

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY MOSENDE, ACCUSED-APPELLANT.

G.R. No. 97170. December 10, 1993

Ponente: NARVASA, C. J.

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NARVASA, C. J.:

The conviction for murder subject of the present appeal rests on circumstantial evidence which, as is axiomatic, is as valid and as persuasive a foundation for conviction for a crime as direct and positive testimonial proof of the specific constitutive elements thereof.

No motive or reason for the killing here dealt with is revealed by the proofs. This is immaterial, where the evidence otherwise persuasively demonstrates who is the killer and the acts by which he has carried out his nefarious intent. This is not to say that what lies in the murky criminal mind is not of interest, specially to penologists, criminal psychologists or social scientists; but it is scarcely material in reaching a conclusion of guilt and imposing an appropriate penalty on the basis of a cold, dispassionate appraisal of the bare facts exposed by the evidence.

The murder victim in this case was a fifteen-year old boy named Carlo Alipao, who was living in the town of Mainit, Surigao del Norte with his mother, Gloria Alipao. He was last seen alive by his mother in the late afternoon of September 18, 1986, when he left his home with two friends, Jinky Mozol and Marlon Escuyos, to visit another friend, Rudy Mosende. Carlo, or “Lelot,” as he was more familiarly called, was then wearing a T-shirt and dark-colored short trousers with stripes.

There is no narration in the record of what Lelot and his companions did after leaving his home and before Lelot was killed. What the record contains is the narrative of Benceslao Resullar, Jr. and Fidelino Balaga, the former, a friend of Rudy Mosende, of events transpiring after Lelot’s death.

According to Benceslao and Fidelino, at about 7 o’clock in the evening of that day, September 18, 1986, they were drinking rum at Benceslao’s house when Rudy Mosende dropped by and asked them to take a stroll. They agreed. When they reached a street corner, Mosende asked them to take some “pulutan” at his shack. Again they agreed. On entering Mosende’s shack -- which was in a dilapidated state and had no flooring -- Mosende shut the door and told them to dig a hole in the ground. Again the two agreed and did as they were told, thinking that they would bury the entrails and hide of the animal slaughtered by Mosende for their pulutan. When the hole was knee-deep, Mosende told them to go to the shack’s toilet.

Benceslao and Fidelino were aghast to find in the toilet the dead body of a male person, whose hands and feet were bound with rope, and whose head and upper torso were encased in a sack. Mosende now told them to bury the cadaver in the hole they had just dug. This time, the pair demurred. However, they eventually did as they were told when Mosende drew out a bolo and angrily threatened them with it. Fearing for their lives, they carried the corpse to the hole, dropped it in, and covered it with soil. Benceslao asked Mosende who was the person they had just buried. Mosende said it was Lelot Alipao (“Lelot” being, as already mentioned, the nickname of Carlo

Alipao). Mosende then told them that if word ever got out of Lelot's (Carlo's) killing, they and their parents would themselves be slain. With Mosende's threat ringing in their ears, Benceslao and Fidelino left the shack; and not long afterwards, fled to Surigao City.[1] They returned to Mainit after Mosende was arrested sometime in April, 1987, and revealed what they knew to the authorities.[2]

Carlo (Lelot) Alipao's remains were discovered after seven (7) months or so. The events leading to that discovery, as disclosed by the largely undisputed evidence given by Lelot's mother and other disinterested witnesses, are succinctly recounted by the Trial Court. Those events include the extraordinary dream of Mrs. Alipao which supposedly revealed to her the place where her son's body lay. The Trial Court's summary is as follows:[3]

“ ** (A)fter Carlo failed to come home, Mrs. Gloria Alipao asked Jinky Mozol and Marlon Escuyos about her son but they said they did not know where he was. She searched for her missing son in different places in the vicinity of Mainit but without success. When she met Rudy Mosende a few times, he gave her false leads as to the whereabouts of Carlo. When she went to the places indicated by him, she did not find her son. Mrs. Alipao declared that she was made to look like a fool by Rudy Mosende.

Eventually, Gloria Alipao dreamed that her son was buried somewhere in the place of Rudy Mosende. When she went to the place and stood outside, she smelled a very bad odor coming from inside the lot. She told many people about her belief that her son was buried there.

For his part, Police Lieutenant Ranulfo Demiar, Station Commander of Mainit, declared that on April 13, 1987, he received an order (Exhibit C) from Judge Desiderio Custodio, presiding judge of the Municipal Trial Court of Mainit, authorizing the exhumation of a body within the Mosende family lot. After securing the consent in writing of Arthur Mosende (Exhibit D), brother of Rudy Mosende, as both their parents were dead, an exhumation was conducted in his presence by Dr. Lourdes Alabat, Chief of the Mainit Medicare Community Hospital. Also present were Barangay Captain Dioscoro Montaner of Barangay Quezon, Mainit poblacion, some policemen and other government and health officials of Mainit.

Exhumed from the residential lot in Mainit of the Mosende family were the remains of a human body wearing a T-shirt (Exhibit F-2) and dark-colored short pants with stripes (Exhibit F-3). The hands and feet of the deceased were tied with rope while the head and upper body were placed inside a sack. The body was identified by Mrs. Gloria Alipao to be that of her missing son Carlo Alipao.

Witness Dr. Lourdes Alabat testified that on April 13, 1987, she conducted the exhumation and autopsy of a human body which was identified by Gloria Alipao to be that of her son Carlo. After a physical examination of the dead body, she prepared an Exhumation Report (Exhibit A) dated April 14, 1987 which contained her medical findings and conclusions. Among other things she declared that she found a softening of the skull of the victim at the right occipital region or the area just behind the right ear. She opined that the cause of the softening was heavy pressure or a blow to that region with heavy object like a piece of wood. At the right jaw of the head, she also discovered a linear fracture and a circular softening of the bone which was probably caused also by a heavy pressure or blow applied to that area. In view of these injuries to the head, she concluded that the victim probably died of intra-cranial or brain hemorrhage. She issued the Death Certificate of Carlo Alipao (Exhibit B) on the basis of the identification made by his mother.”

An information was filed on June 10, 1987 in the Regional Trial Court at Surigao City accusing Rudy Mosende, Jinky Mozol and Marlon Escuyos as co-conspirators in the killing of Carlo Alipao, “with treachery, evident premeditation and abuse of superior strength.”[4] The three accused were separately arraigned, and after they all entered a plea of not guilty, trial ensued.

After the prosecution rested its case, Mozol and Escuyos filed a demurrer to evidence. By Order dated October 7, 1989, the demurrer was sustained and the case dismissed against the two (2) movants. Trial resumed and was

concluded only against Rudy Mosende.

Mosende sought to prove an alibi through his testimony and that of two (2) others, Police Corporal Jose Arlan and Ponso Pecan, a hired helper at the sari-sari store of his sister, Alma Mosende Dumadag. He claims that he had ceased to reside in Mainit as early as 1984 when the family residence was destroyed by a typhoon and, both his parents being already dead at the time, had then decided to live with his elder sister, Alma, in the town of Tubod, eight kilometers away from Mainit. He claims further that he never left Tubod on September 18, and 19, 1986 because of a swollen left foot, sprained during a basketball game. He denied the stories of Benceslao Resullar and Fidelino Balaga, asserting that the former bore him a grudge because they had once fought in a basketball match.

As already mentioned, the Trial Court found Mosende guilty of the murder of Carlo Alipao, on the basis of circumstantial evidence, refusing to believe his alibi. The Court's judgment dated October 2, 1990[5] made the following disposition:

“WHEREFORE, the Court finds the accused, Rudy Mosende, guilty beyond reasonable doubt as a principal of the crime of murder, qualified by treachery, defined and penalized under Art. 248, par. 1 of the Revised Penal Code, and there being no other modifying circumstance to consider, hereby sentences him to suffer reclusion perpetua and its accessory penalties; to pay civil indemnity to the heirs of the victim, Carlo Alipao, in the amount of P30,000.00, and moral damages of P10,000.00; and the costs.”

Mosende assigns as errors allegedly fatal to the judgment of conviction -

- 1) the Trial Court's acceptance of the amended information after Mosende had already pleaded to the original one, and its omission to cause his re-arraignment and entry of a new plea with respect to said amended indictment;
- 2) its failure to accord credit to the entry of September 17, 1986 in the blotter of the Mainit Police Force to the effect that “together with Virgilio Mujica and Victor Aguho all of the seabees, up to this date, subject Lilot Alipao not return home and not known of his whereabouts (sic);” and
- 3) said Trial Court's failure, otherwise, to acquit him on reasonable doubt.

The appellant's objections to the amendment of the information must be overruled. The amendment consisted solely in the addition of a statement that his two (2) co-defendants, who were minors, had “acted with discernment.”[6] No other change was made in any other allegation of the original indictment, much less as to the acts or omissions ascribed to Mosende himself. As regards Mosende, there was no revision of the charges of any sort whatsoever which could affect the the nature of the offense charged, the modifying circumstances alleged, or the evidence against him, or the defense he could present. The amendment was in other words purely formal, one which could cause him no prejudice at all. Such an amendment, adding nothing essential for conviction for the crime charged vis a vis Mosende himself, causing him no surprise and incapable of causing injury to his substantive rights, is one of form which may be made at any time, even after arraignment.[7] The admission of the amended information by the Trial Court over the objections of Mosende's counsel[8] must thus be sustained.

So, too, the Trial Court's refusal to accord any probative value to the entry in the blotter of the Mainit Police Force cannot be faulted. That entry allegedly reflected the report of the mother of Carlo Alipao to the effect that as of September 17, 1986 her son was already missing (“subject Lilot Alipao not return home and not known of his whereabouts [sic]).” It contradicts, it is claimed, her testimony that she had last seen Carlo alive in the late afternoon of September 18, 1986, when he left his home with two friends, Jinky Mozol and Marlon Escuyos, to visit another friend, Rudy Mosende.[9] The Trial Court evidently imputed the contradiction simply to a clerical error, some slight imperfection either in the reporting by a distraught mother, or in the recording by an unconcerned or passive police officer, and did not consider the blotter entry to be entitled to full credit, or

deserving of more weight than, or otherwise militating against, the positive and more categorical and detailed statements of Mrs. Alipao on the witness stand. It acted correctly in doing so, consistently with this Court's observations in earlier cases on the probative value of police blotters generally.[10]

The Court agrees that there is no reason to disbelieve and discard the testimonial evidence of Benceslao Resullar, Jr. and Fidelino Balaga, notwithstanding Mosende's contention that the former bore him a grudge and seized the opportunity to embroil him in the murder of Lelot Alipao. It taxes credulity to suppose that an altercation or exchange of blows during a basketball game should have so filled Benceslao with deep-seated hatred of his antagonist and so imbued him with great artfulness as to lead him to concoct the elaborate scenario that he described to the Court, implicating Mosende by indirection in the crime. And even if Benceslao were to be discredited, for the reason Mosende advances, no cause exists to accord similar treatment to Fidelino, who echoed and confirmed Benceslao's narrative.

Taking account of the facts laid before the Trial Court by Benceslao and Fidelino, in relation to others confirmed with like persuasiveness by other evidence, the Court is again impelled to agree that although there is no proof directly linking Mosende to the actual murder of Carlo (Lelot) Alipao, the established circumstances cannot but lead to the conclusion of his guilt thereof.

The law is that circumstantial evidence will support and justify a verdict of conviction if there be more than one circumstance, if the facts from which the inferences are derived are proven, and the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[11] These requisites are adequately met in the case at bar. There are several circumstances generating certitude of Mosende's guilt, these being:

- 1) it was in the shack of the family of Rudy Mosende that the corpse of Lelot Alipao -- bound hand and foot, head and upper body encased in a sack, dead from severe blows to the head from a blunt instrument -- was dug up from a shallow hole in the dirt floor;
- 2) the body had been buried in that place by Benceslao Resullar, Jr. and Fidelino Balaga some seven months earlier;
- 3) it was on the invitation and request of Rudy Mosende that Benceslao and Fidelino had gone to that shack and dug the hole themselves;
- 4) it was Rudy Mosende who showed them the cadaver of Lelot Alipao, lying in the toilet; and it was Rudy who told them to carry it to the hole and bury it there, and who bullied them into doing so when they initially demurred;
- 5) Mosende told them it was Lelot Alipao they were interring;
- 6) Mosende threatened to kill Benceslao and Fidelino and their parents if anyone should come to know of the evening's bizarre event; and because of their fear, the two exiled themselves in Surigao City, returning to Mainit only after they learned of Mosende's arrest;
- 7) when Lelot left his home for the last time, with two friends, it was allegedly to visit Rudy Mosende.

The foregoing circumstances are incapable of no rational explanation save Mosende's wish to conceal the fact that Lelot Alipao had died a violent death; and there can be no rational cause for that wish except his being himself the cause of Alipao's violent demise.

There was satisfactory identification of the exhumed corpse made by the victim's own mother and another person, distantly related to Rudy Mosende, as well as by the latter himself. As the Trial Court observed:

“With respect to the identity of the exhumed human remains, the evidence clearly showed that it was that of the missing Carlo Alipao. The victim’s mother, Mrs. Gloria Alipao, definitively declared that the short pants (Exhibit F-3) and the T-shirt (Exhibit F-2) were the very same ones worn by her son when she last saw him in the afternoon of September 18, 1986. On cross-examination she described the T-shirt as having several figures in front and the short pants as dark-colored with stripes (tsn, Gloria Alipao, pp. 62-63, April 18, 1989). Although the face of Carlo Alipao was no longer recognizable, she identified him thru his clothes.

Aside from Mrs. Alipao, another person present at the exhumation, Vicente Montaner, Jr., declared that he recognized the pair of short pants worn by the deceased because it had been given by his wife to Carlo Alipao who was her nephew. Incidentally he is also related to Rudy Mosende as the latter’s late mother and the father of Vicente were second cousins (tsn, Vicente Montaner, Jr., p. 10 and p. 21, January 6, 1989).”

Rudy Mosende’s proffered alibi must be rejected in line with familiar jurisprudence. It cannot stand in the face of the positive declarations of disinterested witnesses having no reasonable motive to give false evidence that he was at the scene of the crime on the day of its commission and consummation and in fact sought to conceal it, apart from the fact that Tubod, the place where he claimed to be residing, is “only eight kilometers away from Mainit,” as the Trial Court points out, “and there are public conveyance(s) plying the road ** (and it) would have been quite easy for the accused to take a jeepney ride to Mainit considering that it was nearly fiesta and there were many jeepneys going to town.”

Appreciated against the appellant was the qualifying circumstance of *alevosia*, for when found the corpse was trussed hand and foot “like an animal,” according to the Court. It was while the victim was thus helpless, in no position to offer any sort of resistance or defense, that in the Trial Court’s view, the fatal blows on the head were inflicted; that Alipao, in other words, was tied up and rendered defenseless before he was killed; and that it makes no sense to assume that he was bound only after he was killed. This inference of the Trial Court will not be disturbed either.

WHEREFORE, the judgment of the Trial Court subject of the appeal at bar, being in accord with the evidence and applicable law and jurisprudence, is **AFFIRMED**, with costs *de officio*.

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

[1] SEE TSN, Jan. 5, 1989, pp. 4-10; TSN, Mar. 13, 1989, pp. 63-76

[2] TSN, April 17, 1989 [F. Balaga], p. 16; TSN, Jan. 25, 1989 [B. Resullar, Jr.], p. 24

[3] Rollo, pp. 40-41

[4] Docketed as Crim. Case No. 246 and assigned to Branch 32. The information was amended on December 11, 1987 in view of the discovery that Jinky Mozol and Marlon Escuyos were minors, to include the additional averment that the two had “acted with discernment.”

[5] Per Hon. Diomedes M. Eviota

[6] SEE footnote 4 and related text, *supra*

[7] Sec. 13, Rule 110, Rules of Court; SEE *Peo. v. Borromeo*, 123 SCRA 253 (1983); *Peo. v. Montenegro*, 159 SCRA 236 (1988)

[8] TSN, March 15, 1989, p. 4

[9] SEE pp. 1-2, *supra*

[10] SEE *Peo v. Santito*, 201 SCRA 879 (1991) to the effect that an entry in a police blotter “is not necessary entitled to full credit for it could be incomplete and inaccurate **,” and *Ford v. C.A.*, 186 SCRA 21, to the same effect

[11] Sec. 4, Rule 133 (Revised Rules of Evidence) Rules of Court

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