

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOTO CALOPE AND EDWIN TORRES, ACCUSED-APPELLANTS.

G.R. No. 97284. January 21, 1994

Ponente: MELO, J.

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MELO, J.:

Toto Calope and Edwin Torres were charged with murder in an Information which reads:

That on or about March 11, 1987, at about 11:30 in the evening, more or less, at the boundary of barangays Sinonoc and Cagay-anon, Municipality of Sinacaban, Province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, with intent to kill and taking advantage of their superior strength, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously attack, assault, stab and shot one Glenford Lagitao, thus inflicting multiple gunshot wounds and stab wounds on different vital parts of the latter's body which is the immediate cause of the untimely death of Glenford Lagitao.

(p. 2, Rollo.)

Accused Edwin Torres has not been apprehended thus trial proceeded only with regard to Toto Calope who, upon arraignment, pleaded not guilty.

After trial, the court a quo, on January 30, 1991, rendered a decision, disposing:

WHEREFORE, this Court finds accused Toto Calope guilty beyond reasonable doubt of murder in conspiracy with Edwin Torres, qualified with abuse of superior strength without any mitigating circumstance in his favor and hereby sentences him to reclusion perpetua, to indemnify the heirs of Glenford Lagitao in the sum of P30,000.00 and to pay the costs.

(p. 15, Rollo.)

Calope has interposed the instant appeal and would seek reversal upon the following assigned errors:

I

THE COURT A QUO ERRED IN GIVING CREDENCE TO THE LONE UNCORROBORATED TESTIMONY OF ALLEGED EYEWITNESS ERLINDA MOFAN WHO FAILED MISERABLY TO POSITIVELY IDENTIFY ACCUSED TOTO CALOPE;

II

THE COURT A QUO ERRED IN DISREGARDING THE OVERWHELMING EVIDENCES PRESENTED BY THE DEFENSE ESTABLISHING THAT WITNESS ERLINDA MOFAN COULD NOT HAVE POSITIVELY IDENTIFIED TOTO CALOPE UNDER THE CIRCUMSTANCES; AND

III

THE COURT A QUO ERRED IN FINDING ACCUSED TOTO CALOPE GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER IN CONSPIRACY WITH EDWIN TORRES.

Upon examination of the record, it was noticed that the exhibits for the accused were not elevated, and thus we instructed the Clerk of Court of this Court to require the clerk below to elevate said exhibits. In his reply, the clerk of the trial court stated that despite going over the records of the trial court four times he could not find said exhibits.

However, going over accused-appellant's brief, we noted that no part of his defense is based on Exhibit 1, which is said to be a picture of the bridge where the killing took place. Exhibit 2 is a picture of the bridge showing an electric post nearby without a fluorescent light. As we shall show later even if no fluorescent light were attached to the post, the area was sufficiently illuminated by other light sources. Therefore, Exhibit 2 is immaterial and irrelevant. Exhibits 3 and 4, pictures of the area between the house of Eleuterio Flamor from where prosecution witness Erlinda Mofan saw the killing, were taken more than three years after the incident and, hence, are incompetent evidence. Exhibit 5, a certification of the barangay captain to the effect that the electric post near the bridge is unlighted, is hearsay evidence since the barangay captain was not called to the witness stand, and anyway as aforementioned the situs of the killing was sufficiently illuminated by other light sources; whereas, Exhibit 6, a picture showing the bridge as the boundary of barangays Sinonoc and Cagay-anon, Municipality of Sinacaban, Misamis Oriental province, is clearly irrelevant and immaterial evidence. Therefore, we shall proceed to decide the case without said exhibits.

The facts of the case, as duly established by the evidence and as precisely summarized by the Office of the Solicitor General, are as follows:

In the evening of March 11, 1987, after taking supper at her aunt Sana Folgo's place at Bliss, Cagay-anon, Sinacaban, Misamis Occidental, Erlinda Mofan went to the house of her close friend, Tessie Flamor, in the adjacent barangay of Sinonoc in the same town. Erlinda Mofan met Tessie Flamor on the road, near the latter's house and they conversed with each other. The victim - Glenford Lagitao - whom Erlinda Mofan had known for more than two (2) years, joined in their conversation. The victim was Erlinda Mofan's close friend, an ex-military man, and an informer of the Tenth Infantry Battalion. Edwin Torres whom Erlinda Mofan met there for the first time and appellant - a resident of Cagay--anon whom he had known for more than two (2) years, also joined in the conversation. She heard that they were there to attend a wake.

At 10:30 p.m., the group broke up their conversation, leaving the three (3) still in a huddle. Erlinda Mofan and Tessie Flamor went up the house to sleep. At 11:30 p.m., Eleuterio Flamor, father of Tessie, came home from fishing. He called for them. Moments later, the victim arrived at Flamor's house to buy some squid, but failed, since the catch was small. Thereafter, Edwin Torres and appellant called for the victim. At this time, Erlinda Mofan looked through the window of the Flamor's house, situated about seven (7) meters away from the bridge that served as the boundary between Barangays Sinonoc and Cagay-anon, Sinacaban, Misamis Occidental. She saw the two waiting for the victim on the bridge. When the victim approached them, she saw appellant immediately stab with a six-inch hunting knife – and Edwin Torres shoot - the victim. She also heard gunshots. She closed the window and sat, in a state of shock (tsn, Sept. 19, 1990, p. 10). She saw the stabbing because there was moonlight as well as light from the electric lamp on a post over the right side of the bridge. The house of the Flamors was very near the bridge; the window where she looked was on the same level as the bridge where the stabbing and shooting occurred (tsn, Sept. 19, 1990, pp. 5-11). Around 12:00 midnight the police arrived and retrieved the body of the victim not from the middle of the bridge where he was assaulted, but from the lower portion in an area marked "National Highway" (tsn, Sept. 19, 1990, pp. 16-17).

On March 20, 1987, Erlinda Mofan executed an affidavit at the police station of Sinacaban, Misamis Occidental (tsn, Sept. 19, 1990, pp. 20-21).

Dr. Marlene Awayan, Rural Health Officer of Sinacaban, Misamis Occidental, who conducted a postmortem examination of the victim, issued a medico-legal certificate showing that the victim sustained gunshot wounds in the jaw, left and right shoulder, as well as a stab wound in the chest (Tsn., September 19, 1990, p. 3; Exhibit "A"). The victim died from "hypovolemic shock or internal hemorrhage due to multiple gunshot wounds" (Tsn., October 31, 1990, p. 2; Exhibit "B").

(pp. 3-6, Appellee's Brief.)

Accused-appellant disputes the testimony of prosecution witness Erlinda Mofan that the distance between the place from where she said she observed the incident and the place where the victim was stabbed and shot was seven meters. He contends that the testimony of Erlinda Mofan is negated by defense witness Warlita Alferes who testified that the house of Eleuterio Flamor, from where Erlinda Mofan witnessed the incident, is about twelve fathoms away from the scene of the crime. We cannot give evidentiary weight to the testimony of Warlita Alferes for a reading of her testimony clearly shows that she is a biased witness. She referred to accused-appellant's counsel as "our lawyer" (p. 7, t.s.n., November 6, 1990), and she was the one who hired a photographer to take pictures (Exhs. 2, 3 and 4) of the bridge and its surroundings (p. 3, t.s.n., November 6, 1990). At any rate, the question as to which witness is trustworthy and telling the truth is an issue of credibility and this Court generally accords respect to the factual findings of the trial judge which findings are not to be disturbed unless they are found to be clearly biased or arbitrary.

This Court accords respect to the factual findings of the trial judge, who has the opportunity to directly observe the witnesses and to determine by their demeanor on the stand the probative value of their testimonies. The witnesses reveal much when they testify that is not reflected in the transcript, which only records what they said but not how they said it. The meaningful pause, the ready reply, the angry denial, the elusive eyes or the forthright stare, the sudden pallor when a lie is exposed or the flush of face that accentuates a sincere assertion--these and many other tell-tale marks of honesty or invention are not lost on the trial judge. It is for this reason that his factual findings are generally not disturbed by the appellate court unless they are found to be clearly biased or arbitrary. They are not so in the case at bar.

(People vs. Yadao, 216 SCRA 1; 7 [1992])

An examination of the evidence does not reveal that the findings of fact of the trial court are biased or arbitrary, but rather that they conform with the evidence.

Further, accused-appellant asserts that the testimony of Erlinda Mofan that the distance of the house of Eleuterio Flamor (from where Mofan observed the killing) to the bridge was seven meters is contradicted by the testimony of Cpl. Eleuterio Cotingjo who testified that he found the dead body of the victim 20 meters away from the house of Eleuterio Flamor. Accused-appellant confuses the distance between the house of Flamor and the bridge with the distance between the house and the place where the body of the victim was found and recovered by the police. The distance from Flamor's house and the bridge was indeed seven meters as testified to by Erlinda Mofan and corroborated by Cpl. Eleuterio Cotingjo who testified:

Q.

And the house of Flamor from the bridge how far (sic), if you know?

A.

Seven (7) to eight (8) meters more or less. (p. 16, t.s.n., November 6, 1990).

On the other hand, the distance of twenty meters that Cpl. Cotingjo mentioned referred to the distance from Flamor's house to the place where the victim's body was found (p. 18, t.s.n., November 6, 1990). However, the

place where the victim was killed was not the same place where his body was found. This conclusion is unavoidably inferred from the fact that, as testified to by Cpl. Cotingjo, no blood was seen at the place where the victim's body was found (p. 13, t.s.n., November 6, 1990). Had the victim been killed at the spot where his body was found, that place should have shown traces of blood.

Accused-appellant also argues that the place of the incident was insufficiently illuminated for prosecution witness Erlinda Mofan to recognize the assailants of the victim, pointing out that the electric post near the bridge does not have a fluorescent lamp. May be so. However, accused-appellant overlooked the fact that there was a kapok tree with a fluorescent lamp near the bridge (p. 14, t.s.n., November 6, 1990), and that there was light coming from the house fronting the place where the body of the victim was found, which light sufficiently illumined the area of the incident (p. 15, t.s.n., November 6, 1990).

Next, accused-appellant maintains that the presence of houses and nipa palms between the place of observation of prosecution witness Erlinda Mofan and the bridge obstructed her view of the bridge where the killing of the victim took place. In support of this argument accused-appellant calls one's attention to Exhibit 3, a photograph showing that between the house of Flamor and the bridge are some nipa huts and palms. We find no weight in the argument of accused-appellant. The photograph was taken in 1990, more than three years after the incident (p. 7, t.s.n., November 6, 1990). Thus, it is not competent evidence of matters contemporaneous with the commission of the crime. The nipa palms could have been planted after the incident or could have grown taller or leafier. The adjoining huts could likewise have been constructed after the incident.

Further, accused-appellant sets forth the defense of alibi, claiming that he went fishing on the night of March 11, 1987, with Peter Junio and Meo Nio, and that he returned home at 5 o'clock the next morning. His defense of alibi is uncorroborated. He failed to call his alleged companions, Junio and Nio, to the witness stand. Charged with so grave an offense as murder, accused-appellant, were he innocent of the charge, should not have spared any effort to prove his defense of alibi. Yet he neglected to present his alleged companions to substantiate his alibi. Moreover, alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable but also because it is easy of fabrication (People vs. Devaras, 205 SCRA 676 [1992]; People vs. Martinado, 214 SCRA 712 [1992]). To entitle an accused to an acquittal, alibi must be supported by credible corroboration from disinterested witnesses (People vs. Yadao, 216 SCRA 1 [1992]), and where the defense of alibi is not corroborated, it is fatal to the accused (People vs. Malonzo, 212 SCRA 85 [1992]). Moreover, for alibi to preponderate over the case of the prosecution, the accused must prove not only that he was somewhere when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime (People vs. Penillos, 205 SCRA 546 [1992]). Accused-appellant has failed to demonstrate that it was physically impossible for him to be at the scene of the crime at the time it was committed; he claims that he went out fishing on the night of the crime, but the place where he fished was in the barangay waters of Cagay-anon, the site of the offense.

At any rate, this Court has invariably ruled that alibi cannot prevail over the positive identification of the accused (People vs. de Guzman, 215 SCRA 375 [1992]). Prosecution witness Erlinda Mofan positively identified accused-appellant as the person who stabbed the victim. We have scrupulously examined the testimony of Mofan and we find said testimony to be categorical and straightforward, untainted by inconsistencies, contradictions or evasions, and should be given full credit. Mofan having no motive to testify falsely, her positive testimony is sufficient for conviction (People vs. Consuelo, 184 SCRA 638 [1990]). She could not have been mistaken in identifying accused-appellant for, as earlier stated, the scene of the crime was sufficiently illuminated and Mofan, the victim, the two accused and a friend were together conversing a few moments before the victim was ganged upon by the two accused.

Finally, accused-appellant insists that the sole author of the crime is his co-accused, Edwin Torres. This is not the time and place to determine the culpability of accused Edwin Torres for he has never been apprehended, and thus not arraigned and tried. However, the evidence shows that accused Edwin Torres was armed with a gun (p. 4, tsn, Nov. 7, 1990) while the victim was both shot and stabbed (pp. 3-4, TSN, Sept. 19, 1990). And prosecution witness Mofan positively testified that accused-appellant stabbed the victim (p. 9, TSN, Sept. 19, 1990).

WHEREFORE, the appealed decision is hereby affirmed, with the modification, in line with recent pronouncements, that the civil indemnity is hereby increased to Fifty Thousand Pesos (P50,000.00).

Costs against appellant.

SO ORDERED.

Feliciano, Bidin, Romero, and Vitug, JJ., concur.

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