

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR BALIGOD, MACARIO MALAGYAB ALIAS BALILING AND TEN (10) JOHN DOES, ACCUSED. MACARIO MALAGYAB ALIAS BALILING, APPELLANT.

G.R. No. 97962. November 17, 1993

Ponente: MELO, J.

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MELO, J.:

Salvador Baligod, Macario Malagyab alias Baliling, and ten other persons whose identities and whereabouts are unknown were charged with the crime of robbery with homicide in Criminal Case No. 17-87 of the Regional Trial Court of the Second Judicial Region stationed in Tabuk, Kalinga-Apayao in an Information which pertinently alleged:

That on or about January 14, 1987, at Barangay Cawagayan, Pinukpuk, Kalinga-Apayao and within the jurisdiction of this Honorable Court the above-named accused, conspiring and confederating together and helping one another, with ten (10) others whose identities and whereabouts are still unknown, did then and there wilfully, unlawfully and feloniously and by means of force and violence take and with intent of gain and against the consent of the owner took and carried away the following properties to wit:

Adidas shoes worth P380.00

2 Maong pants worth P300.00 and

Five Thousand One Hundred Pesos P5,100.00

or a total of P5,780.00, belonging to Federico Narcisa to the damage and prejudice of the owner in the aforesaid amount; that on the occasion of the said Robbery and for the purpose of enabling them to take, steal and carry away the articles above-mentioned, herein accused, in pursuance of their conspiracy did then and there wilfully, unlawfully and feloniously and with evident premeditation and taking advantage of their superior number and strength and with intent to kill, sho[o]t Federico Narcisa with different kinds of unlicensed firearms causing his instantaneous death; and on the same occasion of the said robbery with homicide, the same accused did then and there wilfully, unlawfully and feloniously and with evident premeditation and with intent to kill sho[o]t George Narcisa, a son of Federico, inflicting gunshot wounds upon the right side of his stomach and right upper arm, which ordinarily would cause the death of said George Narcisa, thus performing all the acts of execution which should have produced the crime of robbery with homicide as a consequence, but nevertheless did not produce it by reason of causes independent of the accused's will, that is by the timely and able medical assistance rendered to said George Narcisa which prevented his death.

The crime is aggravated by evident premeditation abuse of superior strength, treachery and employment of craft.

(pp. 5-6, Rollo)

Both accused Baligod and Malagyab pleaded not guilty and after trial, the court a quo, on October 22, 1990, rendered judgment, the dispositive portion of which reads as follows:

WHEREFORE, Judgment is hereby rendered finding the accused SALVADOR BALIGOD and MACARIO MALAGYAB alias BALILING guilty beyond reasonable doubt as principals of the crime of ROBBERY WITH HOMICIDE AND FRUSTRATED HOMICIDE under Article 294 par. 1 Revised Penal Code, sentencing each of the accused to suffer the penalty of RECLUSION PERPETUA with the accessory penalties provided for by law, and to indemnify the heirs of Federico Narcisa jointly and severally the sum of P30,000.00 without subsidiary imprisonment in case of insolvency pursuant to Article 39 Revised Penal Code as amended by RA 5465.

Both accused are further ordered to pay the amount of P5,780.00 to the heirs of Federico Narcisa which is the cash and the value of the personal properties stolen by the said accused.

The detention of the accused starting from August 24, 1987 up to the present shall be deducted from the service of their sentence in accordance with Article 29 Revised Penal Code as amended by RA 6127.

(pp. 50-51, Rollo)

Both accused appealed. However, accused Salvador Baligod later filed a motion withdrawing his appeal which this Court granted on November 25, 1992 (pp. 69 and 99-A, Rollo). Thus, only the appeal of Macario Malagyab remains to be disposed of. Said appellant simply argues in his single assigned error that the prosecution failed to prove guilt beyond reasonable doubt.

The summary by the Office of the Solicitor General of the background facts of the case is supported by the evidentiary record, and for this reason, the same is hereby adopted, to wit:

In the evening of January 13, 1987, George Narcisa slept in the house of his cousin Antonio Narcisa, which is about two hundred (200) meters from his own house in Cawagayan, Pinukpuk, Kalinga-Apayao (TSN, November 14, 1987, p. 37).

The following morning at around 6:15 A.M., George was roused from sleep by someone kicking him and he saw a man, whom he later identified as Salvador Baligod, and a companion pointing their guns at his face (TSN, November 14, 1987, pp. 37-38). Salvador Baligod had an Armalite Rifle while his companion, whom George Narcisa did not recognize, had a .45 caliber pistol (TSN, November 14, 1987, pp. 38-39). The two had ten (10) other companions all of whom were armed (TSN, November 14, 1987, pp. 39, 51). Some of the men wore masks (TSN, November 14, 1987, p. 51).

Salvador told George "We will go to your house" (TSN, November 14, 1987, p. 39). George and his cousin Antonio Narcisa were taken by Salvador and his companions to George Narcisa's house (TSN, November 14, 1987, p. 39). Eight (8) men went ahead while the remaining four walked behind George (TSN, November 14, 1987, p. 55).

About twenty (20) meters from the house, Salvador ordered George to call out his father (TSN, November 14, 1987, p. 40). George called for his father shouting "Papa, Papa" (TSN, November 14, 1987, pp. 40, 56).

Inside the house, George's sister Mildred and his father Federico were having a cup of coffee when they heard George shouting "Papa, Papa" (TSN, October 15, 1987, p. 4). As soon as Federico Narcisa came out of the house, Salvador shouted "assault!" (TSN, November 14, 1987, p. 40) and Salvador's companions started shooting at Federico who died on the spot due to multiple gunshot wounds (TSN, November 14, 1987, p. 40; Exhibit "A" and "A-1"). The armed men then turned their guns at George and shot him hitting him in the right side of his body (TSN, November 14, 1987, p. 41). One bullet entered the back side of the right arm and exited in the front part (TSN, November 14, 1987, p. 41). Another hit George in the hip and a third hit him in the shoulder below the clavicle (TSN, November 14, 1987, p. 41).

Immediately after Mildred heard the gunshots, three (3) armed men entered their house and pointed their guns at Mildred (TSN, October 15, 1987, p. 5). They took Mildred out to the porch and a fourth man who was wearing a mask that showed only his eyes and mouth came and guarded her (TSN, October 15, 1987, pp. 5-8). The three men went back inside the house and ransacked it (TSN, October 15, 1987, p. 15). They took cash totalling five thousand one hundred pesos (P5,100.00), a pair of "adidas" shoes belonging to her father, and two pairs of maong pants (TSN, October 15, 1987, pp. 14, 16). The masked man guarding Mildred at the porch talked to her and said "Why is it that you are still here. Why did you not transfer - you should have built your house near the road, you see what is happening now" (TSN, October 15, 1987, p. 8). Mildred recognized the masked man as appellant Macario Malagyab whom she had known since 1977 when, as a jeepney driver, appellant used to fetch her and George, then in high school, every Friday afternoon from school and take her back every Sunday afternoon to the Sta. Theresita Dormitory (TSN, October 15, 1987 pp. 5-8). Appellant used to talk and joke a lot with his passengers (TSN, October 15, 1987, p. 8).

Another masked man came saying "Bakit ayaw buksan yong barrel?" (TSN, October 15, 1987, pp. 9, 10). Mildred answered "who told you that we have a gun (TSN, October 15, 1987, p. 9)". Whereupon the second masked man tried to lunge at her but the appellant prevented him saying "Don't do that because she's a girl - she is a woman" (TSN, October 15, 1987, p. 9).

George was lying down on the ground after he was shot when he heard the assailants decide to finish him off (TSN, November 14, 1987, p. 42). Upon hearing this, George decided to fight back. He immediately got up and grabbed a round piece of wood to hit Baligod who stepped backwards about ten (10) meters to avoid being hit. Baligod tripped and fell down whereupon George threw the piece of wood at Baligod hitting the latter on the left shoulder (TSN, November 14, 1987, pp. 42, 64-65). He ran inside their house, which was only twenty (20) meters away, just as he heard the sound of gunshots behind him (TSN, November 14, 1987, p. 43).

His sister Mildred was at the porch (TSN, November 14, 1987, p. 43) and inside their house George found that their belongings had been ransacked and topsy-turvy (TSN, November 14, 1987, p. 42). George grabbed a bolo and went out again and those who were chasing him stepped back upon seeing him (TSN, November 14, 1987, p. 43). They retreated while firing at George but they missed (TSN, November 14, 1987, p. 44). George chased the attackers who were shooting as they retreated but about fifty meters from the house he became dizzy and collapsed (TSN, November 14, 1987, p. 44). He regained consciousness only at the hospital.

Antonio Narcisa was also hit as a result of the gunfire, sustaining two gunshot wounds, one in the arm and another on his chest.

After the attackers had fled, George was taken to the Provincial Hospital in Bulanao where he stayed for sixteen (16) days before being transferred to the Cagayan Valley Regional Hospital in Tuguegarao where he stayed for twenty-five (25) days or until February 24, 1987 (TSN, November 14, 1987, pp. 43, 44).

Mildred told her brother George that she knew one of the men to be "Baliling", a person who was also known to George, but they did not report this to the police because the man was still at large (TSN, November 14, 1987, pp. 70-71). They informed their mother and their Manong about Baliling but agreed to keep the matter to themselves for the meantime out of fear of reprisal (TSN, November 14, 1987, pp. 71-72).

On June 15, 1987, or about five months after the incident, George and Mildred who were now residing in Pantikian, Kalinga--Apayao (TSN, Oct. 15, 1987, pp. 3, 32) heard over the "Radyo Ng Bayan" program an announcement that certain members of the "Kurakot" gang were apprehended by PC soldiers and that the victims were requested to come and identify them (TSN, November 14, 1987, p. 44).

On the same day, George went to the PC barracks where he saw and identified Salvador Baligod from among the nine (9) people arrested by the PC (TSN, November 14, 1987, pp. 45, 46). On June 18, 1987, Mildred went to the PC barracks and identified appellant as one of the twelve men who shot her father (TSN, October 15, 1987, p. 16). Appellant denied the accusation and told Mildred that he was in Manila at the time of the incident

(TSN, October 15, 1987, p. 11). Their conversation confirmed her conclusion that the masked man who guarded her was appellant Macario Malagyab (TSN, October 15, 1987, p. 11). (pp. 5-11, Appellee's Brief)

Appellant assails the testimony of prosecution witnesses Mildred Narcisa and George Narcisa that appellant was one of the 12 armed men who ransacked their house and killed their father Federico Narcisa on the ground that their testimony as to the clothes he (appellant) was wearing at the time of the incident is conflicting. Mildred Narcisa testified that appellant was wearing a long-sleeve shirt and maong pants while George Narcisa testified that appellant was wearing a checkered short-sleeve shirt with maong pants. This inconsistency is a minor matter which does not militate against the veracity of Mildred Narcisa and George Narcisa. Inconsistencies on minor details do not indicate prevarication and will not adversely affect the credibility of witnesses (*People vs. Segwaben*, 194 SCRA 239 [1991]).

In another flimsy attempt to discredit the testimony of Mildred and George, appellant points out that their testimony do not tally as to the exact number of persons presented to them at the PC barracks. There is no conflict between the testimony of Mildred and that of George for the simple reason that they did not go to the barracks on the same day and, therefore, would not have seen the same persons detained or even the same number of persons, detained or otherwise, who were presented as possible suspects.

Appellant casts doubt on Mildred's testimony that she recognized appellant by way of his voice despite the fact that the man she identified as appellant was wearing a mask during the incident. Identification by the sound of the voice of the person identified is sufficient and acceptable means of identification where it is established that the witness and the accused had known each other personally and closely for a number of years (*U.S. vs. Manabat*, 7 Phil. 209 [1906]). It is not disputed that Mildred had known appellant since 1977, or ten years prior to the assault, when Mildred regularly took and rode appellant's Ford Fiera to and from school for a number of years. On these occasions, appellant used to engage Mildred in conversation, exchanging jokes with her and his other passengers. Mildred entertained no doubts whatsoever as to the identity of appellant. Immediately after the incident she told her brother that one of the masked men was appellant. When she went to the PC barracks, and conversed with appellant and heard his voice, their conversation bolstered her conclusion that appellant was one of the masked men.

Furthermore, the statements and behavior of the masked man who guarded Mildred attest to acquaintance of long standing with Mildred. Thus, the masked man who guarded Mildred asked her the following questions:

"Why is it that you are still here? Why did you not transfer? - you should have built your house near the road, you see what is happening now." (TSN, October 15, 1987, p. 8).

The foregoing statements of the masked man clearly indicate that he knew the Narcisas and was aware that they had always lived far from the road, circumstances that appellant could have known only because of his long acquaintance with the Narcisas and the fact that he had driven Mildred to and from school. By imputing the tragedy that befell the Narcisas to their own failure to move their residence closer to the road, the masked man appeared to deplore the fact that their victims were the Narcisas, especially Mildred whom he had known for a long time, and whom he protected from injury. When another masked man lunged at Mildred, the masked man who guarded her intervened and told the attacking masked man not to hurt Mildred as she is a woman. All these clearly indicate the familiarity and acquaintanceship between Mildred and the masked man whom she identified as the accused-appellant.

Mildred's failure to immediately disclose to the authorities that one of the masked men was accused-appellant does not detract from the veracity of her testimony. The armed men who killed her father were vicious killers and she was obviously fearful that to identify appellant would alert the others who might cause her harm. Delay or

vacillation in making an accusation does not impair the credibility of the witness if such delay is satisfactorily explained (*People vs. Elizaga*, 73 SCRA 524 [1976]; *People vs. Roxas*, 73 SCRA 583 [1976]). Mildred's failure to immediately reveal to the authorities the identity of appellant is fully justified under the circumstance of the case. In one case, a delay of thirty-five days before the victim reported the sexual assault upon her was not considered an unreasonable delay (*People vs. Santiago*, 197 SCRA 556 [1991]). Tardiness in making an accusation due to fear of reprisal does not impair the credibility of a witness (*People vs. Artieda*, 90 SCRA 144 [1979]). Anyway, soon after hearing over the radio that certain members of the "Kurakot" gang had been apprehended and that possible victims were requested to identify the malefactors, when thereby her fear of reprisal had been dispelled, Mildred went to the PC barracks and identified appellant as one of the robbers.

In the face of the positive identification of accused-appellant by Mildred, the defense of alibi put forth by appellant cannot prevail (*People vs. Esmael*, 37 SCRA 601 [1971]; *People vs. Carandang*, 52 SCRA 259 [1973]). At any rate, this Court has consistently hewed to the rule that findings of fact of the judge who tried the case and heard the witnesses should not be disturbed on appeal, unless there are substantial facts or circumstances, which if properly considered, might affect the result of the case (*People vs. Brioso*, 37 SCRA 336 [1971]). A painstaking search of the record fails to unearth the presence of any fact or circumstance of such weight and significance which would sufficiently negate the correctness of the findings of fact of the trial court.

WHEREFORE, with the modification that the civil indemnity is increased to P50,000.00, the appealed decision is hereby AFFIRMED in all other respects.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Vitug, JJ., concur.

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