

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BOBBY SENCIL, ROLITO MARINAY, LIBERATO PRIETO, AND SEVERAL JOHN DOES, ACCUSED-APPELLANTS.

G.R. Nos. 105959-60. October 12, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal by accused-appellants Bobby Sencil, Rolito Marinay and Liberato Prieto from the decision^[1] dated May 25, 1992 of the Regional Trial Court of Ozamiz City, 10th Judicial Region, Branch 15-A in Criminal Case No. 200 for MURDER and Criminal Case No. 201 for ACTS OF LASCIVIOUSNESS, the dispositive portion of which reads as follows:

“WHEREFORE, finding the three accused - BOBBY SENCIL, ROLITO MARINAY and LIBERATO PRIETO guilty beyond reasonable doubt of conspiracy in the murder of Francisco Evangelista, qualified by treachery, aggravated by nighttime and mitigated by voluntary surrender, this Court sentences them to RECLUSION PERPETUA and to jointly and severally pay the heirs of said Francisco Evangelista P50,000.00.

“FURTHERMORE, finding the same three accused - Bobby Sencil, Rolito Marinay and Liberato Prieto guilty beyond reasonable doubt of acts of lasciviousness, committed upon the person of Annabelle Bagayo, aggravated by superiority of strength and nighttime and mitigated by voluntary surrender, this Court sentences them to an indeterminate penalty ranging from SIX (6) MONTHS of arresto mayor as minimum to FIVE (5) YEARS of prision correccional as maximum and to jointly and severally pay Annabelle Bagayo P10,000.00 as damages.

"Costs against the accused."^[2]

On September 3, 1990, two (2) Informations were filed against Bobby Sencil, Rolito Marinay, Liberato Prieto and several John Does for the crimes of MURDER and ACTS OF LASCIVIOUSNESS committed, respectively, as follows:

“That on or about the 29th day of December, 1989, at around 3:00 o'clock dawn, in barangay Malibangcao, municipality of Clarin, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with evident premeditation, with treachery, conspiring, confederating and mutually helping one another, with intent to kill, all armed with a high powered assorted firearms, did then and there willfully, unlawfully and feloniously attack, assault, hack and shoot one FRANCISCO EVANGELISTA alias Paran, thereby inflicting upon the latter the following wounds, to wit: Multiple gunshot wounds, entrance wound at the right upper chest thru and thru and entrance wound at the right lower chest, and hacking wound at the neck and evulsion of the left ear, resulting to (sic) cardio-respiratory arrest due to hypovolomic shock, which caused the instantaneous death of said Francisco Evangelista.

"That there exists two aggravating circumstances in the commission of the crime, they are: 1) Superiority of Strength, and 2) the crime was committed at night-time."^[3]

and:

"That on or about the 29th day of December, 1989, at around 2:45 o'clock dawn, in barangay Malibangcao, municipality of Clarin, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all armed with high powered weapons, conspiring, confederating and mutually helping one another, actuated by lust, did then and there willfully, unlawfully and feloniously with malice one after the other and together, embrace, kiss several times and touch the breast and the sexual organ of one ANNABELLE A. BAGAYO, with force and intimidation and against her will.

"That there exists two aggravating circumstances in the commission of the crime, they are: 1) Superiority of Strength, and 2) the crime was committed at night-time."[4]

It appears on record that at around 2:45 a.m. of December 29, 1989, Annabelle Bagayo, a neighbor of the victim Francisco Evangelista alias Paran, was awakened by a gun shot and a loud voice shouting: "Bay, open up if not your house will burst!"[5]

After lighting a kerosene lamp, Annabelle came out of her house where she saw a group of nine (9) armed men, including accused-appellants Bobby Sencil, Rolito Marinay and Liberato Prieto, in fatigue uniforms with 'tabak' patches but without nameclothes.

She blew out the light from the kerosene lamp when one of the armed men told her to do so and they asked her to point out the victim's house which she did. However, she was dragged to a coconut tree by the three (3) accused-appellants who succeeded in kissing and touching her private parts when she refused to wake up the victim.

Thereafter, they forced her down on the ground over the laid out raincoat where accused-appellants Marinay and Prieto held both her hands while accused-appellant Sencil went on top of her and forcibly pulled down her panties. As she struggled and screamed for help, accused-appellant Marinay pulled accused-appellant Sencil away from her saying: "Never mind, Bay"[6] and helped her up.

On their way to the house of the victim, the three (3) accused-appellants touched her private parts again and ordered her to wake up the victim.

Upon reaching the house of the victim, Annabelle called out the name of the victim but she was informed by Gerardo Villamor that she should go and find the victim's wife, Dolores, who was at that time sleeping at the house of her mother-in-law.

Thereafter, Annabelle found Dolores and informed the latter that a group of armed men was looking for her husband. Immediately, they went to the victim's house Dolores went upstairs and came down with her husband and their son, Arne, to meet accused-appellants.

Meanwhile, accused-appellant Marinay ordered Annabelle to inform the victim that they were going to rob him. When she told the victim about the intention of the armed men to rob him, accused-appellant Marinay ordered her to bring the victim to him. As she was bringing the victim towards accused-appellant Marinay, the latter asked her to step aside and fatally shot the victim on his right breast.

Thereafter, Annabelle screamed while Dolores and Arne ran towards the cornfields. Accused-appellant Marinay promptly told Annabelle to stop screaming and ordered her to go to the house of the victim to get money. However, when she saw that nobody was following her she ran and hid in the kitchen located behind the house for three (3) hours or until about 6:00 a.m.. As soon as she came out from her hiding place, she saw Dolores with some other people gathered around the wounded and lifeless body of the victim.

Several days later, Annabelle reported the abominable and horrendous incident to Captain Angel Medina, Chief of Police of Clarin, Misamis Occidental. She told him of her desire and willingness to testify in the investigation of the victim's death as she can identify the victim's killers.

Consequently, Captain Medina requested the PNP Provincial Headquarters to conduct an investigation and informed the commanding officer of the 466th P.C. Company that the suspects were members of the CAFGU of Montol, Ozamiz City.

On February 9, 1990, nine (9) members of the CAFGU of Montol, Ozamiz City were sent to the P.C. Headquarters for Annabelle to identify. She recognized and pointed out accused-appellant Marinay as the person who sexually molested her and shot the victim. Likewise, on February 12, 1990, another group of CAFGU members was lined up for identification and Annabelle was able to recognize accused-appellants Sencil and Prieto as the armed men who had sexually molested her and participated in killing the victim.

The widow of the victim merely corroborated Annabelle's positive testimony as to the circumstances surrounding her husband's death but was unable to identify any of the armed men who killed her husband.

Accused-appellants, on the other hand, denied killing the victim or sexually molesting Annabelle. They maintained that at 9:00 p.m. of December 28, 1989, they were informed by Barangay Captain Pelagio Moywela of Montol, Ozamiz City that the latter's cousin, Elias Moywela, was killed in Malibangcao. So they proceeded to Malibangcao arriving thereat at around 11:00 a.m. of December 29, 1989 to verify the death of Elias Moywela and to get his body when they learned about the death of Francisco Evangelista. Thereafter, they were summoned to the 466th P.C. Headquarters where they were told that they were suspects in the killing of Francisco Evangelista and on learning this, they voluntarily surrendered to Captain Medina.

Prosecution witnesses Captain Medina, Bonifacio Tuba, Abner Abordo, Luz Anislag and Danilo Bagayo, however, testified, on rebuttal, that they had seen members of the CAFGU of Montol, Ozamiz City at Malibangcao in the early morning of December 29, 1989.

We are not persuaded by accused-appellants' denial and defense of alibi.

The settled rule in this jurisdiction is that appellate courts accord due deference to the trial court's views on who should be given credence since the latter is in a better position to decide the question of the credibility of witnesses having seen and heard these witnesses and observed their deportment and manner of testifying during the trial, unless certain facts of substance and value have been overlooked which, if considered, might affect the result. These findings of the trial court are generally accorded great respect by appellate tribunals for the latter can only read in cold print the testimony of the witnesses which commonly is translated from the local dialect into English. In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching, and listening may escape the reader of the translated words.[7]

In the instant case, the testimonies of the accused-appellants consist merely of denials without any other evidence to sustain their claims and defenses. We have consistently ruled that denials, if unsubstantiated by clear and convincing evidence, are negative and self-serving evidence which deserve no weight in law and cannot be given greater evidentiary weight over the testimony of credible witnesses who testify on affirmative matters. As between the positive declarations of the prosecution witnesses and negative statements of the accused-appellants, the former deserves more credence.[8]

Accused-appellants' defense of alibi must also fail in view of the clear, direct and positive identification made by the witnesses for the prosecution. As a rule, alibi is a weak defense and cannot prevail over the positive testimony

of truthful witnesses. The reason is that alibi is so easily concocted and usually so unreliable that it can rarely be given credence.[9] For alibi to prosper, it is not enough to prove that the accused-appellants were at some other places when the crime was committed but that it must also be demonstrated that it was physically impossible for them to have been at the scene of the crime.[10] As correctly pointed out by the trial court:

“x x x. This Court notes her [Annabelle Bagayo] eye for details, as gathered from her sta[u]nch declaration that she saw armed men, in the light of her kerosene lamp, wearing fatigue uniforms with Tabak patches without nameclothes, before she put out the light. It further takes into account the length of time that she was in their company - from the time she came down the house to the time she was dragged under the coconut tree to be pawed upon, through the time she walked with them to Paran Evangelista's house and the time she was made to do their bidding. During all this time, Annabelle Bagayo's eyes must have adjusted to the dark, enabling her to see the size and shape and features of the men who held her hostage.

“xxx.

“It was with firmness born of certainty that she picked accused Marinay from the long line of men first presented to her in a line-up on February 9, 1990 and it was with the same firmness born of certainty that she picked the two other accused from a second line-up presented to her on February 12, 1990.

“Annabelle Bagayo spoke with the armor of truth and confidence, fueled by righteous rage. Speaking with clenched teeth, she pointed a minatory finger as she identified each one of the three accused whom she described as beast - Bobby Sencil as the one who would have lain on top of her, Rolito Marinay and Liberato Prieto as the men who held her hands, and Rolito Marinay who heeded her cry for God's mercy. Annabelle Bagayo's demeanor on the stand wrapped the three accused with the unmistakable odium of guilt.

"On the other hand, the defense's alibi has not established that it was not physically impossible for the accused to be at the scene of crime at the time of its commission. What the defense did establish was that the crime scene was accessible on foot in four hours from where the accused lived and that it was possible for the accused to leave Barangay Malibangcao, specifically at Annabelle Bagayo's home at 2:45 a.m. or thereabouts. Prosecution rebuttal witness who saw the accused early in the morning in Barangay Malibangcao, in fact, gave the lie to the defense's claim that the three accused, with their comrades, arrived there late in the morning." [11]

Accused-appellants assail the credibility of prosecution's theory by pointing out that more than eight (8) months had lapsed since the alleged incident had occurred before the two (2) Informations were filed against them as well as the undue delay in the execution of Annabelle Bagayo's affidavit regarding the alleged crimes. They also alleged that the real reason for the delay was that the prosecution is still looking for stronger evidence to prove the alleged crimes.

The prosecution, however, successfully explained the delay when prosecution witness Captain Medina testified in open court that:

"Q: Now do you mean to say that these two complainants reported this matter to you personally?

"A: Yes sir.

"Q: After the report[,] what did you do?

"A: When the victim died after [a] few days[,] Annabel[le] Bagayo came to me personally and she told me that she can identify the killer of Francisco Evangelista, barangay councilor of Malibangcao, so after I interviewed her, she really insist[ed] to testify inspite of the danger that she is accusing an armed group. So then I requested an investigator from the Provincial Headquarters to do the investigation so M/Sgt. Bula was sent by the Provincial Command to conduct investigation.

"Q: When was that?

"A: Before the investigation[,] I went to Captain Nazareth who was then the Commanding Officer of the 466th PC Company and informed him they are suspects in the killing of Francisco Evangelista who were informers of the CAFGU of Montol, so I requested him to direct the bringing of the CAFGU in Montol to come to the 466th PC Company for identification purposes." [12]

As aptly observed by the Solicitor General in the Appellee's Brief:

"Evidently, the execution of Bagayo's affidavits on February 9 and 12, 1990 or about forty days after the killing of Evangelista is justified since it was due to the precautions undertaken by Capt. Medina to ensure the safety of Bagayo, considering that the appellants were then members of an armed group (CAFGU).

"So also, the delay in the filing of the Information[s] did not prejudice appellants and neither did it mean that the prosecution has no clear and sufficient evidence against appellants. Under our judicial system, parties to a criminal complaint are given equal opportunities to espouse their respective causes and thereafter, the proper officer is tasked to evaluate the same. The eventual filing of the Information[s] merely mean that there exists, at least, a prima facie evidence against appellants, which if un rebutted, is sufficient to sustain their conviction.

"Similarly, Bagayo's sworn statement dated February 12, 1990 which reads 'I could not remember the faces of my attackers as I have closed my both eyes' cannot be considered sufficient justification to exculpate appellants on the ground that their identification as authors of the crime is based on unreliable evidence. An affidavit being taken ex parte is almost incomplete and often inaccurate (People v. Alcantara, 151 SCRA 326). Suffice it to state that on re-direct examination, Bagayo claimed that she did not close her eyes all the time (p. 13, tsn, November 14, 1991). On the witness stand, she also positively identified appellants as the same persons who molested her and subsequently murdered Francisco Evangelista." [13]

All things considered, we are unable to see any reason to reverse the decision of the trial court as there is no doubt in our mind that accused-appellants had indeed committed the crimes filed against them.

WHEREFORE, finding no merit in the appealed decision, the same is hereby **AFFIRMED** in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Penned by Assisting Judge Ma. Nimfa Penaco-Sitaca.

[2] Rollo, p. 49.

[3] Id., at p. 10.

[4] Original Records of Criminal Case No. 105960, at p. 1.

[5] T.S.N., November 14, 1991, p. 3.

[6] Id., at p. 6.

[7] People vs. Baslot, 209 SCRA 537 [1992].

[8] People vs. Guibao, G.R. No. 93517, January 15, 1993.

[9] People vs. Obando, 182 SCRA 95 [1990].

[10] People vs Penillos, 205 SCRA 546 [1992].

[11] Rollo, pp. 47-48.

[12] T.S.N., December 19, 1991, p. 4.

[13] Rollo, pp. 68-70.

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