

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELBERT AMAR Y SOLEDAD AND ALDEFONSO DE LA PENA Y HERNANDEZ, ACCUSED-APPELLANTS.

G.R. Nos. 104872-73. June 01, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

Accused-appellants Elbert Amar y Soledad and Aldefonso de la Pena y Hernandez were charged with murder in two (2) separate informations dated 1 July 1988 and 19 July 1988, respectively, for the killing of Emmanuel Caballero y Sanchez.

The first information filed with the RTC of Manila, National Capital Judicial Region, and raffled to Branch 49, which charged Elbert Amar y Soledad with murder, alleged as follows:

“That on or about June 26, 1988, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill and with evident premeditation, attack, assault and use personal violence upon one Emmanuel Caballero y Sanchez by then and there hacking the latter with a bladed weapon and shooting him with a gun hitting him on the right wrist and forehead, respectively, thereby inflicting upon the said Emmanuel Caballero y Sanchez mortal hacking and gunshot wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.”[1]

The second information filed with the RTC of Manila, National Capital Judicial Region, and raffled to Branch 5, which charged Aldefonso de la Pena y Hernandez with murder, alleged as follows:

“That on or about June 26, 1988, in the City of Manila, Philippines, the said accused, conspiring and confederating together with Elbert Amar y Soledad who was already charged before the Regional Trial Court of Manila in Criminal Case No. 88-64424 for the same offense and helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill and with evident premeditation, attack, assault and use personal violence upon one Emmanuel Caballero y Sanchez by then and there hacking the latter with a bladed weapon and shooting him with a gun hitting him on the right wrist and forehead, respectively, thereby inflicting upon the said Emmanuel Caballero y Sanchez mortal hacking and gunshot wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.”[2]

At the outset, a procedural lapse committed by the public prosecutor should be pointed out. He filed the first information against accused-appellant Elbert Amar, who was alleged to have killed the victim in conspiracy with others who were still unknown when said information was filed. That information was sufficient to charge Amar and his then unknown co-conspirators. When the identities of such unknown persons were thereafter established, the information could have been amended (instead of a second information being filed) to include them by their

names under Section 14, Rule 110 of the Rules of Court which in part provides:

“Sec. 14. Amendment. - The information or complaint may be amended, in substance or form, without leave of court, at any time before the accused pleads; and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the accused.”

The filing of a single information would have prevented the raffle of two (2) informations, involving the same offense, to two (2) separate branches of the same court and the need to later consolidate the two (2) cases, which was what happened in the case. Needless to say, this procedural lapse unnecessarily delayed the disposition of the case and further clogged the court docket.

Accused-appellant Aldefonso de la Pena y Hernandez pleaded not guilty to the charge on 19 August 1988 while accused-appellant Elbert Amar y Soledad pleaded also not guilty to the charge on 22 August 1988. Upon motion of the private prosecutor, the cases were consolidated and tried jointly.

On 19 October 1990, the Regional Trial Court of Manila, Branch 5 (Special Criminal Court), rendered judgment* the dispositive part of which reads:

“WHEREFORE, the prosecution having proven beyond reasonable doubt the guilt of the accused, accused ELBERT AMAR y SOLEDAD AND ALDEFONSO DE LA PENA y HERNANDEZ are sentenced to suffer the penalty of LIFE IMPRISONMENT; both accused shall indemnify the heirs of deceased SGT. EMMANUEL CABALLERO y SANCHEZ the sum of Thirty Thousand (P30,000.00) Pesos each.

SO ORDERED.”[3]

On appeal to this Court, accused-appellants assign the following errors to the trial court:

“x x x in finding the appellants guilty beyond reasonable doubt in the face of uncorroborated eyewitness testimony which irreconcilably contradicts autopsy findings;

x x x in not crediting the defense eyewitness testimonies with more weight as their version was more in keeping with the autopsy findings;

x x x in failing to appreciate ill motive for (sic) the witness Virgilio de Luna in testifying against appellants.”[4]

The evidence for the prosecution was established mainly through the testimony of eyewitness Virgilio de Luna. Briefly, the case for the prosecution is as follows:

At about six o’clock p.m. on 26 June 1988, Amadeo Lactao together with accused-appellants Aldefonso de la Pena and Elbert Amar and two (2) others identified as Mike Villanueva and a certain Abad were having a drinking session near the house of Lactao at No. 5-A Ulilang Kawayan, Paco, Manila, when Sgt. Emmanuel Caballero passed by, on his way to the house of Virgilio de Luna. The group invited Caballero to have a drink but the latter declined saying that he had to talk to Virgilio de Luna to help him find a job for a certain Evelyn who was with him. Caballero and Evelyn then proceeded to de Luna’s house.

After coming from de Luna’s house, Caballero and Evelyn again passed the group having a drinking session. Virgilio de Luna claimed that he saw Amadeo Lactao shoot Emmanuel Caballero but that it was Elbert Amar who was hit. Caballero then drew his .45 caliber service pistol and shot Lactao. Accused-appellant Aldefonso de la Pena then went to the rear of Caballero and hacked his right hand with a bolo causing Caballero to lose hold of his gun. Accused-appellant Elbert Amar then ran towards Caballero and repeatedly stabbed him with what appeared to de Luna to be an icepick. As Caballero fell to the ground, Lactao was able to get up and shoot Caballero four

(4) times. Caballero died on the spot due to hemorrhagic shock resulting from multiple gunshot wounds on the head and stab wounds on the body.[5] Amadeo Lactao died on 28 June 1988 in the Philippine General Hospital (PGH) as a result of the gunshot wounds he suffered.

The defense witnesses attempted to establish that it was Caballero who initially accosted Amadeo Lactao by holding him from behind while he was seated. When Lactao stood up, Caballero allegedly pushed him towards the open canal and when Lactao fell, Caballero drew his gun and shot Lactao. Elbert Amar allegedly tried to pacify Caballero when Virgilio de Luna came and tried to stab Amar from the back. It was while Amar was pacifying Caballero and de Luna was trying to stab Amar that Amadeo Lactao allegedly was able to get up and shoot Caballero. When all the above events were taking place, accused-appellant Aldefonso dela Pena allegedly just remained standing and seemed shocked.[6]

Four (4) witnesses for the defense attempted to establish the foregoing version of the incident.

In *People vs. Eslaban*[7] we held that:

“This Court has time and again emphasized that for evidence to be believed, it must not only proceed from the mouth of a credible witness; it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. Still, in an earlier case, it was pronounced that Courts are not required to believe that which they judicially know to be unnatural, unusual and improbable when tested by the rules which govern men of ordinary capacity and intelligence in a given matter.”

The above stated doctrine is usually applied in evaluating the evidence for the prosecution to determine whether or not the constitutional presumption of innocence in favor of the accused has been overcome by proof of guilt beyond reasonable doubt. Nothing precludes the application of the same principle in evaluating the evidence for the defense. No rights of the accused are violated in the process for the prosecution has still to prove the accused's guilt with the required moral certainty necessary for conviction.

In the case at bench, the trial court unfortunately did not make an express finding on the credibility of witnesses but the judgment of conviction by the trial court clearly shows that more credence was given to the testimony of the witness for the prosecution than to those for the defense. Absent any special or compelling circumstances, the findings of the trial court on the credibility of witnesses is accorded by this Court the highest respect.[8]

A careful examination of the testimonies of the witnesses reveals that, contrary to the accused-appellants' submissions, the evidence for the prosecution is more consistent with the autopsy findings. To be sure, counsel for the prosecution unfortunately failed, on cross examination, to make the witnesses for the defense account for or explain the various injuries sustained by the victim.

Sgt. Emmanuel Caballero, according to Medico-Legal Report No. M-1463-88 of the PC Crime Laboratory, Camp Crame, Quezon City[9], suffered several gunshot wounds, four (4) stab wounds, an incised wound, a lacerated wound and a hack wound which almost severed his right hand at the wrist.

According to the testimony of Esperanza Lactao, the deceased Amadeo Lactao's wife, accused-appellant Elbert Amar was merely trying to pacify Caballero while Aldefonso de la Pena seemed shocked and was not able to do anything. According to Lactao, it was Virgilio de Luna who tried to hack Elbert Amar. This version of Lactao was basically the same version narrated by Celeste Legaspi, her daughter, Elbert Amar, and Aldefonso de la Pena. Not one of said defense witnesses was able to show how Caballero could have sustained four (4) stab wounds if only Virgilio de Luna was allegedly armed with a bladed weapon. Then, even assuming that a bolo was wielded by de Luna, the defense version is still unbelievable since, according to the defense itself, no other person was present at the scene of the incident aside from Caballero, Lactao, Amar, de la Pena and de Luna. How then could Caballero

have sustained four (4) stab wounds if there was no one who could have inflicted said injuries on him? Evidence should first be believable and logical before it can be accorded any weight.

We now examine whether or not the prosecution has proved accused-appellants' guilt beyond reasonable doubt.

The prosecution, through the testimony of Virgilio de Luna, eye witness to the incident, was able to establish the circumstances surrounding the incident which took place on 26 June 1988. The prosecution's account of the incident, earlier set forth in this decision, is consistent not only with the number and extent of the injuries sustained by Caballero but also with those sustained by Elbert Amar. The alleged inconsistency of the prosecution on the issue of whether Caballero was stabbed with an icepick or a knife is really a minor matter.

Accused-appellants Elbert Amar and Aldefonso de la Pena together with the deceased Amadeo Lactao clearly conspired to inflict injury on Caballero; hence, all of them are liable for the death of Caballero.

However, the Solicitor General correctly points out that the qualifying circumstance of evident premeditation has not been clearly established. Thus, the killing of Emmanuel Caballero is deemed to be homicide and not murder. The accused-appellants Elbert Amar and Aldefonso de la Pena are therefore sentenced to suffer the penalty of 8 years and 1 day of prision mayor as minimum to 14 years, 8 months and 1 days of reclusion temporal as maximum.

The civil indemnity to be paid by accused-appellants to the victim's heirs is increased from P30,000.00 each to P50,000.00 each, in line with the latest pronouncements of this Court.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** with the aforesaid modifications as to penalty and civil indemnity for the victim's heirs.

SO ORDERED.

Quiason and Vitug, JJ., concur.

[1] Rollo, p. 4

[2] Rollo, p. 5

* Penned by Judge Felix B. Mintu.

[3] Rollo, p. 24.

[4] Rollo, p. 70.

[5] Exhibit "H".

[6] TSN, 12 October 1989, pp. 6-9.

[7] G.R. Nos. 101211-12, 8 February 1993, 218 SCRA 534.

[8] *People v. Dominguez*, G.R. No. 100199, 18 January 1993, 217 SCRA 170.

[9] Exhibit "H".

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