

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUCIANO ALBORES Y TARAN, ALIAS DODONG, ACCUSED-APPELLANT.

G.R. Nos. 101122-23. December 09, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a joint decision in Criminal Case Nos. 4340 and 4342 of the Regional Trial Court, Branch 9 of Malaybalay, Bukidnon,* finding the accused, now appellant, Luciano Albores y Taran guilty of Murder and Frustrated Murder.

The Information in Criminal Case No. 4340, dated 17 July 1987, alleged:

"The undersigned Assistant Provincial Fiscal accuses LUCIANO ALBORES y Taran alias Dodong who was born on October 26, 1962, at Bansalan, Davao del Sur of the crime of MURDER, committed as follows, to wit:

That on or about the 10th day of May, 1987 at 4:00 o'clock dawn more or less, at Purok 2, sitio Ipunan, barangay Romago-oc, municipality of Kibawe, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of treachery and evident premeditation, with the use of bladed weapon, did then and there wilfully, unlawfully and criminally attack, stab EUGENIA GUMAPAC inflicting upon her person the following injuries x x x which caused the instantaneous death of EUGENIA GUMAPAC x x x.

Contrary to and in violation to (sic) 248 of the Revised Penal Code."[1]

The Information in Criminal Case No. 4342, dated 21 July 1987, reads:

"The undersigned Assistant Provincial Fiscal accuses LUCIANO ALBORES y Taran alias Dodong who was born on October 26, 1962, at Bansalan, Davao del Sur, of the crime of FRUSTRATED MURDER, committed as follows, to wit:

That on or about the 10th day of May, 1987, at 4:00 o'clock dawn, more or less, at Purok 2, sitio Ipunan, barangay Romago-oc, municipality of Kibawe, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of treachery and abuse of superior strength, with the use of a bladed weapon (knife) did then and there wilfully, unlawfully and criminally stab ELLEN GUMAPAC inflicting upon her person the following injuries x x x which injuries would have caused the death of the said ELLEN GUMAPAC had it not been for the timely, medical assistance accorded her; x x x

Contrary to and in violation to (sic) Article 248 in relation to Article 6 of the Revised Penal Code."[2]

After trial, the court a quo on 18 April 1991 rendered a "Joint Decision", the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the Court finds the accused Luciano Albores GUILTY beyond reasonable doubt of the crime of Murder qualified by treachery, under Criminal Case No. 4340 as defined and penalized under Article 248 of the Revised Penal Code. Considering the presence of one aggravating

circumstance of dwelling which is offset by a mitigating circumstance of voluntary surrender, Exhibit "E", the Court hereby sentences the accused Luciano Albores y Taran, alias Dodong to a penalty of Reclusion Perpetua. He is hereby ordered to pay the heirs of the victim the sum of P30,000.00 as death indemnity.

As to Criminal Case No. 4342 for Frustrated Murder, the Court finds the said accused GUILTY beyond reasonable doubt of the crime of Frustrated Murder as defined and penalized under Article 248 (sic) of the Revised Penal Code in relation to Article 50 (sic) of the same code, and hereby sentences him to an indeterminate penalty of Six, (6) years of Prison Correccional as Minimum to Twelve (12) years of Prison Mayor as Maximum. x x x x"[3]

In his appeal, Albores contends that the trial court erred in giving more credence to the prosecution's evidence and totally disregarding the accused's alibi.[4]

The oral testimony of Ellen Gumapac, the victim in the case for frustrated murder, who was the lone eye-witness for the prosecution, established the following as summarized by the trial court:

"x x x it appears that in the evening of May 9, 1987, while she and her mother, Eugenia Gumapac, the victim in Crim. Case No. 4340 for Murder, were sleeping in their house located at barangay Romago-oc of the municipality of Kibawe, Bukidnon, their house were stoned (sic). They then closed the windows and doors of their house. Then, somebody went up their house whom the witness Ellen Gumapac recognized to be Luciano Albores, the accused in both cases. Once Luciano Albores was upstairs, he stabbed Eugenia Gumapac and dragged her behind her house. At this point in time, Ellen Gumapac remained in their house, but later on, ran toward their neighbor's house but was chased and caught by Luciano Albores, who dragged her at a distance of 3 meters behind their house from where her mother was likewise dragged, and there allegedly sexually abused. This particular testimony was disregarded since the accused was not charged with the crime of Rape. Ellen Gumapac was then dragged after she was stabbed by Luciano Albores, towards Moleta river which has a distance of 100 meters to their house, and their (sic) stabbed causing her to sustain physical injuries consisting of stab wounds on the left chest, left lumber (sic) area and epigastrium x x x. Ellen was dragged to the Moleta river and there made her float in the river and carried by its current. She managed to swim at (sic) the other bank of the river, and proceeded to the house of Sergio Mendez x x x. Then she was given first aid by Mendez, and later brought to Maramag hospital for treatment of her 3 stabbed (sic) wounds x x x and stayed in the hospital until May 25, 1987."[5]

Accused Luciano Albores interposed the defense of alibi, claiming that he was at Kanapolo, Magsaysay, Davao del Sur which is about two hundred (200) kilometers away, at the time of the incident.[6] Defense witnesses Martino Antipuesto and Gonzalo Padriga testified that they saw the accused attend the 7:00 - 9:00 a.m. mass at Kanapulo on 10 May 1987.[7] The accused also testified that he returned to Romago-oc only on 12 May 1987 at 6:00 p.m.[8] and that he went back to Davao on 13 May 1987,[9] subsequently returning to Romago-oc on 15 May 1987 at 6:00 p.m.[10] Epifania Albores, the accused's mother, testified that her son arrived at Romago-oc on 12 May 1987 and left for Davao the next day.[11] Antipuesto added that as Purok leader of Kanapulo, Magsaysay, Davao del Sur, he has personal knowledge that the accused stayed at Kanapulo from 8 January up to 15 May 1987.[12] Padriga added that he saw the accused on 11 May 1987 at 9:00 a.m. at the precinct in Kanapulo when he cast his vote.[13]

The rebuttal witness for the prosecution, Myrna Casinabe, testified however that on 11 May 1989, as chairman of the election board of Precinct No. 29 at Romago-oc, she personally witnessed the accused cast his vote sometime before 12:00 noon. The prosecution presented the list of voters of precinct number 29 containing the accused's signature and thumbmark, and Myrna Casinabe's signature.[14] Casinabe added that she had known the accused since his elementary days.[15]

The accused testified as a sur-rebuttal witness and denied that the signature and thumbmark on the list of voters

were his own.[16]

The trial court, in convicting the accused of both crimes, relied on the "honesty and candor" of Ellen Gumapac, noting that she was of poor intelligence making her incapable of fabricating facts so serious as to condemn the accused against whom she had no ill feelings nor evil motive to falsely point to him as the assailant.[17]

The trial court did not give credence to the accused's alibi finding that it was a "brazen lie and a deliberate fabrication of fact." [18] The court concluded that the alibi was belied by the testimony of Myrna Casinabe which conflicted with the allegation that the accused was not in Romago-oc on 11 May 1987.[19]

The well-settled rule is that 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 of its easy fabrication. We have repeatedly held that the defense of alibi cannot prevail over the positive Identification of the accused by witnesses for the prosecution and that to establish it, the accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission.[20]

We however must not lose sight of the fact that the constitutional presumption of innocence guaranteed to every individual is of primary importance and courts should not precipitately conclude that a person is guilty when the alibi presented appears to be weak. It is true that alibi is a weak defense but it is likewise true that an alibi, albeit genuine, cannot in all cases be adequately established. Thus, we held through Mr. Justice J.B.L. Reyes that "The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases." [21]

In the case at bar, the trial court rejected the accused's alibi due mainly to the testimony of Myrna Casinabe. It should be pointed out however that the accused's testimony was contradicted by Casinabe only in so far as his whereabouts on 11 May 1987 are concerned but not his whereabouts in the morning of 10 May 1987, the date of the commission of the offense. The accused's right to be presumed innocent dictates that his alibi should not fail on this ground, specially when two (2) witnesses testified that they had seen the accused at around 7:00 a.m. on 10 May 1987 at a church about two hundred (200) kilometers away from the scene of the crime. Furthermore, even if we consider that there was no physical impossibility for the accused to be present at the scene of the crime, there was still the need for the prosecution to have proved its case beyond reasonable doubt.

Ellen Gumapac testified that she did not tell Sergio Mendez who their assailant was because she was afraid.[22] In a sworn statement made by Sergio Mendez,[23] he stated that Ellen Gumapac categorically stated that she did not recognize the assailant but only stated that he wore yellow short pants and a red jacket. Unfortunately, the counsel for both sides failed to elicit a clarification regarding the reason why Ellen failed to name the assailant, except that she said she was afraid. The record also fails to show when Ellen first pointed to the accused as her assailant before the accused was "invited" by the police to the hospital where Ellen was confined and she identified him as the culprit. We however find it contrary to human behavior even considering Ellen's poor degree of intelligence, for a victim suffering from serious and potentially fatal wounds to fail to immediately identify her assailant and instead say that she did not recognize him. Ellen saw her assailant leave while she was floating down the river so she then had no immediate fear of further injury.[24] The unexplained initial silence of Ellen taken together with the fact that it was highly improbable for the accused to be attending mass about two hundred (200) kilometers away from the crime scene, less than three (3) hours after its commission, puts in doubt the moral certainty of the guilt of the accused-appellant.

WHEREFORE, the joint decision appealed from is REVERSED and the accused-appellant is hereby ACQUITTED, based on reasonable doubt. He is ordered immediately released from detention unless he is held for some other legal cause or ground.

SO ORDERED.

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

* Presided over by Judge Alejo G. Rola

- [1] Rollo, p. 10
- [2] Rollo, p. 12
- [3] Rollo, pp. 28-29
- [4] Rollo, p. 37
- [5] Rollo, pp. 24 - 25
- [6] TSN, pp.56-57, 11 October 1989
- [7] TSN, p. 42, 11 October 1989
- [8] TSN, pp. 57-58, 11 October 1989
- [9] TSN, pp. 58-59, 11 October 1989
- [10] TSN, pp. 59, 11 October 1989
- [11] TSN, p. 54, 11 October 1989
- [12] TSN, p. 39, 23 May 1989
- [13] TSN, p. 48, 11 October 1989
- [14] Exhibit "D"
- [15] TSN, pp. 71-74, 6 September 1990
- [16] TSN, pp. 80-81, 24 January 1991
- [17] Rollo, p. 27
- [18] Rollo, p. 28
- [19] Rollo, p. 28
- [20] People v. Devaras, G.R. No. 48009, 3 February 1992, 205 SCRA 676
- [21] People v. Fraga, L-12005, 31 August 1960, 109 Phil. 241, 250
- [22] TSN, p. 17, 23 November 1987
- [23] Exhibit "2"
- [24] TSN, p. 9, 23 November 1987

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