trial court rendered judgment convicting both accused of the murder of Paquito Valguna. The dispositive portion of the decision reads:

"WHEREFORE, in the light of the above foregoing and finding the guilt of the accuseds (sic), to have been established beyond reasonable doubt, the court hereby imposes upon the accuseds (sic), Josefino Pascual and Norberto Maximo the penalty of LIFE IMPRISONMENT RECLUSION PERPETUA pursuant to the provision of Art. 248 of the Revised Penal Code, and to PAY THE HEIRS of Paquito Valguna the sum of P30,000.00 without subsidiary penalty in case of insolvency.

"The period of detention of the accuseds (sic) with the Provincial Jail of Capiz shall be credited in full, in favor of the accuseds (sic) subject to the condition provided under Art. 29, Revised Penal Code." (pp. 34-35, Rollo.)

Hence, this appeal. The appellants, Josefino Pascual alias "Peter" and Norberto Maximo alias "Ryan" in their respective briefs allege that the trial court erred:

1. in giving credence to the testimonies of the prosecution witnesses particularly Estrella Valguna and Danilo Valguna;
2. in rejecting the alibi of the accused Josefino Pascual and Norberto Maximo;
3. in exhibiting patent bias and partiality;
4. in rejecting the testimony of the accused, Josefino Pascual, that he was forced to join the New People's Army; and
5. in convicting the two accused of murder and not subversion or rebellion.

The appeal has no merit.

The appellants assail the trial court for giving credence to the testimonies of the prosecution witnesses Estrella Valguna and Danilo Valguna, because when Es-trella Valguna and her husband reported to the police the following day (October 6, 1987) the killing of their son Paquito, Estrella told the police that she could not identify the killers of her son. She described them merely as men "with firearms and suspected members of the NPA" (tsn p. 11, Nov. 6, 1989, testimony of Patrol-man Lorenzo Robles). It was only on July 7, 1988 or nine months after the killing occurred on October 5, 1987, that Estrella "secretly" supplied the names of the suspects: Josefino Pascual, Norberto Maximo and Salva-dor Vista alias "William."

However, her delay in identifying the murderers of her son, was understandable for she and her family were threatened with extermination by the appellants if they should report the incident to the authorities. She was able to muster enough courage to identify them only after two of the suspects had been arrested for robbery.

During her direct testimony, Estrella Valguna declared that she had known the accused even before the incident, for they were neighbors. She had known Nor-berto Maximo also for he had worked for her for two years as he used to go to her house to work in her field. She also had known Josefino Pascual for a year before the incident. Moreover, she and the accused had been face to face for about five hours, waiting for the deceased to arrive the night the accused killed him.

Although it was not known who among the five (5) accused inflicted the two stab wounds sustained by Paquito, all five of them are equally guilty for they had all conspired to liquidate him.

Where a conspiracy exists, the act of one is the act of all and each is to be held in the same degree of liability as the others (People vs. Villanueva, 211 SCRA 403). Conspiracy was established by evidence that all five were animated by a single and common purpose, to murder Paquito and they were united in its execution.

Pascual's and Maximo's defense of alibi is a weak defense (People vs. Bañez, 214 SCRA 109) and was cor-rectly dismissed by the trial court. Alibi must yield to and may not prevail over the positive identification made by the prosecution witnesses (Siton vs. Court of Appeals, et al., 204 SCRA 473).

"x x x We have time and again ruled that alibi is the weakest of all defenses for it is easy to fabricate and difficult to disprove; it cannot prevail over the positive identification of the accused by the witnesses. Moreover, for defense of alibi to prosper, it is not suffi-cient that the accused prove that he was somewhere else when the crime was committed but that it was also physically impossible for him to have been at the scene of the crime at the time the victim was shot. xxx" (People vs. Florida, 214 SCRA 227; People vs. Martinado, 214 SCRA 713).

"Alibi is the weakest of all defenses especially in the light of clear, positive and precise evidence tending to identify the culprit and in the absence of ill-motive on the part of the eye-witnesses." (People vs. Molina, 213 SCRA 52, 53.)

The lower court's observation was correct when it said:

"Both accused only put up the defense of alibi that Norberto Maximo was in Iloilo City, and that he was suspected as member of the NPA and he was apprehended when he returned to Brgy. Lucero, Jamindan, Capiz to harvest palay from the landholding of his live-in partner in May, 1988 (tsn, Leonor p. 12 Nov. 14, 1989); that on October 5, 1987, he was at the house of his mother-in-law in Iloilo City, working as 'cargador.' The accused, Maximo, when testifying was not candid, his testimony was not spontaneous and not straightforward his demeanor reveals that he was memorizing his testimony. The court cannot believe that the accused was telling the truth because it would be incredible that he did not know his co-accused when they were living in the same Municipality and in adjacent barangays." (p. 34, Rollo.)

Barangay Lucero, where appellant Norberto Maximo resided, is only about 1 1/2 kilometers from Barangay Guintas where the murder was committed. It can be reached after a 12-15 minute walk (TSN, p. 2, December 5, 1989, rebuttal witness Estrella Valguna).

With regard to the trial Judge's alleged "patent bias and partiality," the same is not supported by clear evidence.

"Mere suspicion that a judge is partial is not enough. There should be evidence to prove the charge." (People vs. Serrano, 203 SCRA 171, 172.)

The defense theory that the accused, Josefino Pascual, was only forced to join the New Peoples' Army, and that he should have been convicted of subversion or rebellion, not murder, is irrelevant and frivolous and should not be taken seriously.

The trial court imposed on the appellants "the penalty of life imprisonment reclusion perpetua pursuant to the provision of Article 248 of the Revised Penal Code, and to pay the heirs of Paquito Valguna the sum of P30,000.00." (pp. 34-35, Rollo.) Apparently the trial court could not distinguish between life imprisonment and reclusion perpetua. The proper penalty is reclusion perpetua and not life imprisonment. In People vs. Jaymalin, 214 SCRA 685, we indicated the differences between life imprisonment and reclusion perpetua:

"The judgment must nevertheless be rectified insofar as it sentenced the accused-appellant to 'reclusion perpetua or life imprisonment.' We have held that the two penalties are not synonymous or interchangeable as reclusion perpetua carries accessory penalties that do not attach to life imprisonment. Under the Dangerous Drugs Act, the proper penalty for the crime committed by the accused-appellant is life imprisonment x x x." (pp. 686-687.)

The death indemnity should be increased to P50,000.00 in accordance with more recent jurisprudence (People vs. Bañez, 214 SCRA 109).

WHEREFORE, the Judgment of the trial court finding the herein appellants, Josefino Pascual and Norberto Maximo, GUILTY beyond reasonable doubt of the crime of murder, is AFFIRMED but with modification of the penalty imposed on them which shall be reclusion perpetua and the award of civil indemnity to the heirs of the deceased, Paquito Valguna, is hereby increased to P50,000.00. Costs against the appellants.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Quason, JJ., concur.

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