

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR CABANIT, ACCUSED-APPELLANT.

G.R. Nos. 62030-31. October 04, 1985

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

In Criminal Cases Nos. 460-N and 461-N of the Court of First Instance of Ilocos Sur, Branch II, Narvacan, the accused Nestor Cabanit was charged in two separate Informations for the crime of Murder, it being alleged in said cases that on December 31, 1978, in the Municipality of Narvacan, Province of Ilocos Sur, said accused with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot Norberto Gazmen and Eliseo Gazmen, thereby inflicting on both offended parties multiple gunshot wounds which thereafter caused the death of said persons. Pursuant to these two separate Informations, both dated May 15, 1979, the accused was arrested and thereafter he posted a bond for his provisional liberty and when arraigned he entered a plea of not guilty to both charges.

Subsequently, however, on motion of his bondsmen, the bond posted by him was withdrawn because herein accused was again charged of murder and illegal possession of firearms before the Municipal Court of Narvacan, Nagbukel and Santa, Ilocos Sur. Accused was then committed to the Provincial Jail on January 8, 1981, where he was detained. Then on July 23, 1981 another separate Information was filed against him and two others in the same Court of First Instance of Ilocos Sur, again for the crime of murder and in this third case it was recommended that no bail be granted (Decision, p. 2, Rollo, 7).

In the two cases subject of the present appeal, it is disclosed from the evidence adduced by the prosecution during the trial that: —

"Between 11:00 p.m. and 12:00 midnight on December 31, 1978, while Elisa Gazmen and her aunt Rosalia Dauz were waiting along the National Road in Narvacan, Ilocos Sur, to attend the New year's eve Mass in the Catholic Church of Barangay Lungog, they saw, from a distance of ten (10) meters, Norberto Gazmen and Eliseo Gazmen in front of the store of Ester Parel. The two were buying beer. Suddenly, appellant shot Norberto Gazmen, causing the latter to slump to the ground. Eliseo Gazmen embraced Norberto Gazmen. While he was thus embracing Norberto, Eliseo Gazmen was also shot by appellant, making him fall down. There were five shots, all in all, fired by appellant. As a result of the shooting, Norberto Gazmen died instantly while Eliseo Gazmen died on the way to the hospital (tsn., Jan. 8, 1980, pp. 4-20, Oct. 21, 1980, pp. 3-14).

"The medical examination conducted by Dr. Encarnacion de la Cuevas, Rural Health Physician of Santa, Ilocos Sur, revealed that the cause of death of both deceased was:

"Cerebral Hemorrhage due to skull fracture and Brain Injury Secondary to Gunshot wounds." (Exh. "A", Records, p. 142; tsn. Aug. 10, 1979, pp. 2-17). Appellee's Brief, pp. 3-4, pp. 117-118)

The version of the accused Nestor Cabanit is as follows:

"Nestor Cabanit declared that between 4:00 and 5:00 o'clock in the afternoon of December 31, 1978, while in

their house, his father asked him to read a letter from his younger brother, Eduardo Cabanit who was then working in Manila. The letter revealed that his brother sent money and cloths thru Ex-Mayor Benjamin Sanidad of Sto. Domingo, Ilocos Sur. He and his father left their barrio immediately at 5:00 o'clock of the same afternoon. They arrived at Sto. Domingo, Ilocos Sur in the house of Ex-Mayor Sanidad, but he was in a neighboring barrio until 11:00 o'clock that evening. They were able to get the package with a pair of pants and cash money in the amount of P225.00. His brother used to work at the CDCP in Makati. From the house of his uncle, he and his father with a certain Leoncio Obilas waited for a bus to ride in going home, but they were not able to get a ride, so they decided to spend the night in the house of Ex-Mayor Sanidad. They returned to Lungog, Narvacan Ilocos Sur early 5:00 o'clock in the following day only to be informed on their arrival of the death of Norberto Gazmen and Eliseo Gazmen." (Appellant's Brief, pp. 6-7).

The trial court in resolving the innocence or guilt of the accused-appellant, discounted the latter's alibi that he was in Sto. Domingo, Ilocos Sur, which is about forty (40) kilometers away from Narvacan town, in the night of December 31, 1978. Obviously, it gave credit to the testimonies of three (3) prosecution witnesses who positively declared to have seen appellant at the crime scene on the night in question and more particularly to the declarations of Rosalia Daut and Elisa Gazmen, the eighteen year old daughter of the deceased Eliseo Gazmen that they saw the accused Nestor Cabanit shoot Norberto Gazmen and thereafter Eliseo Gazmen. (Tsn., pp. 5-10, October 21, 1980; Tsn., pp. 7-12, January 8, 1980).

The claim of alibi interposed as a defense by the accused rests on the testimony given by him and those of his corroborating witnesses, Gregorio Cabanit, his father, and Leoncio Obilas, a resident of Barangay Pado Grante, Sto. Ilocos Sur, who claims having been with the accused and Gregorio Cabanit on the night of December 31, 1978 in Sto. Domingo, Ilocos Sur, in the house of Ex-Mayor Benjamin Sanidad of said town up to the following morning (tsn., 4-8, Hearing of September 17, 1981).

Thus, on July 30, 1982, a decision was rendered by the trial court with the dispositive portion thereof reading as follows:

"WHEREFORE, foregoing considered, the Court finds accused Nestor Cabanit:

1) In Criminal Case No. 460-N, for the death of Norberto Gazmen GUILTY beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code, qualified by Treachery and there being no mitigating nor aggravating circumstance present in the commission of the crime, hereby sentences said accused to a penalty of reclusion perpetua and to indemnify the heirs of the deceased in the amount of P12,000.00;

2) In Criminal Case No. 461-N, for the death of Eliseo Gazmen, GUILTY beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code, qualified by Treachery and there being no mitigating nor aggravating circumstances present in the commission of the crime, hereby sentences said accused to a penalty of reclusion perpetua; to indemnify the heirs of the deceased in the amount of P12,000.00; and

3) To pay the costs.

SO ORDERED.

Narvacan, Ilocos Sur, July 30, 1982."

It is from this judgment rendered against the herein accused that he has interposed the present appeal.

In his appeal, defendant-appellant contends that the court a quo erred in holding that his guilt for the crime charged has been sufficiently established and in giving credence to the testimonies of the prosecution witnesses thereby disregarding his defense of alibi and consequently convicting him of the crime of murder.

We find no merit in his appeal nor can we discern any proper reason to disturb the findings of the trial court. The identification of the accused Nestor Cabanit as the assailant who fired several shots, first at Norberto Gazmen, and soon thereafter at Eliseo Gazmen, is positive and unequivocal. Such was fully established by two credible witnesses, Elisa Gazmen and Rosalie Daus, both of whom were then on their way to church to attend the midnight mass on New Year's eve and who witnessed the shooting of said victims.

The accused-appellant submits that it was never established that there was enmity between him and the two victims and thus there was no motive for him to shoot at the offended parties. But upon the same consideration it may also be said that absent any indication of ill-will against the accused being harbored by the prosecution witnesses then what they did testify about may be rightfully considered as the untarnished truth as it would be illogical for them to impute so serious an offense on someone other than the one who had actually done wrong to their family. It is difficult to accept that Elisa Gazmen would be disposed to falsely impute the killing of her father and her cousin to the herein accused Nestor Cabanit because by doing so, this would then leave the real culprit footloose and free. The same consideration may be said as regards the declarations of Rosalia Daus. It is highly improbable that both Elisa Gazmen and Rosalia Daus would deliberately desire to make a mockery of justice and leave the death of their relatives unpunished on account of their own deliberate fabrications.

Proof to establish motive for the killing of the victims in this case is of little significance because as stated in *People vs. Lumantas*, 28 SCRA 764, even lack of motive for committing the crime does not preclude conviction when the crime and the participation of the accused therein are definitely shown.

The alibi of the accused that he was in the other town of Sto. Domingo, with his father Gregorio Cabanit, some forty kilometers away on the night when the shooting happened is unconvincing. There is sufficient cause for the trial court to reject said alibi specially when it is considered that no one among those actually residing in the house of Ex-Mayor Sanidad wherein the appellant profess to have slept that evening of December 31, 1978, was presented or summoned to bolster the tendered alibi of appellant. The alibi in this case is made more dubious and weak because it is established mainly by the accused himself and his immediate relatives, such as his father, and not by credible persons who would, in the natural order of things be best situated to support the tendered alibi (*People vs. Brioso*, 37 SCRA 336; *People vs. Bagasala*, 39 SCRA 236; *People vs. Carino*, 55 SCRA 516). It has been repeatedly observed that alibi is a defense that is weak and can be easily fabricated or contrived (*People vs. Juela*, 127 SCRA 560; *People vs. Pogasa*, 127 SCRA 574) and great caution therefore must be exercised in accepting the same (*People vs. Bagsican*, 6 SCRA 400). The reason in that alibi is at best a weak defense and easy fabrication especially between parents and children relatives, and even those not so related (*People vs. Lumantas*, 5 SCRA 157; *People vs. Pelagio*, 20 SCRA 153; *People vs. Bulawin*, 29 SCRA 710).

In any case, the appeal of the herein accused is centered and hinge on the credibility of the witnesses who testified during the trial. The governing rule that generally applies is that the findings of fact of the trial court are accorded the highest degree of respect by an appellate court (*People vs. Sabandal*, 41 SCRA 179; *People vs. Dramayo*, 42 SCRA 59). Absent any proper reason to depart from this rule, factual conclusions reached by the trial court which had the opportunity to observe and gauge the demeanor and conduct of the witnesses while testifying are, therefore, not to be disturbed (*People vs. Legones*, 69, SCRA 210).

The other lesser points raised by appellant who question the delay on the part of Elisa Gazmen and Rosalia Daus in making the accusation against him do not impress us as sufficiently persuasive. The alleged delay in naming the accused as the assailant was not long enough to be significant and even this had been adequately explained. Elisa Gazmen did not immediately divulge the name of the appellant as she went to Bangued, Abra to inform her cousins of the death of her father (Tsn., 11-12, May 21, 1980); and on the part of Rosalia Daus, because of fear that they may be harmed should she reveal the assailant's identity (Tsn., p. 4, Hearing of March 5, 1981). In any

case, the killing took place at midnight of December 31, 1978 and the report regarding the killing was made by Elisa Gazmen on January 3, 1979 and on January 2, 1979 by Rosalia Daus, who was much pre-occupied and had not yet regained her composure. Alleged delay or vacillation in making a criminal accusation when adequately explained, does not necessarily impair the credibility of the said witness (*People vs. Rotas*, 73 SCRA 583, 593; *People vs. Lao Wan Sing*, 18 SCRA 1076).

WHEREFORE, with the modification that the indemnity to be paid to the heirs of the deceased Norberto Gazmen and Eliseo Gazmen by the herein accused-appellant is increased to P30,000.00, the judgment appealed from is affirmed in all other respects, with costs.

SO ORDERED.

Aquino, (Chairman), Concepcion, Jr., Abad Santos, Escolin, and Cuevas, JJ., concur.

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