

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO BAYSA AND ROGELIO BAYSA, ACCUSED-APPELLANTS.

G.R. Nos. 76391-92. April 25, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Tacurong, Sultan Kudarat, Branch XX, finding appellants Domingo Baysa and Rogelio Baysa guilty beyond reasonable doubt of the crime of Double Murder. The dispositive portion of the decision reads as follows:

"WHEREFORE, in view of the foregoing considerations, and finding the accused Domingo Baysa and Rogelio Baysa, guilty beyond reasonable doubt of two (2) murders in both the above-entitled cases, this Court hereby sentences them to suffer the penalty of IMPRISONMENT ranging from seventeen (17) years, four (4) months and one (1) day to twenty (20) years of reclusion temporal in Criminal Case No. (725) 30-T, to pay Cecilia Macatangay Vda. de Ordanza, widow of the deceased victim Casimiro Ordanza, the sum of TWELVE THOUSAND PESOS (P12,000.00), Philippine Currency, as cost of death, the sum of SEVEN THOUSAND PESOS (P7,000.00) as actual damages, and the sum of TWENTY FIVE THOUSAND PESOS (P25,000.00) as moral and exemplary damages; to suffer the penalty of DEATH in Criminal Case No. (726) 31-T, to pay the heirs of the deceased victim, Martiniano Acosta, the sum of sum of TWELVE THOUSAND PESOS (P12,000.00), Philippine Currency, as cost of death, the sum of TEN THOUSAND PESOS (P10,000.00) as actual damages; and the sum of TWENTY FIVE THOUSAND PESOS (P25,000.00) as moral and exemplary damages and to pay the costs." (p. 106, Rollo)

The accused-appellants were charged in two separate informations for two counts of murder allegedly committed as follows:

Criminal Case No. (725) 30-T

"That on or about June 25, 1978, in the evening, at Sitio Lobrosman, Barangay San Rafael, Municipality of Tacurong, Province of Sultan Kudarat; Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, with malice aforethought and with deliberate intent to take the life of one Casimiro Ordanza, did then and there wilfully, unlawfully and feloniously, with treachery and evident pre-meditation, attack, assault and shoot said Casimiro Ordanza with the use of a Carbine, Caliber 30 Rifle, inflicting upon the latter's head a gunshot wound which directly caused his immediate death.

"CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code, with aggravating circumstance of nighttime which was specifically sought for to afford the commission of the crime with impunity." (p. 55, Original Records, Crim. Case No. (725) 30-T)

Criminal Case No. (726) 31-T

"That on or about June 25, 1978, in the evening at Barangay San Rafael, Municipality of Tacurong, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused,

in company with Elpidio Baysa who is already dead, each armed with a firearm, conspiring, confederating together and mutually aiding one another, with deliberate intent to take the life of one Martiniano Acosta, did then and there, with treachery and evident premeditation, wilfully, unlawfully and feloniously attack, assault and shoot said Martiniano Acosta with the use of the afore-mentioned firearms, thereby inflicting upon the latter multiple gunshot wounds which directly caused his instantaneous death.

"CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code, with the aggravating circumstances of dwelling, abuse of superior strength, and nocturnity which accused specially sought for to afford the commission of the crime with impunity." (p. 28, Original Records, Criminal Case No. (726) 31-T)

The prosecution evidence upon which the finding of guilt beyond reasonable doubt was derived relied heavily on the testimonies of Eulalia Acosta Vda. de David, Fernando Bibat, Antonio Yabut and Dr. Ysmael Bardoles, among other witnesses.

The two murders happened in Barangay San Rafael, Tacurong, Sultan Kudarat in the evening of June 25, 1978. It was on the same evening and in the same barangay that the late Elpidio Baysa, the son of appellant Domingo, was killed. The appellants, together with Elpidio Baysa, Antonio Yabut and the victim Casimiro Ordanza were residents of a small area within Barangay San Rafael, known as Sitio Lubrosman. The other victim, Martiniano Acosta and his family also lived in Barangay San Rafael but outside of Sitio Lubrosman.

Eulalia Acosta Vda. de David testified regarding the death of her brother, Martiniano Acosta. She said that on June 25, 1978, at 7:00 o'clock in the evening, after supper, Martiniano Acosta went underneath the kitchen of their house to make a pigeon cage with the aid of a lighted kerosene lamp. (pp. 190, 192, tsn., March 30, 1981) She heard the dogs barking and as she peeped through the hole in the wall of the house, she saw three (3) men approaching. She recognized them as Elpidio Rogelio and Domingo Baysa, who were armed with guns. (pp. 195-196, 198, Ibid.) She heard several gunshots and her brother exclaiming: "Ay na, Diyos ko!", meaning, "Oh, my God!". Alarmed that Martiniano Acosta might have been the one hit, she peeped through the wooden floor and saw him sprawled on the ground (p. 198, Ibid). Eulalia recalls that this happened while she, her mother Macaria Dacusin, her uncle, Guillermo Dacusin, Felix Bruno and her brother-in-law, Fernando Bibat were inside the house. (p. 194, Ibid; p. 211, tsn., March 31, 1981)

Fernando Bibat's testimony corroborated that of Eulalia. He related that on that evening, he and Felix Bruno went to Barangay San Rafael to get the working carabao of Martiniano Acosta. (p. 86, tsn., January 23, 1980) They took their supper with the Acostas. Thereafter, while Martiniano Acosta was working on a pigeon cage using an improvised kerosene lamp and the rest of them remained inside the house (p. 87, ibid), he heard the dogs barking. He saw, through a hole in the wall, Elpidio, Rogelio and Domingo Baysa walking towards the house. (pp. 90-92, Ibid) As the three (3) men drew nearer, he noticed Rogelio car-rying a long firearm and he heard a gun report. (p. 92, Ibid) Someone shouted from downstairs: "Ay na, Diyos ko!". He saw, through the gaps of the wooden floor, Martiniano Acosta lying down. He watched Rogelio fire another shot and walk with Elpidio towards the body of Martiniano Acosta. Domingo asked whether Martiniano Acosta was already dead and Rogelio answered "Natayin", meaning, "He is dead." (pp. 93-94, Ibid)

Antonio Yabut testified regarding the death of Casimiro Ordanza. He said that at about 7:00 o'clock in the evening of June 25, 1978, while lying down in his house, he heard a gunshot, succeeded by consecutive ones coming from the drier of Martiniano Lobusta. (p. 40, tsn., October 22, 1979) As he stood up to look through the window, he heard Casimiro Ordanza calling him for help and rushing to his house. (Ibid) When asked about the gunburst, Casimiro said he saw two (2) persons who fired at him and he shot one of them in return. (p. 41, Ibid; p.57, Rollo) Thereafter, Casimiro went to look for Rogelio and Elpidio in their respective houses to find out the "true man" who, according to him, was from Sitio Lubrosman. (pp. 42, 44, Ibid) Meanwhile, Antonio Yabut asked

Martiniano Lobusta where Elpidio and Rogelio were but he answered that he did not know. Martiniano Lobusta also made efforts to look for the two but to no avail. After going to and returning from Elpidio's and Rogelio's houses three times or for fifteen minutes, and before setting off on his last attempt to verify, Casimiro Ordanza removed his clothes except his short pants so that he will not be recognized. (p. 45, Ibid) Antonio himself tried to look for the two Baysas but along the way, he saw a dead person, whom he identified as Elpidio Baysa, being cradled by his wife near a canal. (p. 46, Ibid) About ten (10) meters away from the dead body stood appellants Domingo and Rogelio Baysa, Martiniano Lobusta, Marcos Valdez and Artemio Baysa. (Ibid) He noticed that Rogelio was holding a carbine (p. 47, Ibid) He also saw Casimiro Ordanza running and heard him calling Rogelio: "Gel, Gel!" (Ibid) As Casimiro Ordanza came nearer to where the appellants were, Antonio Yabut heard Domingo say: "Gel, Gel! Patayin mo na!", meaning "Gel, Gel! Kill him!" (p. 48, Ibid) to which order Rogelio retorted: "Huwag, kami na lang", meaning, "Not anymore. We will do it by ourselves." (Ibid, p. 59, Rollo) Casimiro Ordanza and appellant Rogelio left the crowd walking side by side. As they passed near Antonio Yabut, Rogelio ordered Casimiro to walk ahead and aimed the carbine at the latter. When they were sixty meters away from Antonio Yabut, one gunburst was heard after which Rogelio returned to the crowd and shouted "Nalpasin. Natayin," meaning, "It is finished. He is dead." (pp. 49, 54, Ibid; p. 59, Rollo)

Antonio Yabut also revealed that there was a pre-arranged plan to kill a certain "Barbasan" whom he later learned to be Martiniano Acosta. He was invited by Rogelio, Artemio and Domingo Baysa to participate in that plan. (pp. 64-65, tsn., December 3, 1979; p. 95, Rollo) He was told that the reason for the plot was Martiniano Acosta's being instrumental in the recovery of the carabao which was stolen by the Baysas from a certain Canaway. (Ibid) At 7:00 o'clock in the morning of June 25, 1978, Rogelio fetched and asked Antonio Yabut to accompany him to the house of Elpidio Baysa, who informed Antonio of the plan's execution on that same date. (p. 3-4, Ibid)

The lower court noted and assessed the findings of Dr. Ysmael Bardoles based on post-mortem examinations on the cadavers of Casimiro Ordanza and Martiniano Acosta in its decision, to wit:

"Dr. Ysmael Bardoles issued a postmortem examination and findings report marked as Exhibit "A" in Criminal Case No. (725) 30-T in the name of Casimiro Ordanza, quoted as follows:

"Gunshot wound thru and thru, entrance measuring around one (1) cm. in diameter occipital region; head and exit, measuring around 4½ inches in diameter, brain expelled out, head."

Likewise, he issued and signed a death certificate marked as Exhibit "B" in Criminal Case No. (725) 30-T in the name of Casimiro Ordanza.

"Further, Dr. Ysmael Bardoles issued a postmortem examination and findings report in the name of Martiniano Acosta and was marked as Exhibit "A" in Criminal Case No. (726) 31-T and quoted as follows:

"1. Gunshot wound, measuring around 1 centimeter in diameter (entrance), temporal region, left and exit, measuring around 1 inch in diameter, upper jaw, mouth, left.

"2. Gunshot wound, measuring around 1 centimeter in diameter (entrance), occipital region, head, no exit.

"3. Gunshot wound, measuring around 1 centimeter in diameter (entrance), right thigh, middle third, anterior and exit, measuring around 3 inches in diameter, hypogastric region, right.

"4. Gunshot wound, superficial, left abdomen, measuring around 1½ inches in diameter.

"5. Gunshot wound, entrance, measuring around ½ inch in diameter middle third, thigh, anterior, left and exit measuring around 1 inch in diameter, proximal third, medial, left thigh.

"6. Gunshot wound, entrance, measuring around 1½ inches in diameter anterior, below knee joint, left foot and

exit measuring around 2 inches in diameter, middle third, medial left foot.

"7. Gunshot wound, entrance, measuring around ½ inch in diameter, anterior, distal third, left thigh and exit, measuring around 2 inches in diameter, middle third, medial left thigh.'

The above-mentioned postmortem examination and findings report in the name of Martiniano Acosta showed that the gunshot wounds were with different sizes of point of entry, namely: 1 cm. in diameter for gunshot wounds Nos. 1, 2 and 3; 1½ inches in diameter for gunshot wounds Nos. 4 and 6; and ½ inch for gunshot wounds Nos. 5 and 7. Likewise, he issued and signed a death certificate in the name of Martiniano Acosta marked as Exhibit "B" in Criminal Case No. (726) 31-T. He did not present or submit any postmortem examination and findings report and death certificate for the late Elpidio Baysa for the reason that there was no criminal case filed in Court. x x x.

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"Dr. Ysmael Bardoles' postmortem examination and findings report on the victim Martiniano Acosta showed that at least there were three kinds of firearms that were used by the killers in shooting and killing him. He suffered seven (7) gunshot wounds with different sizes of point of entry; namely, 1 cm. in diameter, for gunshot wounds Nos. 1, 2 and 3; 1½ inches in diameter for gunshot wounds Nos. 4 and 6, and ½ inch for gunshot wounds Nos. 5 and 7. Thus, therefore, there were at least three (3) assailants who shot and killed Martiniano Acosta. On the other hand, there is no doubt that the one who shot and killed Casimiro Ordanza was the accused Rogelio Baysa with the use of a 30 caliber rifle. This is supported by the discovery of an empty shell of 30 caliber rifle near his body. Both victims Martiniano Acosta and Casimiro Ordanza suffered gunshot wounds with points of entry of 1 cm. in diameter coming from a 30 caliber rifle." (pp. 93-95, Rollo)

The appellants assigned the following errors allegedly committed by the trial court in their appeal:

I

THE TRIAL COURT ERRED IN THE APPRECIATION OF FACTS AND EVIDENCE OF THE PROSECUTION.

II

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED. (p. 118, Rollo)

The first two assigned errors pertain to the credibility of the testimonies of the prosecution witnesses upon whom the trial court relied for its decision. It is a well-established rule that generally, "where the issue pertains to the credibility of a witness, this Court will not interfere with the findings of the trial court on the matter, considering that it had the peculiar opportunity to observe the gestures, features, demeanor and manner of testifying of the said witnesses, unless the Court has plainly overlooked the undisputed facts of substance and value that, if properly considered, would affect the result of the case." (Medios v. Court of Appeals, G.R. No. 79570, January 31, 1989; People v. Carido, G.R. No. 32242, November 18, 1988; People v. Paragoso, G.R. No. 50872, October 18, 1988; People v. Turla, G.R. No. 70270, November 11, 1988). The records do not reveal to this court any showing of any ignoring or misappreciation of facts and evidence presented by the parties that would substantially alter the results of the case.

In Criminal Case No. (725) 30-T, the appellants contend that the trial court relied on circumstantial evidence such that their guilt was established by way of inference from the sole testimony of prosecution witness Antonio Yabut who could not have seen the actual shooting of Casimiro Ordanza on a dark night. We do not find this contention meritorious. Neither the time of the night during which the crime was committed, nor the distance of 60 meters travelled by the appellant Rogelio Baysa before he consummated the killing to avoid being identified will prevent the witness from rendering a truthful account of the incident he observed. The circumstances, as presented, even though not descriptive of the actual firing at the victim are sufficient to prove the identity of the perpetrators and the manner of committing the crime. As correctly put by the Solicitor General:

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"x x x Prosecution witness Antonio Yabut saw Ordanza and Rogelio Baysa leave with the latter trailing the former. After the two had negotiated some 60 meters, Antonio Yabut heard a gunshot. Then Rogelio Baysa returned telling Domingo Baysa and his companions: It is done. He is dead.' (tsn, October 22, 1979, p. 17). Under these circumstances, there can be no doubt that the wound sustained by the victim was caused by the gunshot which Antonio Yabut heard. No one was seen near the victim who could have inflicted the wound other than Rogelio Baysa (People v. Agbot, 106 SCRA 325), who was then carrying a Carbine. (p. 18, Appellee's Brief; Underscoring supplied)

The credibility of the testimony of Antonio Yabut is even more bolstered by appellant Rogelio Baysa's statement before the trial court that he was present at the place where the body of the deceased Elpidio Baysa was sprawled on the same night and that Casimiro Ordanza came running towards him and calling him. (p. 79, Rollo) The postmortem examination findings which reveal that there was a gunshot wound with point of entry at the back of the head of Casimiro Ordanza corroborate the testimony of Antonio Yabut who said that appellant Rogelio shot Casimiro Ordanza from behind. (p. 93, Rollo)

We uphold the trial court's finding on the credibility of the witness, Antonio Yabut, as well as on the clear and positive identification of the appellant Domingo Baysa as principal by inducement and appellant Rogelio Baysa as principal by direct participation in the shooting and killing of Casimiro Ordanza with the use of a 30 caliber rifle (p. 102, Rollo). The fact that Antonio Yabut was the lone prosecution witness to the crime does not suffice to overturn this finding where the pervading circumstances fully support the conclusion of the court. The denial of the appellants did not overcome their positive identification. The guilt of the accused is established to a moral certainty (People v. Obengue, 147 SCRA 488 [1987]). It is a well-settled rule that "the testimony of a single witness, if positive and credible, is sufficient to support a conviction even in a charge for murder" (People v. de la Cruz, 148 SCRA 582 [1987] citing People v. Romero, 119 SCRA 234 [1982]; People v. Gutierrez, Jr., 158 SCRA 614 [1988]; and Aguirre v. People, 155 SCRA 337 [1987]).

The appellants' contention that it is contrary to human nature that a father would order his son to commit a crime within the hearing distance of another person is without merit. Appellant Domingo Baysa acted in a manner that is probable as the common experience of men and women would approve as probable. Under the circumstances, the overwhelming motive of the appellant was that of revenge against Casimiro Ordanza for killing his son, Elpidio, on that same night (See People v. Patog, 144 SCRA 429 [1986]).

The appellants also maintain that it is unusual for Casimiro Ordanza to walk with someone whom he knows had the intention to kill him. They also claim that the fact that appellant Rogelio Baysa and the victim walked away together indicates that no order to kill was ever given by appellant Domingo Baysa. We do not agree with these contentions. The records do not show any proof of knowledge or forewarning on the part of Casimiro Ordanza of any intent to kill him. The fact that the victim left with appellant Rogelio Baysa shows lack of such knowledge, but it does not overcome the evidence that appellant Domingo Baysa had earlier given an order to kill.

In Criminal Case No. (726) 31-T, the appellants claim that the affidavits of prosecution witness Eulalia Acosta Vda. de David dated June 28, 1978 and December 12, 1978 show a discrepancy in that she initially failed to mention the presence of witness Fernando Bibat at the scene of the crime. A close look at the records will show however that in the December 12, 1978 affidavit, which was actually a supplementary statement, the witness corrected herself by saying that there were five of them in the house at the time of the incident, instead of four, as she previously stated. She explained that she was still nervous so that she forgot to say that Fernando Bibat was there to get a carabao (p. 10, Original Records - Criminal Case No. (726) 31-T).

Moreover, Mrs. David's supplementary statement is corroborated by Sgt. Vicente Guialogo who conducted an investigation in their house on the night of June 25, 1978, immediately after the killings happened (pp. 153 and 160, tsn., July 21, 1980). The testimony of Sgt. Guialogo is given credence by the Court because as a police officer, he is presumed to have performed his duties in a regular manner. (People v. Natipravat, 145 SCRA 483 [1986]; People v. de Jesus, 145 SCRA 521 [1986]; People v. Patog, supra)

The appellants assert that the failure of Eulalia to report the names of the accused-appellants to the authorities soon after the incident creates doubt as to the identification made by the prosecution. No doubt is created. We note with favor the following arguments of the Solicitor General:

"While it is true that she at first hesitated to identify the killers for fear of retaliation, she nevertheless subsequently divulged their identities to Sgt. Guialogo. Thus,

"Q: What is the name, did she mention?

"A: She would not mention their names.

"Q: Even if she was in the police station? Why, what is her reason?

"A: She was afraid.

"Q: Did you not assure her, you are now in the hands of the police, we will protect you?

"A: Yes sir, I assured her.

"Q: Even if you were assuring her, she did not tell you the killer of her brother? Did she actually tell you who were the killers of her brother?

"A: After a few months. It took her weeks or months.

"Q: Why do you say weeks or months, can you not remember whether if it was one (1) month later?

"A: I could not exactly remember how long, but I believe it took her statement when she finally decided to tell the names, but that was after a month. But we could refer to the statement.

"COURT:

"Q: But there was a considerable lapse of time until she decided to tell the names?

"A: Yes, sir.

ATTY. GALINDEZ:

"Q: Did she tell the names of the killer of her brother?

"A: Yes, sir.

"Q: Who?

"A: Domingo Baysa, Rogelio Baysa and the one who died another Baysa. (tsn, October 30, 1980, pp. 6-7).

"Her initial reluctance should not affect the probative value of her testimony. The decisive factor is that she identified both appellants (*People v. Untalasco, Jr.*, 125 SCRA 159) who were known to her prior to the incident (*People v. Tiengco*, 133 SCRA 290). She was well-acquainted with them because she lived in the same barrio where they resided (*People v. Medrano*, 114 SCRA 335). Her hesitation is understandable (*People v. Demate*, 113 SCRA 353); it should not affect her credibility (*People v. Cruz*, 142 SCRA 576; *People v. Millora*, 119 SCRA 417)." (pp. 19-21, Appellee's Brief)

The reticence of the witness to reveal the identity of the appellants has been satisfactorily explained, i.e., that she was afraid (pp. 169-170, tsn, October 20, 1980); hence, this should not affect her credibility (*People v. Martinez*, 127 SCRA 250 [1984]; *People v. Valdez*, 159 SCRA 152 [1988]; *People v. Coronado*, 145 SCRA 250 [1986]). As stated by the Court in *People v. Punzalan* (153 SCRA 1 [1987]):

"The initial reluctance of witnesses in this country to volunteer information about a criminal case and their unwillingness to be involved in or dragged into a criminal investigation is common and has been judicially declared not to affect credibility."

Lastly, the appellants contend that there were inconsistencies in the testimonies of Eulalia and Fernando Bibat which were given during the ocular inspection conducted on November 14, 1983. The alleged conflicts involve the number and identity of persons who held and fired the gun, as well as the number of lamps that lighted the place where Martiniano Acosta was shot. The appellants say that these inconsistencies make the credibility of the prosecution evidence and the finding of guilt of the appellants dubious. We disagree. The Solicitor General was correct in saying that since the statements of the witnesses during the ocular inspection were taken five (5) long years after the crime was committed, the witnesses cannot be expected to accurately relate and uniformly describe all the details of the crime. One may recall things which the other may fail to remember (*People v. Gacho*, 124 SCRA 671 [1983]). Any apparent disparity between the testimonies may be explained by the differences in observation or memory on the part of the witnesses which does not necessarily suggest any intention towards untruthfulness. Where witnesses are asked to identify the appellants five years after the overt act occurred, it is likely that they would not remember all the details of the crime and that inconsistencies and mistakes are inevitable (*People v. Laganzon*, 129 SCRA 333 [1984]).

Since the prosecution witnesses were able to positively identify the appellants as the authors of the crime and the testimonies were, on the whole, consistent on material points, we find the contradictions pointed out by the appellants to be insignificant. Thus, we see no reason to disturb the conclusions reached by the trial court insofar as credibility is concerned (*People v. Centeno*, 130 SCRA 198 [1984]).

The testimonies of Eulalia and Fernando Bibat are also corroborated by the postmortem examination on the cadaver of Martiniano Acosta (pp. 93-95, Rollo). All things considered, we uphold the findings of the lower court on the sufficiency of the evidence to support the conclusion that the guilt of the appellants has been established beyond reasonable doubt.

WHEREFORE, the judgment of the trial court in Criminal Cases Nos. (725) 30-T and (726) 31-T against appellants Domingo Baysa and Rogelio Baysa for double murder is AFFIRMED except for a MODIFICATION with respect to the penalty imposed such that the appellants are sentenced to suffer the penalty of reclusion perpetua in Criminal Case No. (726) 31-T consistent with Section 19(2), Article IV of the present Constitution. The appellants are also ordered to pay indemnity in the amount of THIRTY THOUSAND PESOS (P30,000.00) in each case in lieu of the indemnity and moral and exemplary damages imposed by the trial court. The awards for actual damages are AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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