

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME COMPETENTE AND JESUS COMPETENTE, ACCUSED-APPELLANTS.*G.R. No. 96697. March 26, 1992*

Ponente: MELENCIO-HERRERA, J.

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The "fiesta" of Barangay Bano, Tiwi, Albay, on 15 May 1986, was marred by the death of Nestor Dacir, a Barangay Tanod. Charged with Murder for having strangled and stabbed him to death were accused-appellants Jesus Competente and Jaime Competente, father and son, respectively. They were alleged to have conspired and helped each other in treacherously attacking said Victim. On their plea of "not guilty," they were tried and convicted to suffer reclusion perpetua and to indemnify the deceased's heirs in the sum of P30,000.00 as compensatory damages. They are now before this Court appealing that verdict of the Regional Trial Court of Tabaco, Albay.[1]

Prosecution eyewitnesses, Rosita Galan, Sonny Dacir, the Victim's 8-year old son, and Antonio Calmada, narrated the occurrence more or less in the following tenor: The houses of the Victim, the Competentes, and one Eddie Gutierrez, in Barangay Bano, are near one another. On 15 May 1986, Rosita went to Eddie Gutierrez' house at Barangay Bano to attend the fiesta. The latter is her brother-in-law. She knows accused-appellants, they being neighbors of her brother-in-law. She likewise knew the Victim, being her brother-in-law's friend. At about 1:00 o'clock P.M. of 15 May 1986, at Barangay Bano, while she was attending to Eddie Gutierrez' children in the front yard, she heard the Victim's house stoned thrice by four men, whom she failed to identify. The victim went out to verify and saw the perpetrators run towards the house of the Competentes. The Victim followed them. As the latter was approaching, Rosita and Antonio Calmada heard appellant-father (Jesus), who was then at their yard, say "Here he is, here he is." As fate would have it, the victim tripped and fell flat on his face. Immediately, the appellant-father sat astride the Victim's back and strangled him on the neck. Suddenly, the appellant-son (Jaime) arrived at the scene and positioning himself behind his father, stabbed the Victim with a kitchen knife on the right side of his body, slightly above the hip bone. The son hurriedly retreated to their house but the father continued strangling the victim until his wife, Aurora, told him: "Jesus, Jesus tama na, nakadamay na ang aqui mo" (Jesus, Jesus, that is enough, your son is already involved). Only then did appellant-father release his hold on the Victim's neck. Aurora also confronted her son as to why he had to join his father. Prosecution witness Antonio Calmada saw the strangling of the Victim by appellant-father but did not see the stabbing.

Seeing the incident, Rosita Galan shouted and screamed for help. Eddie Gutierrez and Antonio Calmada responded and seeing the Victim flat on his face and bloodied, put him on a tricycle and took him to the hospital where he died upon arrival.

Appellants-father-and-son denied the charges against them claiming that one Feliciano Bacho was the culprit; that the latter had admitted the commission of the crime, and was accordingly charged with Homicide in Criminal Case No. 2495.

Appellant-father contended that at about 1:00 o'clock P.M. on the day of the fiesta, while he was in the "sala," Emerita Colina, one of his visitors, stood and said "there is a quarrel outside the house." Emerita went out and said "Ay, Nestor was stabbed by Bacho." He went out of his house and saw the Victim chasing Bacho. When he sensed that the Victim was approaching his house, he went inside and closed the door. The Victim tapped on the door and asked that he be allowed inside thinking that Bacho was also therein. He opened the door and pushed him out but the Victim, in turn, pushed him in. He then advised the Victim to go to the hospital. Defense witness Loreto Rodriguez corroborated the foregoing version.

P/Sgt. Wilfredo Bermas also declared that in the course of the investigation he had conducted, Bacho confided to him that he had stabbed the Victim. Appellant-son, for his part, claimed that after the baptism of his child, he had a drinking spree with the latter's sponsor. He got drunk and fell asleep at about 11:30 in the morning and after he woke up at around 3:30 in the afternoon he heard that the Victim was stabbed by Bacho.

Assessing the different versions, the Court a quo accorded more credence to that of the prosecution and, as initially stated, rendered a verdict of guilt.

The errors that accused-appellants fault the Trial Court with center on the issue of credibility, as well as on the finding that the circumstances of evident premeditation, treachery and superior strength attended the commission of the offense.

We find no room for reversal.

The defense insists that it was Feliciano Bacho who committed the crime. It stresses that the Victim's wife, Teresita Dacir, even cooperated with the INP Tiwi Police in filing Criminal Case No. 2495 for Homicide against Bacho et als., only to change her mind after the preliminary investigation had been conducted and thereafter pinpointing father and son instead.

The records disclose, however, that in her Affidavit, taken on 16 May 1986 (Exh. 5), or the day after the fatal incident, she had already disclosed:

"6. Q: Who were those person or persons responsible to (sic) the death of your husband, if you know?

"A: I am suspecting JESUS COMPETENTE and his son, JAIME COMPETENTE as I've witnessed NESTOR DACIR strangled on his neck by JESUS COMPETENTE, and his companions who (sic) I do not know their names.

"8. Q: Why did you happen to suspect JESUS COMPETENTE and his son JAIME to be the suspect in this particular case to include their companions?

A: Because I have seen JESUS COMPETENTE strangle my husband. While JAIME COMPETENTE was also there and several others.

10. Q: Showing to you, persons in the name (sic) of FELICIANO BACHO, JESUS BACHO, JUSTINIANO BACHO and DANNY COMPETENTE, what can you say about them?

A: They were the same persons who stoned our house."

Evidently, therefore, even the day after the fateful occurrence, the Victim's wife had already identified accused-appellants as the assailants of the husband and Feliciano Bacho as one of those who had stoned the Victim's house.

Moreover, in the Re-investigation of Crim. Case No. MT-2495 against Feliciano Bacho, and I.S. No. 86-1924 against father and son, the Provincial Fiscal concluded, in a Resolution dated 28 November 1986, that he was

"firmly convinced that Feliciano Bacho was not the one who stabbed Nestor Dacir, despite his demonstration and extra-judicial confession." He then ordered the case against Bacho dismissed and "that an information for murder be filed against Jesus Competente and Jaime Competente with the Regional Trial Court of Tabaco, Albay (Original records, pp. 58-61).

That should settle the matter of Bacho's culpability irrespective of the asseverations of the defense to the contrary and the alleged "change of mind" of the Victim's widow.

Eyewitness Rosita Galan's failure to report the incident until 18 May 1986 because she did not want to be involved is not a sufficient basis for rejecting her testimony. The initial reluctance of witnesses and their unwillingness to be involved in criminal investigations, are common and have been judicially declared not to affect credibility (*People v. Pacia*, No. 69543, 14 June 1990, 186 SCRA 529).

The defense further assails Rosita Galan's testimony that at about 1:00 P.M. she was attending to the Gutierrez children at the front yard of the latter's residence as being inconsistent with physical facts in that it was very hot at the time. That is not necessarily so, however, as there were trees in the area (Exh. D, p. 48, original record).

Accused-appellants also attack as hearsay Rosita's testimony that when the victim was approaching, she heard appellant-father say "here he is, here he is" and heard Aurora Competente confront her son Jaime "why do you have to join your father?" For one, however, the failure of accused-appellants to object to hearsay evidence, constitutes a waiver of the right to cross-examine the actual witness to the occurrence, thereby rendering the evidence admissible (*People v. Garcia*, L-44364, 27 April 1979, 89 SCRA 440). For another, the testimonies aforesaid were offered to prove the fact of utterances regardless of their truth and, therefore, were not hearsay. In any case, the utterances can be considered as part of the *res gestae*, having been made during the incident (Rule 130, sec. 36, Rules of Court).

Pursuing their attack on the credibility of prosecution witnesses, accused-appellants further aver that the testimony of the Victim's eight (8)-year-old son, Sonny Dacir, is unreliable because of his failure to immediately reveal to his mother the identity of his father's assailants, which is allegedly contrary to human conduct. The fact remains, however, that he knew that his mother had witnessed the incident herself. And if he did not tell the police or the barangay authorities, it was because they did not ask him any questions.

Additionally, the defense further claims that the prosecution failed to establish the motive behind the incident. The accepted dictum is, however, that motive is not essential to conviction when the accused as in this case, are positively identified and there is no doubt as to their identity (*Andaya v. People*, G. R. No. 75930, 8 June 1990, 186 SCRA 410).

We turn now to the testimonies of accused-appellants and their witnesses which, according to the defense, were incorrectly rejected by the Trial Court. The records do not bear this out.

The mere denial by appellant-father of the act of strangling the Victim can not prevail over the positive identification of him by prosecution witnesses. Moreover, the autopsy findings confirm that fact of strangulation. To quote:

"I - External -?

1. Neck at the level of the Adam's Apple

Right -- Wounds, superficial, near each other, 6 in number, 3 of which are abraded and 3 are scratches.

Left -- Abrasion 3 in number, near each other."

That autopsy report also supports the Provincial Fiscal's conclusion that Bacho could not have been the culprit as the latter never mentioned the strangling in his demonstration contrary to the physical finding of the examining physician. Of note as well is the circumstance that appellant-father's version of the incident is contrary to human experience. After having been stabbed, the Victim could not be expected to still run after Bacho, who was then allegedly armed with a kitchen knife, and to knock on the door of the Competente house. Said Victim was so badly wounded that he died soon after arrival at the hospital. He was in no position, therefore, to run after his alleged assailant.

Appellant-son's defense of alibi contains no semblance of truth. Aside from the fact that it can not prevail over positive identification, it has been held that alibi is weak if established merely by the accused themselves and their relatives and not by credible persons (*People v. Solis*, G. R. No. 93629, 18 March 1991, 195 SCRA 405). It also taxes credulity that appellant-son would have slept from 11:30 A.M. to 3:00 P.M. while their guests were celebrating the baptism of his son and at the height of the barangay "fiesta."

Correctly rejected by the Trial Court, too, were the testimonies of the other defense witnesses. Thus, the testimony of Roberto Cope that he saw eyewitness Rosita Galan in the house of her father-in-law Dioscoro Galan at nearby Barangay Sugod from 11:00 A.M. to 2:00 P.M. can hardly be given weight. The fiesta was in Barangay Bano not in Barangay Sugod. Besides, it is strange for Roberto to have kept watch on the exact whereabouts of Rosita from 11:00 A.M. to 2:00 P.M.

The testimonies of Loreto Rodriguez, Emerita Colina and Domingo Dacoco, Jr. echo appellant-father's version that it was Bacho who had stabbed the Victim and can neither be appreciated in the light of the findings of the Provincial Fiscal. There is the added consideration that most of them are close relations of accused-appellants who can normally be expected to be biased in their favor, absent credible indications to the contrary.

Nor can the testimony of P/Sgt Wilfredo Bermas be treated differently. He stated that it was Bacho, not the Competentes, who was the culprit; that when he investigated Bacho, the latter confided to him that he had killed the Victim; and that a criminal complaint was filed against Bacho, which complaint did not include appellant-father-and-son; subsequently, though, they were included because of the insistence of the Victim's wife. However, considering the result of the re-investigation by the Provincial Fiscal, it is clear that P/Sgt. Bermas' investigation was hasty and the complaint he filed the next day after the incident unreliable. The re-investigation report likewise rebuts the presumption that P/Sgt Bermas performed his duties in a regular manner.

The circumstance that the Judge who rendered the judgment was not the one who heard the witnesses, does not detract from the validity of the verdict of conviction. Even a cursory perusal of the Decision would show that it was based on the evidence presented during trial and that it was carefully studied, with testimonies on direct and cross examination as well as questions from the Court carefully passed upon.

We agree with the defense, however, that evident premeditation was incorrectly considered by the Trial Court as a generic aggravating circumstance. There is insufficient showing that father and son had previously conceived of the commission of the crime and had manifestly indicated that they had clung to their determination. In fact, the evidence is hazy as to whether or not they had taken part in the stoning.

But treachery was, indeed, present. Appellant-son's act of stabbing the Victim while his father was strangling the latter who was lying face down flat on the ground indicates that both father and son had employed means tending to as it did insure the execution of the act of killing without risk to themselves which could have arisen from the defense which the Victim could have made. Having tripped and fallen flat on his face on the ground, the Victim was in no position to defend himself. Apropos it is to recall that the Victim was hit on the back above his right hip bone. The crime has been correctly categorized, therefore, as Murder.

The Court notes with dismay, however, that the Court a quo "allowed provisional liberty on the same bail bond" to accused-appellants (Original record, Order, p. 730). That is a clear reversible error considering that they were sentenced to reclusion perpetua and that with their conviction evidence of their guilt can not but be strong. For this act, the Trial Judge deserves the severest censure, which we are constrained to impose on her in this case.

WHEREFORE, except for the modification of the indemnity to the heirs of the victim, Nestor Dacir, which is hereby increased to P50,000.00 in line with current jurisprudence, the judgment appealed from is hereby AFFIRMED.

Let a Warrant of Arrest issue immediately against accused-appellants Jaime Competente and Jesus Competente.

They shall each bear one-half of the costs.

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

[1] Penned by Judge Milagros JB. Marcaida in Criminal Case No. T-1592.

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