

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO MARTINADA, BONIFACIO MESIAS, BONDOY MORATO, AND TWO JOHN DOES, DEFENDANTS, FRANCISCO MARTINADA AND BONIFACIO MESIAS,...

G.R. Nos. 66401-03. February 13, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a mandatory review of the decision of the Regional Trial Court, Branch XV at Palo, Leyte in Criminal Cases Nos. BN-1886, BN-1886-A and BN-1886-B.

In three separate informations, appellants Francisco Martinada and Bonifacio Mesias, together with one Bondoy Maroto and two John Does were all charged with (a) qualified theft of large cattle or cattle rustling; (b) illegal possession of firearms; and (c) frustrated murder.

The trial court, after joint trial, found the appellants guilty as charged and sentenced them accordingly, as follows:

"WHEREFORE, judgment is hereby rendered, finding the two accused, Francisco Martinada and Bonifacio Mesias, GUILTY beyond doubt of Qualified Theft of Large Cattle as charged in the information (Criminal Case No. BN-1886) with the aggravating circumstances of Recidivism and by a band, and as provided for in P.D. No. 533, otherwise known as the ANTI-CATTLE RUSTLING LAW of 1974, hereby sentences both accused to the Maximum Penalty of DEATH, to indemnify the Spouses Alejandro Naboya and Segundina Elias the sum of P2,500.00 without subsidiary imprisonment in case of insolvency and for each to pay one-half (1/2) of the costs.

"WHEREFORE, judgment is hereby rendered, finding the two accused Francisco Martinada and Bonifacio Mesias, GUILTY beyond reasonable doubt of Illegal Possession of Firearms as charged in the Information (in Criminal Case No. BN-1886-A) and hereby sentences both accused to an indeterminate penalty of not less the FIVE (5) years of Prision Correccional as Minimum to not more than TEN (10) YEARS of Prision Mayor as Maximum, and for each to pay one-half (1/2) of the costs.

"WHEREFORE, judgment is hereby rendered, finding the two accused, Francisco Martinada and Bonifacio Mesias, GUILTY beyond reasonable doubt of the crime of Frustrated Murder as charged in the Information (in Criminal Case No. BN-1886-B) with the qualifying circumstance of treachery and hereby sentences both accused to an indeterminate penalty of not less than SIX (6) YEARS and ONE (1) DAY of Prision Mayor as Maximum to not more than TWELVE (12) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS OF Reclusion Temporal as Maximum and each to pay one-half (1/2) of the costs." (pp. 18-19, Rollo)

Accused Bondoy Maroto was not arrested and is still at large.

Even as the death penalty was meted out only in Criminal Case No. 1886 for cattle rustling, appellants still filed their brief with this Court in all three criminal cases since the crimes were committed on the same occasion, the factual allegations in the three cases are intertwined and they were heard jointly.

It appears that at about midnight of February 13, 1982, Segundina Naboya was awakened by the barking of their dog; that her husband Alejandro, herein victim, descended from their house after having been awakened by a gun report; that at about the same time, Pascual Naboya, brother of Alejandro Naboya who was residing about 50 meters away from the latter's house, also heard the barking of the dog; that Pascual stepped down from his house to verify why the dog was barking, whereupon, he heard a gun burst which made him walk towards Alejandro's house armed with a bolo; that he heard a second shot and then saw Alejandro already lying on the ground; that the victim was hit at the neck; that Segundina recognized Mesias and Martinada as the assailants; that Pascual Naboya also recognized Martinada, Mesias and Maroto as the culprits; that after Alejandro was shot, appellant Martinada untied the carabao and the latter and his companions took the carabao away; and that the victim's wound required seven to nine days to heal.

Appellants impute these errors to the trial court:

1. The trial court erred in ruling that the guilt of appellants Martinada and Mesias was proven beyond reasonable doubt.
2. The trial court erred in incorporating into the record and making as part of its decision the unsolicited fact of the alleged previous convictions for qualified theft of large cattle and illegal possession of firearms of appellants Martinada and Mesias, and thus violated their constitutional right to be informed of the cause and nature of the accusation against them and to a fair and just trial before a neutral and objective judge.
3. The trial court erred in holding that the shooting of Alejandro Naboya was attended by treachery and in not ruling that the crime committed was at most attempted homicide.

In their attempt to impeach prosecution witnesses Segundina Naboya, Alejandro Naboya and Pascual Naboya, appellants have actually assailed the credibility of these witnesses for the purpose of destroying the latter's positive identification of said appellants.

Appellants seem to forget the moth-eaten fundamental principle that the findings of the lower court which had the best opportunity to hear and observe the witnesses testify and to weigh their testimonies are given the highest respect and recognition by the appellate court.

This Court has thus held in the case of *People v. Trigo*, No. 76515, June 14, 1989 (174 SCRA 93) that on the matter of witnesses' credibility appellate courts give weight and the highest degree of respect to trial courts' findings in criminal prosecution, because the latter are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.

Thus, too, in the case of *Matabuena v. Court of Appeals*, No. 76542, May 5, 1989 (173 SCRA 170), this Court ruled that absent any substantial proof that the trial court's decision was grounded entirely on speculations, surmises or conjectures, the same must be accorded full consideration and respect. This should be so because the trial court is, after all, in a much better position to observe and correctly appreciate the respective parties' evidence as they were presented.

On the alleged inconsistencies in the declarations of the prosecution witnesses, this Court sustains the submission of the Solicitor General that they are very minor and insignificant and do not in any way alter the fact that Alejandro was shot by the appellants and that the carabao was stolen.

Significantly, this Court has repeatedly declared that inconsistencies of witnesses on minor details do not detract from the positiveness of the identification of appellants (*People vs. Alvarez*, No. 70446, Jan. 31, 1989); that minor inconsistencies do not affect the witness credibility; that they strengthen rather than weaken the witness'

credibility (*Medios vs. Court of Appeals*, No. 79570, Jan. 31, 1989); and, that contradiction in the testimonies of witnesses instead of suggesting prevarication, indicates veracity, thereby bolstering the probative value of the testimonies as a whole (*Ebajon vs. Court of Appeals* Nos. 77930-31, Feb 9, 1989).

With respect to the alleged delay or failure of witnesses *Segundina Naboya* and *Pascual Naboya* to immediately report the identity of the assailants, this Court finds such delayed reporting to have been sufficiently explained.

It should be noted that appellants never refuted, and even conceded the veracity of the sworn statement of *Segundina* executed on February 25, 1982 wherein she explained that it took her twelve days to report the identity of the perpetrators of the crime because she was so busy attending to her husband *Alejandro* who was then confined in the hospital. Even on cross-examination, she confirmed her declarations in the aforesaid sworn statement. This Court takes note of the fact that appellant *Mesias* adopted the said sworn statement as part of his evidence.

Emphatically also, as per *Dr. Bugho's* testimony, *Alejandro's* wound was fatal since it could have caused the latter's death had it not been for the timely medical intervention or treatment administered to the victim. Needless to say, for a wife whose husband was in imminent danger of dying, the natural and instinctive reaction was for the wife to be by her husband's side and to give her utmost care and attention in the effort to save his life. All other things like the reporting of the assailants' identity can be set aside; what mattered most was her husband's survival. Hence, the moment *Alejandro* was pronounced out of danger, *Segundina* immediately went to the police to execute her sworn statement.

Notably, this Court has reiterated the well-entrenched pronouncement that delay of witnesses in informing others of what they know about a criminal offense will not affect their credibility, where delay is satisfactorily explained. (*People vs. Andres*, No. 75355; 155 SCRA 290) Likewise, in the case of *People vs. Pacabes*, 137 SCRA 158, the Court held that it is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case. Indeed, the natural reticence of most people to get involved in a criminal case is of judicial notice.

Very much in point is the case of *People vs. Molato*, No. 66634, Feb. 27, 1989; 170 SCRA 640, where this Court declared that there is no reason to doubt the widow's testimony as she was able to positively identify the assailant as the accused through the flashlight that her husband beamed at appellant even as the latter flashed his light at the victim. The place was illuminated by the flashlights of the two so that it is not impossible for the widow to recognize the appellant and his companion from a mere distance of four meters nor the other witness to identify the two assailants.

The belated reporting of witness *Pascual Naboya* does not contradict the aforestated explanation of *Segundina* because the former acted independently of the latter's course of action and he did so for a different reason - because of fear. This simply shows that both witnesses made their separate reports without prior consultation or arrangement with each other. Clearly, each was motivated by a distinct and independent reason for the delayed reporting.

Whether the barking of the dog or the gun report awakened *Segundina* and *Pascual* is another matter where the alleged inconsistencies or variations in the declarations of the witnesses should be considered petty so as to affect substantially the weight of their testimony. Whether it was the barking of the dog or the gunshot which jolted *Segundina*, *Alejandro* and *Pascual* from their sleep would not really matter; what is important is that they were awakened by something unusual in the middle of the night and the cause was the presence of armed men within the premises. Note also that the declarations of *Segundina* and *Pascual* that the barking of the dog woke them up are corroborative. Possibly, *Alejandro* was sleeping so deeply that he did not hear the dog's bark but when a gunshot rang, the loud impact awakened him.

Another alleged trivial discrepancy is the place or location where Alejandro was shot. While Segundina stated that Alejandro was shot on the ground about eight meters from her, the latter declared that he was hit inside his house at a distance of about two meters from Segundina. Whether or not the victim was shot while in the house or on the ground is again insignificant and such minor inconsistency would not and did not alter the fact that Alejandro was fired upon by the assailants from which he suffered a fatal wound. This discrepancy all the more proves that Alejandro and Segundina were not coached nor rehearsed in order to give a consistent testimony. The fact that their statements varied proves that they were telling the truth and the same were not a concoction as would have been normally expected of husband and wife.

Thus, in a long line of cases this Court has ruled that alleged contradictions and inconsistencies pointed out by the accused in the testimony of prosecution witnesses relating to minor details do not destroy the credibility of witnesses. On the contrary, they indicate that said witnesses were telling the truth and not previously rehearsed.

Appellant's claim that Alejandro should have been in an equal position and opportunity (as Segundina) to recognize appellant Martinada is inaccurate considering that when the victim was going down the house, a flashlight was beamed at his face which had the effect of blinding him temporarily. However, in a moonlit night and within a distance of a few meters, both Segundina and Pascual positively identified the appellants.

Notably, appellants' defense of alibi has not been substantiated because their alibis were never supported by any witness nor even by their own family members whom they were allegedly with that evening when the offenses were committed. This Court has consistently held that alibi cannot prevail over positive identification of prosecution witnesses and that alibi to be given full faith and credit must be clearly established and must not leave any doubt as to its plausibility and verity. (*People vs. Serante*, L-46724 52 SCRA 525).

The contention of appellants that the trial court should not have considered the aggravating circumstance of recidivism since said circumstance was not alleged in the information nor copies of previous sentences rendered against the accused were presented at the trial is not altogether correct. While it is true that to prove recidivism, it is necessary to allege the same in the information and to attach thereto certified copies of the sentences rendered against the accused, such aggravating circumstance may still be given credence by the trial court if the accused does not object to the presentation of evidence on the fact of recidivism.

The records reveal that during the trial, the lower court made sufficient reference to the previous cases when it declared that appellant Martinada had been convicted and sentenced to fifty eight years of imprisonment for four cases of qualified theft of large cattle and for illegal possession of firearm; and, that such sentence has become final and executory.

Evidently, appellants never objected to the reference to the previous cases, nor did they deny that they were the same persons convicted in said cases. The referral made by the trial court should be relied upon because, after all, the records of prior cases are part of the court records which could be verified and produced readily.

In the case of *People vs. Monteverde* (142 SCRA 668), this Court declared that the trial court properly appreciated recidivism as an aggravating circumstance although not alleged in the information because the same was proved by evidence.

With regard to the shooting of Alejandro Naboya, this incident should have been considered by the trial court as a qualifying aggravating circumstance to the crime of cattle rustling. Since the information did not allege the fact of Alejandro's injury, the same can no longer be appreciated in the case of cattle rustling. The appellants therefore can be held guilty under Criminal Case No. 1886 only of simple cattle rustling, with the aggravating circumstance of recidivism.

It goes without saying that the trial court should not have convicted accused Martinada and Mesias of the crime of Frustrated Murder since this crime should have been absorbed in the crime of cattle rustling, thereby qualifying the latter.

"Section 8 of P.D. 533, otherwise known as Anti-Cattle Rustling Law of 1974, provides, to wit:

'Sec. 8. Penal provisions. - Any person convicted of cattle rustling as herein defined shall, irrespective of the value of the large cattle involved, be punished by prision mayor in its maximum period to reclusion temporal in its medium period of the offense is committed without violence against or intimidation of persons or force upon things. If the offense is committed with violence against or intimidation of persons or force upon things, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed. If a person is seriously injured or killed as a result or on the occasion of the commission of cattle rustling, the penalty of reclusion perpetua to death shall be imposed. xxx" (pp. 12-13, decision)

The circumstances of committed with violence against or intimidation of persons or force upon things, and a person was seriously injured or killed as a result or on the occasion of the commission of cattling rustling are no doubt qualifying aggravating circumstances as they 'not only give the crime committed its proper and exclusive name but also place the author thereof in such a situation as to deserve no other penalty than that especially prescribed for said crime.' (People v. Bayot, 64 Phil. 269, 273 [1973]) (p. 13, decision) Thus, the trial court could no longer convict separately accused Martinada and Mesias of the crime of Frustrated Murder, otherwise there would be double jeopardy.

This Court finds merit in the submission of the Solicitor General that graduation of penalties as determined by the presence of aggravating and mitigating circumstances still applies. The Solicitor General thus justifies his contention:

"P.D. No. 533, in the context of Article 10 of the Revised Penal Code, which reads, to wit:

'Art. 10. Offenses not subject to the provisions of this Code. Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.'

which provision is the basis of the principle relied upon by the appellants, as enunciated in the cited case of People v. Respecio, 107 Phil. 995, 996 [1960], is not a special law.

"As will be noted, P.D. No. 553 merely modified the penalties provided for qualified theft of large cattle under Article 310 of the Revised Penal Code, imposing stiffer penalties thereon under special circumstances. In other words, P.D. No. 553, served only the purpose of amending Articles 309 and 310 of the Revised Penal Code. This is explicit under Section 10 of the said Decree, to wit:

'Sec. 10. Repealing clause. The provisions of Article 309 and 310 of Act No. 3815, otherwise known as the Revised Penal Code, as amended, x x x which are inconsistent with this Decree are thereby repealed or modified accordingly.'" (p. 121, Rollo)

WHEREFORE, for the offense of simple cattle rustling with the aggravating circumstance of recidivism, and applying the Indeterminate Sentence Law the appellants are hereby sentenced to 4 years, 2 months and 1 day of Prision Correccional as minimum to 14 years, 8 months and 1 day of Reclusion Temporal as maximum and for the crime of illegal possession of firearms, they are hereby sentenced to Five (5) Years of Prision Correccional as minimum to Ten (10) years of Prision Mayor maximum.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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