

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO DUMPE Y JIMENEZ, ALIAS "ISKO", DANILO CLEMENTE Y MANALO ALIAS "DAMBO", JEREMIAS SEBASTIAN Y BASA ALIAS "JAMES", DEFENDA...

G.R. NOs. 80110-11. March 22, 1990

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Before us is an appeal of Danilo J. Dumpe, alias "Isko", Danilo M. Clemente, alias "Dambo", and Jeremias B. Sebastian, alias "James" (hereinafter, the Appellants) from the Decision of the Regional Trial Court of Caloocan, Branch 121,* convicting them of the crime of Murder in Criminal Case No. 17875 for the death of Guillermo Ocampo and imposing on them the penalty of reclusion perpetua; to indemnify the victim's heirs in the amount of P30,000.00 as actual damages and P50,000.00 as moral damages; and to pay the costs.[1]

Appellants Dumpe and Sebastian are represented by the CLAO, while a private counsel appears for Appellant Clemente. They filed separate Appellant's Briefs. The Solicitor General also submitted two separate Appellee's Briefs.

The facts, which were given credence by the Trial Court and which are mainly based on the testimony of prosecution witness, Joselito Dungca, follow:

On 15 May 1982 at about 1:30 A.M., the victim, Guillermo Ocampo, and prosecution witness, Joselito Dungca, were accosted by a certain "Amboy" and Arturo Adriano alias "Boboy Laki," both at large, along Third Avenue, Caloocan City. Ocampo and Dungca were asked if they had tattoo marks. When they answered in the negative, "Amboy" and "Boboy Laki" undressed them and, upon seeing that the victim had a tattoo resembling a German "C", they were brought to a group (the Appellants and several others), who were drinking liquor nearby and who were told that the victim and Dungca were "spies." (t.s.n., 15 March 1983 pp. 4-5). The group then started mauling the victim Ocampo. In witness Dungca's own words:

Q

How did Danilo Clemente and Jessie Bata maul Guillermo?

A

They boxed Guillermo Ocampo in his different part of his body and still not satisfied, Jessie Bata pulled out a balisong and because Guillermo Ocampo had long hair, he cut the hair with the use of the balisong. Still not satisfied, Boboy Laki continued the cutting of the hair of Guillermo Ocampo and then afterwards and they were still unsatisfied, they asked Guillermo Ocampo whether he wanted to erase the tattoo mark and replace it with "sputnik." Guillermo agreed and Jessie Bata slashed the tattoo mark of Guillermo. While Jessie Bata was slashing

the tattoo, Boboy Laki was wiping the blood to see if there were still tattoo marks.

Q

Who were present aside from the group of Dumpe, Clemente, Sebastian, Jessie Bata and Boboy Laki, who were still there?

A

I was there, sir.

x x x" (ibid., p. 7)

Thereafter, a woman, who passed by, was called by someone in the group and she hit the victim's face with her shoe. It was at this point in time that witness Dungca saw the other victim Roberto Arevalo talking with "Amboy." Then, Appellant Clemente and a certain "Boy fely" had a contest as to who could knock the victim down with a single punch. Appellant Clemente won. All these were done in the presence of Appellants Dumpe and Sebastian and several others (ibid., pp. 6-8).

The two (2) victims and witness Dungca were then taken to a basketball court located at Josefina Street by the Appellants and "Boboy Laki" (ibid., p. 9). From there, the victim Ocampo was taken to a cemetery about 500 meters away by Appellants Dumpe and Sebastian while Dungca, Appellant Clemente and "Boboy Laki" remained in the basketball court. Afraid of being harmed Dungca ran away but as he was leaving, he saw Appellant Clemente punch the other victim, Arevalo on the chest (ibid., p. 3). Then he started to go home but he was called and brought back to the basketball court (t.s.n., 6 April 1983, p. 7). After about five (5) minutes, Appellants Dumpe and Sebastian came back running with bloodied clothes and one of them was holding a bloodied knife. Appellant Clemente asked them what had happened and they answered "ayos na" (it is already done) (supra., pp. 9-10). Later that same morning, the bodies of the victims, Ocampo and Arevalo were found inside the cemetery with multiple stab wounds.

The autopsy examination on the victim Ocampo (Exh. O) revealed that the latter had suffered 22 stab wounds and a large hematoma on the face. The examining physician testified that, in all probability, the wounds were caused by one sharp-pointed instrument and that based on the location of the wounds, the victim was directly facing and also directly behind the assailant when the injuries were inflicted.

All three appellants denied culpability and put forward their respective alibis.

Appellant Sebastian, 18, single, set decorator at Broadcast City and residing at 31-A, 4th Avenue, Grace Park, Caloocan City, testified that on 14 May 1982, he was working at Broadcast City. At about 11:00 P.M., he was dancing at Park Avenue dancing hall, at 3rd Avenue, Caloocan City. He and his two companions went home at 11:30 P.M. and he did not leave his house thereafter. He denied having been seen by witness Dungca coming from the cemetery with Appellant Dumpe. He further denied having even met Dungca that evening.

Appellant Dumpe, 22, single, residing at 157 Maria Clara St., 4th Avenue, Caloocan City, declared that in the evening of 14 May 1982, he was sleeping in his house. He was then alone, because his father and mother were in the province. He denied knowing the victim Ocampo but admitted being acquainted with the Arevalo. He just learned from the people in the vicinity that the latter was salvaged by policemen.

Appellant Clemente, 32, married, residing at 526 Interior St., 4th Avenue, Caloocan City, testified that on the night of the incident, he did not meet Appellant Sebastian nor did he even know the latter. They met only at the city jail. Neither did he know Appellant Dumpe having met him for the first time also at the city jail. He only

came to know that Appellants Sebastian and Dumpe were implicated when the policemen told them that the three of them were involved in the case (t.s.n., 11 July 1984, pp. 4-5).

Appellants denounce their conviction and contend that the Trial Court erred in (1) giving weight and credence to the testimony of prosecution witness Dungca; (2) relying so much on the weakness of the defense evidence rather than on the strength of the evidence for the prosecution; and (3) finding Appellants guilty beyond reasonable doubt of Murder for the death of the victim Ocampo.

Contrary to the defense posture, we find the testimony of witness Dungca credible. It was he who was with the victims immediately before the latter were killed. His failure to make mention of the basketball court and the cemetery in his sworn Statement should not detract from the credibility of his direct testimony. The general rule has always been that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex parte affidavits are generally incomplete (*People vs. Gonzales*, G.R. No. L-40727, 11 September 1980, 99 SCRA 697). Affidavits are generally subordinated in importance to open Court declarations because they are oftentimes executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to him (*Regalado*, 2 Remedial Law Compendium, p. 558).

The exception to the rule, that is, where the omission in the affidavit refers to a very important detail such that the affiant would not have failed to mention it (*People vs. Anggot*, G. R. Nos. L-38101-02, 29 June 1981, 105 SCRA 168), and which omission could affect the affiant's credibility, does not apply herein. Thus, the omission in witness Dungca's affidavit of any mention of the basketball court and the cemetery whereas he mentioned them in his testimony at the trial is not such vital omission that would discredit his testimony. Omissions and misunderstandings by the administering officer are not infrequent particularly under the circumstances of hurry and impatience (*Regalado*, *ibid.*, p. 559). The more important detail, mentioned both in the sworn Statement and in the oral testimony is that he saw Appellants Dumpe and Sebastian running towards them, and that when asked by Appellant Clemente whether "ayos na" the answer was in the affirmative, which according to Dungca in his Affidavit meant "patay na" (Exhibit "B").

There is no question that witness Dungca had positively identified Appellants Dumpe, Sebastian, and Clemente as among the group who mauled the victim Ocampo. He pinpointed Appellants Dumpe and Sebastian to have been among the very persons who took the victim Ocampo from the basketball court to the cemetery where the latter was found dead with several stab wounds all over the body; and that when they returned to the basketball court where Appellant Clemente was, among others, they had bloodied clothes and were carrying a bloodied knife and immediately informed Appellant Clemente that everything was "ayos na."

In any event, the question of credibility is a matter better addressed to the judgment of the Trial Court, which is in a vantage position to appreciate the same having been able to observe the demeanor of witnesses while testifying.

And while witness Dungca did not see the actual stabbing at the cemetery, the sequence of and the combination of facts and circumstances is sufficient to produce conviction beyond reasonable doubt. Particularly, mention may be made of the mauling of the victim after he was seen to have a tattoo although he had denied the same, hence, the assailants conclusion that he was a "spy"; the cutting of his hair; the scraping of his tattoo with a knife; the contest between Appellant Clemente and "Boy Fely" as to who could knock the victim down with one punch; the taking of the victim to the cemetery by Appellants Dumpe and Sebastian; their return to the basketball court with bloodied clothes and with a bloodied weapon; and the information conveyed to Appellant Clemente that

everything was "ayos na," meaning "patay na," according to witness Dungca, or that "it is done" according to the Trial Court.

The foregoing also establish conspiracy as found by the Trial Court. Although Appellant Clemente did not participate in the actual killing at the cemetery, his actuations prior to and after the killing conclusively show that he was, in purpose and intent, one with his co-Appellants in perpetrating the criminal act.

Arrayed against the foregoing, the respective defenses of alibi of the Appellants must necessarily fail specially considering the accessibility to the scene of the crime of the places where each of the three appellants claimed to have been on the date and at the time of its commission. Conviction is, therefore, called for on the strength of the evidence presented by the prosecution, irrespective of the weakness of that of the defense.

The crime committed is Murder qualified by abuse of superior strength. The three (3) Appellants with others still unidentified, took advantage of their numbers and used excessive force entirely out of proportion to the means of defense available to the victim. One of them also carried a "balisong" compared to the deceased Ocampo who was alone and unarmed.

WHEREFORE, the judgment of conviction appealed from is hereby AFFIRMED with the modification that damages are reduced to P30,000.00 consistent with case law.[2] Proportionate costs.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

* Presided by Judge Salvador J. Baylen.

[1] Appellants, together with four other persons whose real names and whereabouts are unknown, were also charged with Murder for the death of one Roberto Arevalo in Crim. Case No. C-17874 (82), which was jointly tried with this appealed case. Appellants Dumpe and Sebastian were acquitted in that case for lack of sufficient evidence and so also was Appellant Danilo Clemente on the ground of self-defense.

[2] With reservations regarding the penalty of reclusion perpetua consistent with my dissent in People vs. Millora, G. R. Nos. L-38968-70, 2 February 1989.

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