

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO BONGADILLO Y SHARON, ACCUSED-APPELLANT.

G.R. No. 96687. July 20, 1994

Ponente: PUNO, J.

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PUNO, J.:

DOMINGO BONGADILLO was charged with MURDER before the Regional Trial Court (Branch XVII)[1] of Tabaco, Albay, for hacking to death his stepmother's second husband, MAXIMINO BUAL. The Information,[2] dated September 22, 1989, reads:

"That on or about the 1st day of June, 1989, at more or less 7:00 o'clock in the morning at Sitio Quinastillohan, Barangay Hacienda, San Miguel, Municipality of Tabaco, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, treachery, taking advantage of superior strength and with evident premeditation, did then and there, wilfully, unlawfully and feloniously attack and hack with a bolo MAXIMINO BUAL Y BARCELLANO, thereby inflicting upon the latter multiple fatal wounds in the different parts of his body which caused his instantaneous death, to the damage and prejudice of the latter's heirs.

"ACTS CONTRARY TO LAW."

Upon his arraignment on December 4, 1989, accused-appellant pleaded not guilty. Thereafter, trial ensued.

The testimonies of prosecution witnesses, Bonifacio Bongat, Dominga Bustamante, Asuncion Bustamante Bual, Dr. Audwin Azada, and Vicente Burce, tried to establish these facts:

On May 31, 1989, BONIFACIO BONGAT, a barber and resident of San Roque, Tabaco, Albay, visited his nephew, Ernesto Bongat, in Hacienda, San Miguel, Tabaco, Albay.[3]

At around seven o'clock in the morning of June 1, 1989, Bonifacio headed for Salvacion, Malilipot, Albay, to attend the barrio's feast day, held every first Saturday of June. After walking for three (3) minutes, he arrived at the beach. From a distance of approximately fifteen meters, Bonifacio saw the accused, Domingo Bongadillo, hacking another man with a bolo. However, Bonifacio failed to recognize the victim who by then was sprawled on the ground.[4] After he had hacked the victim three (3) times, the accused fled. Bonifacio then boarded a paddled boat and proceeded to Salvacion, Malilipot, Albay.[5]

On June 4, 1989, the feast day celebration of Salvacion, Bonifacio met Dionisio Bustamante and learned from him that the victim was Maximino Bual, second husband of Asuncion. Upon Dionisio's request, Bonifacio went to the police station and gave his sworn statement[6] in relation to the hacking incident.

DOMINGA BUSTAMANTE, sister of Asuncion, testified that at around seven o'clock in the morning of June 1, 1989, she was in Quinastillohan, Hacienda, San Miguel, Tabaco, Albay. Unaware of what transpired along the beach, Dominga proceeded to the house of Maximino Bual to request the latter to help her clear the property of Freddie Burce. She was stunned upon seeing Maximino Bual in a pool of blood. She then looked for her sister,

Asuncion, and found her husking corn in a farm.

Apparently, prior to the hacking incident, or in the afternoon of May 31, 1989, Domingo Bongadillo inquired from Dominga if she was aware of the problem involving his live-in girlfriend, Lory Azurpado, and the victim, Maximino Bual. Dominga denied any knowledge about it. Unable to contain his emotion, Domingo told her that Maximino was taking advantage of his girlfriend. Domingo vowed he would kill Maximino.[7]

ASUNCION BUAL, stepmother of the accused and the widow of Maximino, had no inkling about the incident. She was husking corn when her sister, Dominga Bustamante, informed her of her husband's tragic fate. Asuncion rushed home and saw the lifeless body of her husband Maximino, more or less, four meters from their house.

Asuncion recalled that in the afternoon of May 31, 1989, Domingo, who was standing some thirty meters from their house, angrily brandished his bolo at Maximino Bual. Accused threatened: "Magrani ka ta gagadanon taka!"[8] (Come near and I will kill you). She, however, was not aware of the alleged affair between her husband, Maximino, and her stepson's girlfriend.

After the hacking incident, the barangay captain, Vicente Burce, was summoned at the scene of the crime. He went to the residence of Domingo, some forty meters from the place of incident. When he arrived, Domingo was eating boiled camote with his bare hands. Domingo, at that time, was with a lady companion. Vicente did not pay attention to Domingo's hands, but he (Vicente) noticed that Domingo was wearing clean clothes. After informing Domingo that he was suspected of killing Maximino, Vicente invited Domingo to the police station to avoid any untoward incident.

The victim was examined by Municipal Health Officer, Dr. Audwin C. Adaza. It was revealed that the victim sustained fourteen (14) hack wounds and died due to "Hypovolemic/Neurogenic Shock secondary to Multiple Hacked Wounds with Cervical Transaction."[9]

The evidence for the defense consisted mainly of the testimony of accused-appellant Domingo Bongadillo.

Accused-appellant admitted that, on May 28, 1989, his girlfriend, Lory, and his "Papay Imo" (Maximino), told him of Maximino's intention to take Lory with him to Cabasan. Domingo claimed he was not jealous of Maximino, albeit Lory had been his live-in partner for four (4) months. Neither was he offended by Maximino's proposition which, he averred, was told to him in jest. Domingo averred that before he and Lory lived together, they had agreed that each of them could freely enter into other relationships.

A day before the incident, or at around eleven o'clock in the morning of May 31, 1989, Domingo allegedly gathered gravel and rocks. He loaded the rocks he collected in a vehicle. As he was loading a rock, he slipped. The rocks fell. His hands were pinned and injured in the process.

He complained that he was feverish due to his swollen hands. At the time the barangay captain, Vicente Burce, came to his house and brought him to the Tabaco police station, he had a fever. With both of his hands injured, accused-appellant claimed it was not possible for him to hack the victim to death.

Two (2) witnesses, P/Cpl. Reynaldo Borromeo and Patrolman Eduardo Boridor, Municipal Warden and Jail Guard, respectively, affirmed that accused was holding his left hand with his right hand when the latter was brought in to the police station. Later, accused was brought to the Rural Health Unit where he was given antibiotics for his injured hands.

After trial, DOMINGO BONGADILLO was found guilty of MURDER with the qualifying/aggravating circumstances of evident premeditation and abuse of superior strength. He was meted the penalty of reclusion perpetua and ordered to indemnify the heirs of the victim, Maximino Bual y Barcellano, the sum of thirty

thousand pesos (P30,000.00).[10]

Feeling aggrieved, Domingo Bongadillo appealed. He raises these errors:

"THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCONSISTENT, CONTRADICTORY, AND IMPROBABLE TESTIMONIES OF PROSECUTION WITNESSES DOMINGA BUSTAMANTE, BONIFACIO BONGAT AND ASUNCION BUAL.

"THE TRIAL COURT ERRED IN NOT GIVING WEIGHT TO THE ACCUSED' DEFENSE OF ALIBI AND DENIAL, IT BEING IMPROBABLE FOR HIM TO COMMIT THE CRIME CHARGED BECAUSE HIS HANDS WERE BADLY INJURED BY REASON OF AN ACCIDENT THAT BEFELL HIM THE DAY BEFORE THE CRIME INCIDENT.

"THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY OF MURDER BEYOND REASONABLE DOUBT."

We affirm the judgment of conviction.

Eyewitness Bonifacio Bongat positively identified accused-appellant as the assailant. He testified:

"FISCAL BOCALBOS:

"Q: Mr. Bongat, do you recall where you were on the morning of June 1, 1989 at about 7:00 in the morning?

WITNESS:

"A: I was at the Hacienda.

"Q: In what particular place at the Hacienda were you?

"Q: I was at (sic) house of Ernesto Bongat, my nephew.

"x x x x x x x x.

"Q: What time did you stay at the house of your nephew?

"A: I was there until 7:00 a.m. when I went to the beach.

"Q: To what direction were you going then?

"A: I was proceeding to Salvation, Malilipot, Albay to attend the barrio fiesta.

"Q: Do you recall if there was an accident while you were at said time and place?

"A: Yes, sir, there was.

"Q: Will you tell the Honorable Court what was that unusual incident about?

"A: Upon reaching the beach I saw somebody being hacked.

"Q: Do you know the man being hacked?

"A: I do not know him.

"Q: How about the one that was hacking the victim, do you know him?

"A: Yes, sir, I know him.

"Q: Who was that man?

"A: Domingo, sir.

"x x x x x x x x.

Q: Let us go to the point where this Domingo was hacking a man. How many times did you see Domingo hack the man?

"A: I was not able to count. I just saw him that man.

"Q: At least, can you tell us was it once, twice or thrice?

"A: I can only estimate 3 times after which I left.

"Q: What was the position of the man when he was being hacked by Domingo?

"A: He was already lying flat on the ground.

"x x x x x x x x.

"Q: Up to this time you did not know who was that man who was hacked?

"A: I came to know him later.

"Q: Who was that man?

"A: He was that certain Maximino. "

(TSN, March 16, 1990, pp. 3-7)

Accused-appellant urges that Bonifacio was 100 meters from the scene of the crime. Considering said distance, not to mention that the eyewitness was, more or less, sixty-nine years old when he witnessed the hacking incident, he contends that the eyewitness is not worthy of belief. We are not persuaded.

Bonifacio explicitly stated that he was fifteen meters from the incident. He testified:

"Q: How far were you from the alleged incident that you saw?

"A: More or less, fifteen (15) meters.

"Q: What was the position of the victim and the assailant as far as you were concerned?

"A: They were fronting me.

"Q: Who was facing you?

"A: The assailant, sir.

"Q: And when you arrived at the seashore was that the time he started hacking?

"A: I do not know if it was the start when I reached the shore. But that was the scene I saw."

(TSN, March 16, 1990, pp. 24-25)

Bonifacio never claimed he was 100 meters from the hacking incident. The distance of 100 meters alluded to by Bonifacio had reference to the distance between the hacking incident, which was along the beach, and the house of Maximino Bual. Thus, on cross-examination, Bonifacio said:

ATTY. CANDOLEA:

"Q: And where did you see the incident?

"A: At the seashore on my right.

"Q: Are you very sure the incident happened on the seashore?

"A: Yes, sir, along the beach.

"Q: Was it far from the house of Maximino Bual?

"A: The distance is, I think, one hundred meters.

"Q: You mean the distance of the incident which you saw and the house of Maximino Bual is 100 meters?

"A: Yes, sir."

(TSN, March 16, 1990, pp. 18-19).

To be sure, Bonifacio recognized Domingo Bongadillo as the assailant. He knew the assailant even prior to the hacking incident. As borne by the records, the eyewitness, despite his age, had satisfactorily demonstrated before the trial judge, that he could clearly see from a distance of twenty meters. He testified:

"ATTY. CANDOLEA:

"Q: We can see whether he can recognize the accused at a distance of 20 meters. It is of common knowledge that the eyesight of a person deteriorates as he reaches the age of 70.

"FISCAL BOCALBOS:

"Q: It is already for the Court to appreciate. (At this juncture, the defense counsel saw a lineman fixing a light on an electric post and requested the witness to identify the color of the man's pants and also if he has a wristwatch or not for which the witness clearly identified at a distance of, more or less, twenty (20) meters from the courtroom that the lineman was wearing blue pants and wristwatch. And that cleared the doubt that the witness who is 70 years of age has a deteriorating eyesight).

(TSN, March 16, 1990, pp. 30-31).

Accused-appellant tried to destroy the credibility of the prosecution witnesses, citing inconsistencies on their testimonies apropos the place where the victim was hacked, as testified to by Bonifacio, and the place where the victim was later found by witnesses Asuncion Bual and Dominga Bustamante.

The cited inconsistencies in the answers of the prosecution witnesses, specifically, as to the location of the victim, as seen by the eyewitness Bonifacio, on the one hand, and the place where the victim was found by Dominga and Asuncion Bual, on the other hand, do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.[11] What tilts the balance against the accused-appellant is the fact that Bonifacio had seen him in the act of hacking the victim to death. It is settled that findings of the trial court pertaining to the credibility of witnesses deserve great respect since it had the opportunity to examine their demeanor as they testify on the witness stand, and therefore, it could discern if such witnesses were telling the truth or not.[12]

We note, further, that the hacking incident occurred at around seven o'clock in the morning. It is a rule that: "Where conditions of visibility are favorable, and the witness does not appear to be biased, his assertion as to the identity of the malefactor should be normally accepted." [13]

Accused-appellant assails the failure of Bonifacio to immediately inform the police authorities, or at the very least, Asuncion Bual, of the hacking incident. He contends that the indifference displayed by said witness was contrary to human nature. We disagree.

The initial reluctance of a witness to volunteer information about a criminal case is common and has been recognized as not affecting the credibility of a witness[14]

The accused-appellant anchors his defense on denial and alibi. The defense of alibi cannot prevail over the positive identification of the accused by an eyewitness who had no improper motive to falsely testify.[15] In the case at bench, there was no evidence indicating that Bonifacio Bongat was moved by improper motive to falsely testify against Domingo. His testimony should, therefore, be given full faith and credence.[16]

We have examined the evidence of accused-appellant. He claims he was not slighted by the illicit affair between his girlfriend and the victim. We find it preposterous that, after he had learned of the said affair, accused-appellant would just take it lightly, particularly, in this case, since the victim was the second husband of Domingo's stepmother. Quite obviously, accused-appellant is trying to convince this Court that he had no motive to kill the victim. The effort is futile for motive is essential only when there is doubt as to the identity of the assailant, but not when the accused had been positively identified.[17]

Accused-appellant's uncorroborated allegation, that his hands were badly injured prior to the hacking incident, was unsubstantiated. Other than his say so, there was no medical record or evidence presented to prove that, assuming he did injure his hands, the injury was so severe that it would be impossible for him to hack the victim to death. His story is of doubtful veracity and cannot overcome the positive declaration of the eyewitness pointing to him as the killer.

The trial court found that the killing was attended by two (2) aggravating circumstances, viz: evident premeditation and abuse of superior strength.

Before evident premeditation can be appreciated against the accused, these requisites must first be established: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) the sufficient lapse of time between the determination to commit the crime and the execution thereof, to allow the offender to reflect upon the consequences of his act.[18]

We agree that the killing of Maximino Bual was attended by evident premeditation as shown by these circumstances:

On May 28, 1989, accused-appellant was personally notified by Maximino Bual of his intention to take with him the former's live-in girlfriend to Cabasan. Three (3) days later, accused-appellant asked Dominga Bustamante about the illicit affair between his girlfriend and Maximino. He revealed he would not stop until he had killed Maximino. His anger still unspent, accused-appellant went to the residence of Maximino. On May 31, 1989, Domingo brandished his bolo and warned Maximino that he would kill him. Finally, on June 1, 1989, accused-appellant was seen hacking Maximino with his bolo.

We agree with the trial court ruling that the killing was attended by abuse of superior strength. "The circumstance of abuse of superior strength depends on the age, size and strength of the parties. It is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing a superiority of strength notoriously advantageous for the aggressor which is selected or taken advantage of (by) him in the commission of the crime." [19] As found by the trial court, accused-appellant was a young, robust and healthy thirty-three (33) year-old man, whereas, the victim was a sixty-three (63) year-old man. The wide age gap between the victim and the assailant who was armed with a bolo supports the finding of the trial court that there was an abuse of superior strength in the commission of the offense.

WHEREFORE, premises considered, we AFFIRM the trial court decision, finding DOMINGO BONGADILLO y SHARON guilty beyond reasonable doubt of MURDER, and sentencing him to reclusion perpetua. In line with

the prevailing jurisprudence, the civil indemnity is increased from thirty thousand pesos (P30,000.00) to fifty thousand pesos (P50,000.00).[20] Costs against accused-appellant.

SO ORDERED.

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

[1] Presided by Judge Milagros J.B. Marcaida.

[2] See Original Records, p. 19.

[3] His nephew's house was situated some 200 meters from the beach where paddled boats await those who wish to leave the island of San Miguel.

[4] TSN, March 16, 1990, pp. 18, 24-25.

[5] See Exhibit "A"; Original records, p. 3.

[6] Marked as Exhibit "A."

[7] TSN, February 5, 1990, pp. 14-15.

[8] TSN, February 5, 1990, pp. 6-8.

[9] Exhibit "C"; Original records, p. 5.

[10] Decision, dated November 27 1990; Original Records, p. 82.

[11] People vs. Mauyao, G.R. No. 84525, April 6, 1992, 207 SCRA 732, 738.

[12] People vs. De Guzman, G.R. No. 102409-10, December 21, 1992, 216 SCRA 754, 759-770.

[13] People vs. Jacolo, G.R. No. 94470, December 16, 1992, 216 SCRA 631.

[14] People vs. Hubido, G.R. No. 101741, March 23, 1993, 220 SCRA 389.

[15] People vs. Pomentel, G.R. No. 87781, December 11, 1992, 216 SCRA 375.

[16] People vs. Navaja, G.R. No. 104044, March 30, 1993, 220 SCRA 624; People vs. Dagdagan, G.R. No. 100332, March 22, 1993, 220 SCRA 308 citing People vs. Patog, 144 SCRA 429 (1991).

[17] People vs. Amondina, G.R. No. 75295, March 17, 1993, 220 SCRA 6.

[18] People vs. Castor, G.R. No. 93664, December 11, 1992, 216 SCRA 410.

[19] People vs. Jimenez, Jr., G.R. No. 84276, February 13, 1992, 206 SCRA 214.

[20] People vs. Jumamoy, G.R. No. 101584, April 7, 1993, 221 SCRA 333.

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