

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSALINO NECERIO, DEFENDANT-APPELLANT.

G.R. No. 98430. July 10, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Rosalino Necerio, was charged with the crime of murder in Criminal Case No. 5141 before the Regional Trial Court, 5th Judicial Region, Branch 2, Legazpi City. The information filed in said case reads, as follows (p. 7, Rollo):

“That on (or) about the 15th day of June, 1990 at about 9:30 o’clock in the evening, at Bgy. Palanog, Municipality of Camalig, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, above-named accused with intent to kill, enter(ed) the dwelling of Salvador Orogo y Nantes, and with treachery and evident (premeditation), did then and there willfully, unlawfully and feloniously, attack, assault and stab said Salvador Orogo y Nantes, thereby inflicting upon the latter stab wound which directly caused his death.

“CONTRARY TO LAW.”

After trial on the merits, the trial court rendered its decision on February 25, 1991, the dispositive portion of which reads, as follows (p. 28, Rollo):

“PREMISES CONSIDERED, this Court finds the accused ROSALINO NECERIO, GUILTY beyond reasonable doubt of having killed SALVADOR OROGO, with the attendant qualifying circumstance of treachery. Then likewise were present the aggravating circumstances of nighttime and having been committed in the duelling of the victim. Accused is therefore sentenced to suffer the penalty of reclusion perpetua. He is ordered to indemnify the heirs of the victim, the amounts of P30,000.00 for the fact of death of Salvador Orogo; P30,000.00 as moral damages and P15,000.00, as exemplary damages.

“COSTS AGAINST THE ACCUSED.

“SO ORDERED.”

Hence, the present appeal.

The facts of this case, as found by the trial court are, as follows (pp. 20-23, Rollo):

“Salvador Orogo is a family man. He has a wife, with four children. As is the usual way in barangays away from the center of the town, people retire to rest for the night quite early. Herein family of Salvador Orogo was no exception. At about 8:00 o’clock that evening of June 15, 1990, the couple together with the children were already laying down for the night rest. Considering that the alleged incident happened at about 9:30 o’clock in the evening, there was only one eye-witness to the occurrence. And this was the wife Ludita Orogo.

“She testified that in the evening of June 15, 1990, she was already laying down in the sala of their house, together with her husband and three (3) children. Their house measures about 2 1/2 meters by 4 meters. It has

no room, so they just sleep in the sala which is the main house itself. It has a door but has no lock. It is being (sic) closed by just sliding it. While she was then laying down on her side, nursing her youngest child (who was) four months old, her eyelids heavy and tired with the (dullness) of the day's household chores, sub-conscious and half asleep and nearly to succumb to the invitation of sleep, she was awakened to consciousness by a sound created by the opening of the door. She just didn't mind, thinking it was one of her children wanting to answer the call of nature. Somebody however suddenly barged into the house. She recognized that somebody to be the accused herein ROSALINO NECERIO whom she identified in open court. She was able to recognize the accused, although it was 9:30 o'clock in the evening because they had a kerosene lamp lighted for the night specially due to the fact that she was nursing a four-month old child. This kerosene lamp was placed on top of a biscuit can, located in one corner of the house as shown on the picture marked as Exhibit 'B-2'. This kerosene lamp has a wick the size of the small finger, so that it was bright enough to (illuminate) the whole house. She (knows) the accused because he usually goes to their house. He is a compadre of her husband and in fact her husband acted as father for the accused when the latter asked for the hand of Magdalena Neo in marriage.

"(Ludita) Orogo alleged that the accused once inside, went near her husband and immediately stabbed the latter on the left side of the body. After having stabbed her husband, accused pulled the knife and poked the same on witness and warned her not to inform anybody or else he will come back and kill her. After warning her, the accused left. It was only after the accused left that she was able to shout for help.

"Accused Rosalino Necerio interposed the (defense) of alibi. He stated that in the evening of June 15, 1990, he was in the house of Tito Neo, the father of his fiancée Magdalena Neo. With him in the house were Tito Neo, Magdalena Neo, and (sic) Amador Neo and Gilbert Navera.

"It was about 9:30 o'clock in the evening of June 15, 1990, while he and Amador Neo were already sleeping; when they heard shouts outside. Amador then asked him that they will (sic) verify. The shouts were coming from the house of Salvador Orogo and they were asking for help. So accused together with Amador Neo, went to the house of Salvador Orogo. He took a look at the cadaver but did not go up to the house. He did not approach the widow. He did not visit the family of the deceased the morning after the incident. He did not accompany the cadaver to the Municipal Building. He did not attend the wake nor attend the funeral. He was arrested on June 21, 1990, in the house of Tito Neo. From June 15, 1990 when the incident happened up to the time of his arrest he stayed in the house of Tito Neo, which was about 200 meters away from the house of Salvador Orogo.

"This testimony of the accused was corroborated by Magdalena Neo and Amador Neo."

In this appeal, the accused-appellant assigns the following errors committed by the trial court (p. 34, Rollo):

"FIRST ERROR: The court a quo gravely erred in holding that the guilt of the accused-appellant was proven beyond reasonable doubt.

"SECOND ERROR: The court a quo gravely erred in disregarding accused-appellant's defense of alibi.

"THIRD ERROR: The court a quo gravely erred in failing to take into account the absence of Motive on the part of the accused-appellant to kill his close friend and future cousin-in-law."

To substantiate the aforementioned assignment of errors, the accused-appellant asseverates that the testimonies of Ludita Orogo, far from being credible, are replete with inaccuracies and inconsistencies. During the preliminary investigation, she testified that the accused-appellant poked at her the knife dripping with blood. However, during the cross-examination, she contradicted herself when she testified that no blood came out from the wound. Also, in her sworn statement, she stated that on June 20, 1990 (should be June 10, 1990), there was a heated argument between her husband and the accused-appellant right inside their residence. She did not know what the argument was about because she was outside nursing their baby. These statements are inconsistent with her testimony

during the trial that while she was inside the house, her husband told the accused-appellant that he is so boastful, it is better for him not to proceed with the marriage. Furthermore, it has been established that from the time of the stabbing incident up to the time the accused-appellant was arrested, he did not leave the place.

The appeal utterly lacks merit.

We are in conformity with the contention of the Office of the Solicitor General that (pp. 64-65, Rollo):

“These alleged inconsistencies are too insignificant to affect Ludita (Orogo’s) credibility as a witness. Inconsistencies in the testimony of a witness which are merely de minimis would not impair the credibility of said witness (People v. Almenario, 172 SCRA 268 [1989]; People v. Muñoz, 170 SCRA 107 [1989]). Such minor lapses did not impair the essential truthfulness of Ludita Orogo’s narration (People v. Centeno, 172 SCRA 607 [1989]).”

The fact that the accused-appellant, from the time the crime was committed up to the time he was arrested, stayed in the house of Tito Neo, does not work to his advantage. He must have felt safe in the thought that by threatening Ludita Orogo (supra), he had succeeded in instilling fear in her heart, that is why he did not bother to escape (People v. Jimenez, G.R. Nos. 92457--58, August 12, 1991, 200 SCRA 539).

We quote with favor the ratiocination of the trial court, the guilt of the accused-appellant having been established beyond reasonable doubt (pp. 23-27, Rollo):

“We are all aware of the rulings of our Supreme Court that alibi is a weak defense in the sense that it is so easy to concoct and fabricate. But then even if it is weak, it does not relieve the prosecution of its prime responsibility of proving the guilt of the accused beyond reasonable doubt. It does not set the prosecution free from introducing proof that requires moral certainty, ‘a certainty that convinces and satisfies the reason and conscience of those who are to act on it’ (People vs. Lavarias, 23 SCRA 1301). So that if after investigation of the whole proof, there is inability of the mind to rest easy upon the certainty of the guilt of the accused, then there is reasonable doubt (People vs. Lasada, 18 Phil. 90; People vs. Alipis, 14 SCRA 297), and the accused is entitled to an acquittal. ‘Mas vale que queden sin castigar diez reos presuntos, que se catigue uno inocente’ (People vs. Cunanan, 19 SCRA 769).

“We are likewise aware of rulings of our highest Court to the effect that alibi cannot be effective against the positive identification of the accused and it is not impossible for him to be at the scene of the crime.

“For alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed, but it must likewise be demonstrated that it was physically impossible for him to have been at the scene of the crime at the time of the commission.

“The defense of alibi cannot prevail over the positive identification of the accused by credible witnesses as the authors of the Crime (People vs. Mercado, et al., G.R. No. L-39511, Apr. 28/80; People vs. De Jesus, L-38309, 23 Oct. ‘78; People vs. Matitim, L-56261, 21 Jan. ‘83; People vs. Reana, L-32106, 14 Feb. ‘83).

“In the case at bar, is the reason and conscience of the court convinced and satisfied with moral certainty regarding the guilt of the accused? Can the mind of the court rest easy after a careful examination of the proofs, upon the certainty of guilt?

“There was only one eyewitness to the incident herein. This was the wife of the victim. She positively identified the accused as the perpetrator of the crime. She was able to recognize the accused because there was that lighted kerosene lamp in one corner of their house. The house was only about 2 1/2 by 4 meters. There were no partitions or rooms, so that there was nothing that could in any manner detract or obstruct the light from the kerosene lamp. As testified to by Ludita Orogo, wife of the victim, which testimony was never impugn(ed) by the defense, the wick of that kerosene lamp was the size of her small finger. With such a size of

a wick, the court could readily see that it could give off a steady and even light enough to brighten a room of two and one half meters by four meters. The more it would assume prominence in brightness being the only glow in the dark. She could not have been mistaken with the identity of the accused, the latter being familiar as he had been frequenting their residence. There was shown no sinister motive for the widow to falsely impute such a dastardly act to the herein accused.

“The court carefully observed the demeanor of the widow when she testified. Her testimony was clear. It is straightforward. The court found no signs whatsoever of any basis to doubt her narration. There was even a point in time when (she) shed in (sic) tears while testifying.

“The testimony of a single witness, if positive and credible is sufficient to support a conviction (People vs. V. Aldeguer, G.R. No. L-47991, Apr. 3/90). The testimony of only one witness, if credible and positive and if it satisfies the court beyond reasonable doubt, is sufficient to convict (People vs. Cutura, 4 SCRA 663).

“Accused testified that he was at the house of Tito Neo, his future-in-law at the time of the incident, which was only about 200 meters away from the scene of the crime. It was therefore not impossible for the accused to be at the scene of the incident at the time of commission.

“The court was not quite impressed with the testimony of the corroborating witnesses for the defense. Magdalena Neo is a (fiancee) of the accused. Amador Neo is a future brother-in-law. Accused has already been helping in the household chores of his fiancee. He has been doing menial jobs therein. He even was already allowed to stay in his fiancee’s house. True, relationship is not a ground for disqualification of a witness, but (in connection with the) defense of alibi this mould not substantially contribute to the cause of the defense.

“In cases of positive identification of the accused by reliable witnesses, it has been held that the defense of alibi must be established by full, clear and satisfactory evidence (U.S. vs. Pascua, 1 Phil. 631; U.S. vs. Oxiles, 29 Phil. 587; People vs. Pili, 51 Phil. 965; People vs. De la Cruz, 76 Phil. 601).

“Oral evidence of alibi is so easily concocted and fabricated and usually so unreliable that it can rarely be given credence (People vs. Layos, 60 Phil. 224; People vs. Moradas, 70 Phil. 558). Hence if oral proof is sought to establish alibi, it must not be loose, vague and doubtful, but firm, consistent and trustworthy to the extent that when hurled against the evidence for the prosecution, the impact must perforce overwhelm the latter (People vs. Masilungan, L-9733, Sept. 30, 1958).

“The Court honestly believes that the accused was positively identified by the widow. It was not quite impossible for the accused to be at the scene of the crime when it was committed. The alibi advance(d) by the accused and his witnesses was not satisfactory to the court. The corroborating witnesses (have) some reasons for being biased and partial.

“The actuations of the accused after the incident also (did not) help any in his cause. It was quite unnatural. The victim was a compadre of the accused. The victim served as father to the accused when the latter presented himself and asked for the hand of Magdalena Neo in marriage. Yet from the time of the incident on June 15, to the time of his arrest on June 21, accused never did visit or attend the wake for the victim. He just stayed in the house of Tito Neo which was only about 200 meters away from the house of the victim. x x x.”

The trial court took into account the aggravating circumstances of nighttime, dwelling and treachery (pp. 27-28, Rollo):

“The incident happened at about 9:30 o’clock in the evening. The accused must have purposely sought the cover of darkness to conceal his crime. As testified by him, he and the victim were together during the day of June 15, helping in the processing of copra. But he still waited for darkness to envelope the barangay before committing the felony. The crime was likewise committed inside the house of the victim.

“The court likewise finds that there was treachery in the commission of the crime by the accused. The victim

was sleeping. The attack was sudden. The victim thus had no opportunity to properly defend himself, from the onslaught of the accused.”

It correctly appreciated treachery and dwelling. However, nighttime should not have been considered a separate aggravating circumstance as this was absorbed by alevosia (People v. Espiritu, G.R. No. 80406, November 20, 1990, 191 SCRA 503; People v. Bueza, G.R. No. 79619, August 20, 1990, 188 SCRA 683; People v. Tasarra, et al., G.R. No. 85531, December 10, 1990, 192 SCRA 266).

ACCORDINGLY, the decision appealed from is hereby AFFIRMED, subject to the modification that the indemnity for the death of Salvador Orogo is increased to P50,000.00.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Bellosillo, JJ., concur.

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