

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR DIQUIT, ONE A.K.A. TOTOY CAISIP AND RODRIGO TAMBIOCO, ACCUSED, OSCAR DIQUIT AND RODRIGO TAMBIOCO, ACCUSED-APPELLANTS.

G.R. No. 96714. January 27, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The accused Oscar Diquit and Rodrigo Tambioco have appealed the decision of the Regional Trial Court of Cavite finding them guilty of the murder of Patrolman Manuel Atienza, a member of the police force of Naic, Cavite, and sentencing each of them to suffer the penalty of Reclusion Perpetua.

The amended information against them alleged:

"That on or about the 23rd of April, 1988, in the Municipality of Naic, Province of Cavite, Philippines and within the jurisdiction of this Honorable Trial Court, the abovenamed accused, conspiring, confederating and mutually helping and assisting one another, with intent to kill, with treachery and evident premeditation, being then armed with a short, and long firearms of unknown caliber, shoot one Pat. MANUEL ATIENZA, thereby inflicting multiple gunshot wounds on his body which caused his instantaneous death, to the damage and prejudice of the legal heirs of said Pat. Manuel Atienza." (p. 16, Rollo.)

Upon arraignment, both accused pleaded not guilty. A third defendant, one known as Totoy Caisip, escaped after the trial and has remained at large until now.

Prosecution witness, Lucila Camposano-Atienza, testified that on April 23, 1988, at around six o'clock in the afternoon, she was on the terrace of her son's house at Labac, Naic, Cavite, when she was approached by three (3) persons who asked for the whereabouts of her son, Manuel. She told them that he (Manuel) was at the Puzon Compound, about 200 meters away. She noticed that one of the men was carrying what appeared to be a long firearm inside a sack, and another had a sidearm tucked in his waist (pp. 4-8, t.s.n., October 9, 1989). Shortly after the three persons had left, she asked her other son, Rolando Juco, to go to the Puzon Compound and fetch his half-brother, Manuel. A few minutes later, she heard gunshots coming from the Puzon Compound. She saw Rolando running back. He told her that Manuel had been shot and killed by the three persons who had earlier inquired for him (pp. 9-13, t.s.n., October 9, 1989).

She positively identified two of the three persons as Oscar Diquit and Rodrigo Tambioco (pp. 6-7, t.s.n., Ibid.).

Rolando Juco, an eyewitness to the crime, corroborated his mother's testimony on the arrival of the three accused who inquired from his mother regarding the whereabouts of his brother, Manuel. After the three (3) men left (pp. 20-21, 24-25, t.s.n., Ibid.), his mother ordered him to fetch his brother from the Puzon Compound and he obeyed. He found his brother there, and they walked home together, Manuel walking about three armslengths ahead of him when the three men who had earlier inquired about Manuel emerged from a house and blocked their way.

Two men fired three (3) shots from their firearms. On hearing the first shot, Rolando dropped to the ground. After the shooting had stopped, he saw the three (3) men running away. He rushed to his brother who lay in a pool of his own blood. Rolando, shook him but he was already dead (pp. 25-35, t.s.n., Ibid.).

Rolando ran home and informed his mother. Many persons arrived at the scene of the crime, including PC constables and policemen. The latter brought the cadaver of his brother to the funeral parlor (pp. 33-34, t.s.n., Ibid.).

Rolando Juco positively identified the accused, Oscar Diquit, as one of the two men who shot his brother. The other triggerman is still at large. He identified Rodrigo Tambioco as the companion of the gunmen (pp. 23-24, 30-31, t.s.n., October 9, 1989).

Another prosecution witness, Elma Ferrer Vda. de Atienza (wife of the victim), testified on the expenses amounting to fifty-two thousand seven hundred seventy-five pesos (P52,775), incurred for the burial of her husband.

Dr. Bienvenido Muñoz, the NBI medico-legal officer who performed an autopsy on the cadaver of the victim, testified that the deceased died from two (2) gunshot wounds produced by two types of firearms. Both wounds were fatal for either one of them could cause the death of the victim (pp 6-9, t.s.n., January 12, 1990).

Another witness, Sgt. Paraiso Esequie, a PC Sergeant stationed at Ternate, Cavite, 227th PC Company, testified on the arrest of the two accused on May 12, 1989, more than a year after the commission of the crime (pp. 11-15, t.s.n., February 5, 1990).

The defense of the accused consisted of denials and alibi. Oscar Diquit testified that he was fetched by his uncle from San Juan, Ternate, Cavite, on April 21, 1988. On April 23, 1988, he was at the Reclamation Area in Pasay City helping in the construction of a house for Rosalie Basco. He denied any participation in the murder of Atienza because at that time he was in the house of one Dominador Monterrey at the Reclamation Area in Pasay City (pp 3-8, t.s.n., February 28, 1990). He admitted that he is a native of Maragondon, Cavite and that he owns a house in San Juan, Ternate, Cavite, where his brother lives, but, he and his wife reside in Pasay City because his wife is a vendor in the Baclaran Market (pp. 8-12, t.s.n., Ibid.). He admitted, on cross-examination, that he knew his co-accused, Rodrigo Tambioco, even before April 23, 1988 because both of them are from San Juan, Ternate, Cavite. He also knew Totoy Caisip who is also from San Juan, Ternate, Cavite (pp. 13-15, t.s.n., Ibid.).

The accused, Rodrigo Tambioco, testified that on April 23, 1988, he was in the house of his mother, Purita Bautista, in San Juan, Ternate, Cavite, preparing "suman" from 4:00 p.m. until 9:00 in the evening of that day. He was arrested together with his co-accused, Oscar Diquit, on May 12, 1989 at the Reclamation Area in Pasay City. He allegedly went to Pasay City in order to evade the threats of one Esperanza Dingko who allegedly became furious upon knowing that her sister-in-law is Rodrigo's mistress. He denied any participation in the crime (pp. 2-7, t.s.n., March 5, 1990).

Their testimonies were corroborated by Severino Javier, cousin of Rodrigo Tambioco, and Rizal Basco, uncle of Oscar Diquit.

In a decision dated November 12, 1990, the trial court disregarded the defendants' alibis and convicted them of the crime charged. The dispositive portion of the decision reads:

"WHEREFORE, this Court finds that the charge of murder as provided under Article 248, Revised Penal Code, against herein accused Oscar Diquit alias Elmelo Diquit and Rodrigo Tambioco being supported with sufficient evidence presented by the prosecution proves therefore the guilt of herein accused beyond reasonable doubt. This Court hereby imposes upon the accused the medium penalty of Reclusion Perpetua, and to pay the

indemnity to the heirs of Manuel Atienza, the sum of P50,000.00 plus another amount of P52,775 for damages.

"With costs de oficio." (p. 82, Rollo.)

Diquit and Tambioco appealed to this Court alleging that the trial court erred:

1. in giving weight and credence to the incredible testimonies of prosecution witnesses Lucila Atienza and Rolando Juco; and
2. in holding that the guilt of the accused-appellants were (sic) proven beyond reasonable doubt.

The appellants contend that Juco could not have witnessed the shooting of his brother, because when he was ordered by his mother to fetch the victim from the Puzon Compound, the latter was already walking home and it was at that point that his killers spotted him and opened fire on him. Being several minutes behind the appellants, Juco could not have witnessed the actual shooting. He must have seen only the flight of the three (3) armed men. The appellants allege that it was impossible for Juco to have negotiated the 200 meter distance to the Puzon Compound without overtaking the three (3) armed men who had left ahead of him.

However, it was established at the trial that the appellants, after leaving Atienza's house, headed for the Puzon Compound but waited in ambush for Atienza in a house near the Puzon Compound. It was after Juco and the victim had left the Puzon Compound that the three assailants emerged from their hiding place, and, without any warning, opened fire on their victim and fled. The time element, therefore, does not militate against Juco's assertion, thus:

"Q. Going back to the actual shooting which you claimed you have witnessed, Mr. Witness, can you recall from what direction did these three men appear while you were then walking?

"A. There is a house there, sir, and it was in that house where these three persons came out." (p. 35, t.s.n., October 9, 1989; p. 13, Appellee's Brief.).

There is no merit in the appellants' contention that the identification of the killers was doubtful because the prosecution witnesses did not know their identities before the commission of the crime. Otherwise, it would not have taken the police authorities at Naic, Cavite, more than a year to arrest the malefactors.

The fact is that the prosecution witnesses, Lucila Atienza and Rolando Juco, positively identified the accused as the killers of Manuel Atienza. Lucila Atienza had talked with them, while Rolando saw them face to face when they shot his brother. The killing happened in the month of April when the days are longer and there is enough daylight by which to see even at six o'clock in the afternoon. The apprehension of the accused took a little longer because the prosecution witnesses did not know them by name. As the trial court aptly observed:

"It maybe recalled that after the killing incident on April 23, 1988, months had passed by before the warrant of arrest (Exhibit 'G') was issued against the accused sometime in October 1988. Reason of [sic] such a delay, however, is sufficiently explained as follows:

"First, the names and aliases and the addresses of the accused were unfamiliar to the eyewitness (t.s.n., p. 43, October 9, 1989);

"Second, the accused had made good their escapes [sic] from the vicinity [sic] of the crime as no effort was made to check their exits to freedom away from Labac, Naic, Cavite; and

"Third, no traces were left or found on the crime scene by which the accused may circumstantially linked with (sic) [the killing]." (p. 27, Appellee's Brief.)

Under prevailing doctrine, when the issue is one involving the credibility of witnesses, the trial court's findings and conclusions with respect thereto, are entitled to great weight and respect on appeal. Subject to certain

exceptions which do not obtain in this case, the trial court is in a better position to decide this question having seen and heard the witnesses themselves and observed their deportment and manner of testifying (People vs. Espejo, 186 SCRA 628; People vs. Malinao, 184 SCRA 148; People vs. Macabenta, 170 SCRA 299; People vs. Egas, 137 SCRA 188).

Also noteworthy is the fact that the eyewitness to the crime, Rolando Juco, is a near relative of the victim (half brother) because such an eyewitness strives hard to remember the faces of the assailants in order to bring them to justice. Rolando saw the faces of the appellants when they talked with his mother. He had a good look at them again, when they stood in front of the Puzon Compound and fired upon his brother. He assured the authorities that he would be able to identify them if he saw them again. Where the witness does not appear to be biased against the accused or harbor any ill motives to falsely impute the crime to the latter, the identification of the malefactors by an eyewitness should normally be accepted.

The witness positively identified them in court as the assailants of his brother.

Appellants assail the manner of their arrest as based on hearsay information and on identification made in violation of their constitutional rights for they were not made to stand in a police line-up.

It should be pointed out, however, that a warrant (Exhibit "G," p. 16, Records) for the arrest of the appellants had been issued on October 10, 1988 but had remained unserved until one Danilo Ramos informed the authorities of the whereabouts of the accused-appellants culminating in their arrest at the Reclamation Area in Pasay City on May 12, 1989. The warrant of arrest was issued after a preliminary investigation of the case had been conducted by the Acting Municipal Trial Judge of Naic, Cavite. He subpoenaed appellants who were admittedly residents of San Juan, Ternate, Cavite. The subpoena for Rodrigo Tambioco was received by his wife, Mary Anne Tambioco, on September 28, 1988 (p. 10, Records). Instead of submitting counter-affidavits to answer the charges levelled against them, the appellants fled to Pasay City to evade arrest. Their flight was a strong indicium of their guilt (People vs. Temblor, 161 SCRA 623; People vs. Dante Astor, 149 SCRA 325).

In any event, it is too late for them to question the legality of their arrest. They did not move to quash the information before the trial court on this around. Thus, any irregularity in effecting their arrest was cured when they voluntarily submitted to the jurisdiction of the trial court by entering a plea of "not guilty" and participating in the trial (People vs. Rabang, 187 SCRA 682).

We cannot conclude this decision without rectifying the trial court's egregious error in sentencing the accused to suffer "the medium penalty of reclusion perpetua, etc." (p. 82, Rollo.) Since reclusion perpetua is an indivisible penalty, it has no minimum, medium, and maximum periods. It is imposed in its entirety regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime (Art. 63, Revised Penal Code). Reclusion Perpetua is imprisonment for life but the person sentenced to suffer it shall be pardoned after undergoing the penalty for thirty (30) years, unless by reason of his conduct or some other serious cause, he shall be considered by the Chief Executive as unworthy of pardon (Art. 27, Revised Penal Code).

WHEREFORE, the appealed decision is affirmed with the modification that the appellants are sentenced to suffer the penalty of reclusion perpetua and to pay solidarily to the legal heirs of the deceased Manuel Atienza the sum of P50,000 as indemnity, plus P52,775 as actual damages and costs. In all other respects, the appealed decision is affirmed.

SO ORDERED.

Narvasa, C.J., Cruz, and Medialdea, JJ., concur.

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