

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIAN MAGDAHONG AND BENJAMIN RIVERO, ACCUSED. JULIAN MAGDAHONG, ACCUSED-APPELLANT.

G.R. Nos. 83028-29. August 10, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Julian Magdahong and Benjamin Rivero were charged with the crime of double murder under two (2) separate informations for the deaths of Gloria C. Barde and Gilbert Camacho. The crime was said to have been committed as follows:

"That on or about 7:00 o'clock in the evening of September 17, 1983, at Moreno District, municipality of Daet, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, armed with bolo, with intent to kill, with treachery, evident premeditation and with the use of superior strength, did then and there willfully, unlawfully and feloniously stab and hack one GLORIA C. BARDE, thereby inflicting upon the latter mortal wounds on the vital parts of her body which caused her instantaneous death, to the damage and prejudice of the heirs of the victim. (Rollo, p. 25)

For the death of Gilbert Camacho, the Information alleged:

"That on or about 7:00 o'clock in the evening of September 17, 1983, at Moreno District, municipality of Daet, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, armed with bolo, with intent to kill, with treachery, evident premeditation and with the use of superior strength, did then and there willfully, unlawfully and feloniously stab and hack one GILBERT O. CAMACHO, thereby inflicting upon the latter mortal wounds on the vital parts of his body which caused his instantaneous death, to the damage and prejudice of the heirs of the victim." (Rollo, pp. 25-26)

Only the accused Julian Magdahong was present during arraignment on March 7, 1985 as his co-accused Benjamin Rivero was at large. Magdahong pleaded "not guilty" to both charges so that a consolidated trial of the two (2) cases ensued, after which a decision was rendered thus:

"WHEREFORE, the court finds the accused guilty beyond reasonable doubt of the crime of double murder with the aggravating circumstance of superior strength not absorbed by the commission of the crime and hereby sentences him in Criminal Case No. 4071 to serve for the death of Gloria Barde the penalty of Reclusion Perpetua; and for the death of Gilbert Camacho in Criminal Case No. 4072, another penalty of Reclusion Perpetua, with costs de oficio. The court likewise orders the accused to pay the heirs of the deceased the amount of Thirty Thousand (P30,000.00) Pesos for the death of Gloria Barde and another Thirty Thousand (P30,000.00) Pesos for the death of Gilbert Camacho, and considering the agony the parents of the victims have undergone, the court finally orders the accused to pay the parents of the victims the amount of Two Hundred Thousand (P200,000.00) Pesos by way of moral, compensatory and exemplary damages." (Rollo, p. 34)

Due to dissatisfaction with the trial court's decision, accused-appellant Magdahong appealed both cases to this Court.

The people's version of the facts are as follows:

"About 7:00 o'clock on the evening of September 17, 1983, while Calixto Poling was walking along Moreno Street, Daet, Camarines Norte, he heard a child's cry of 'Itay ko, Itay ko' inside the house of Salvador Barde, which was located at Moreno Street. Immediately after hearing the child's cry, he saw appellant Julian Magdahong, together with Benjamin Rivero, leave the house of Salvador Barde with a bloodied 'sundang' (bolo) (p. 4 TSN, Nov. 27, 1986). Likewise, Evangeline Pacay, while waiting for a tricycle ride, also heard the child's cry and saw appellant leave the house of Salvador Barde together with Benjamin Rivero (pp. 10-12, TSN, March 4, 1986)

"Upon seeing the two, Calixto Poling inquired from appellant what was going on but, instead of getting an answer, appellant threatened him with an attack, which made Calixto run (pp. 6-10, Nov. 27, 1986). After Calixto ran, and as he looked back while running, appellant and Benjamin Rivero left the area aboard a tricycle, which was parked in front of Salvador Barde's residence (p. 10, Ibid). Again, Evengeline Pacay witnessed these happenings (p. 12, TSN, March 4, 1986).

"Meanwhile, Salvador Barde and his wife reached home about 7:30 o'clock in the evening of that day after coming from their store located at Felipe II, Street 6, Daet, Camarines Norte (pp. 5-6, TSN, March 27, 1987). When he was about to open the door, Salvador noticed that it was partially opened and when he switched on the light, he saw his daughter Glorina and adopted son Gilbert sprawl (sic) on the floor, soaked in blood (pp. 7-10, Ibid).

"Salvador and his wife rushed to their children but found them already dead. The police officers of Daet, Camarines Norte and the Philippine Constabulary conducted separate investigations on the case. But one year elapsed without any complaint filed or any suspect pinpointed. This prompted Salvador Barde to write then Col. Hermogenes Peralta, Chief of the PC-Criminal Investigation Service (CIS), seeking assistance to speed up the solution of the crimes and to hail the culprit or culprits to the bar of justice (pp. 27-28, TSN, April 8, 1987; pp. 12-13, TSN, March 24, 1987).

"Salvador Barde, upon advice of Col. Peralta, went to Camp Ibalon in Legaspi City where he was introduced to Sgt. Clemente Gonzales, a PC-CIS agent assigned to the case (p. 14, Ibid.; pp. 13-14, TSN, August 28, 1985). Acting on the information given by Salvador, Sgt. Gonzales interrogated Evengeline Pacay, Calixto Poling and Rolando Barde at Camp Ibalon, Legaspi City. On the basis of the testimonies given by them, Salvador Barde filed a formal complaint against appellant Julian Magdahong and Benjamin Rivero before the Municipal Trial Court of Daet, Camarines Norte which conducted the preliminary investigation (pp. 16-17, TSN, August 28, 1985; pp. 18-20, TSN, Nov. 20, 1985). Consequently, a warrant of arrest was issued and appellant Julian Magdahong was arrested on January 23, 1985 at the Benguet Mining Corporation in Paracale, Camarines Norte (pp. 25-26, TSN, Nov. 20, 1985). (Brief for the Appellee, pp. 3-6)

The defense of Magdahong is alibi. He claims to have been at a bienvenida party held in a house about three kilometers away when the crime was committed. He also asserts that the testimonies of the witnesses were fabricated.

Accused-appellant assigns the following errors:

I

"THE LOWER COURT ERRED IN RENDERING A JUDGMENT OF CONVICTION DESPITE THE GROSS INSUFFICIENCY OF EVIDENCE AND UNCORROBORATED TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION.

II

"THE LOWER COURT ERRED IN GIVING WEIGHT AND CREDIT TO THE TESTIMONIES OF WITNESSES CALIXTO POLING AND EVANGELINE PACAY WHOSE TESTIMONIES WERE OBTAINED UNDER SCANDALOUS AND DOUBTFUL CIRCUMSTANCES." (p. 5, Brief for the Accused-Appellant)

The sole issue to be resolved in this case is whether or not the accused is guilty of the crime charged on the basis of the testimonies given and the evidence presented.

After a careful evaluation of the records of the case, we find no reversible error in the factual findings and conclusions of the trial court.

It is clear from the testimonies of the witnesses that they saw the accused-appellants with bloodied bolos in their hands leave the victims' house on that fateful day of September 17, 1983. Despite accused Magdahong's insistence that he could not have been at the scene of the crime because he was then at a party in Romeo Abanes' house, the evidence remains strong that it is not impossible for him to have committed the crime considering that the house of Rolando Caro was only three kilometers away from Salvador Barde's house and is accessible by vehicle in less than five minutes. Moreover, the accused himself said that he left the party which was given for Rolando Caro earlier than 7:00 p.m. (p. 10 TSN, August 25, 1987). Thus, taking the circumstances of time and place, it was not impossible for the accused to be at the scene of the crime. The defense of alibi should be established by clear and convincing evidence. The requirement of time and place must be strictly met. Appellant must convincingly prove that he was at some other place for such period of time as to preclude or render impossible his presence at the place where the crime was committed at the time of its commission (People vs. Rizalidnay, August 15, 1988, G.R. No. 48269).

Apart from bringing up the defense of alibi, the appellant struggles to discredit the primary prosecution witnesses, Calixto Poling and Evangeline Pacay. He specifically questions the failure of the witnesses to testify soon after the commission of the crime. It has been held in People vs. Coronado, (145 SCRA 250 [1986]) that the failure of a witness to report at once to the police authorities the crime they had witnessed should not be taken against them. It is not uncommon for a witness to show some reluctance about getting involved in a criminal case. The natural reluctance of most people to get involved in a criminal case is of judicial notice. As a matter of fact, Magdahong ran after Calixto Poling with the bolo when Calixto asked about the bloody incident. It was Magdahong's companion who dissuaded him so they could leave the place. Furthermore, there should be no doubt as to the credibility of their testimonies considering that these witnesses were subjected to intense and rigid cross-examination during the trial. The records also show that there was some dilly-dallying by the police investigators until complaints were filed with higher authorities. There is therefore no reason for us to depart from the well-established rule that the findings of fact of the trial court on the credibility of witnesses should be accorded the highest respect because it has the advantage of observing the demeanor of the witnesses and can discern if such witnesses are telling the truth (People v. Ornoza, 151 SCRA 495 [1987]).

More importantly, the discussions on the credibility of witnesses should not detract from or lead to a disregard of other evidences. There were several prosecution evidence which could establish the guilt of the accused. For one, the Asst. City Fiscal testified that the accused swore to him his confession. However, the appellant correctly contends that his confession is inadmissible since it was signed without the presence of a counsel and that he was mauled and tortured into signing. We agree with the accused that the confession is inadmissible considering the constitutional requirement that the same should be made only in the presence of a counsel. But there is no basis for his claims of mauling and torture. The confession is rejected by the courts on the sole ground that it was taken in violation of the appellant's right to counsel.

The post mortem examination by Dr. Buena Alegre on the victims corroborates the testimony of the witnesses that they saw the accused-appellant come out of the house holding the bloodied bolo.

The case is further tilted against the accused on the basis of testimony that Magdahong made death threats against Salvador Barde because he was driven away from his long time employment as family driver and charged with theft while he in turn brought cases before labor agencies against Barde.

It appears that Magdahong was Salvador Barde's driver and that the former stole the latter's jack from the jeepney. This is confirmed by the admission of Magdahong that he stole the jack (Exh. T). He even executed a promissory note that he will pay the value of the jack. Magdahong, however, did not pay. Instead, he left his employer and filed a case against him for recovery of wages and separation pay. The case was dismissed and this angered Magdahong. It was when he was talking to Rolando Barde that he made the threat to kill Salvador Barde and members of his family. From these, it is evident that Magdahong had a motive to kill the fourteen-year old daughter and the eight-year old adopted son of his former employer.

The appellant's insinuation that there could have been somebody else who killed the victims is unbelievable.

He was seen running out of the house by persons who met him at the gate. He had a bloodied bolo while a voice inside was crying "Itay, Itay."

The circumstances under which the letters introduced by the defense were written are highly doubtful. One is an unsigned and undated letter allegedly from victim Glorina Barde to a certain Noel and another is an undated letter allegedly from Noel. The letters are supposed to show that Glorina was an "easy" girl. Two anonymous and undated letters indicating the whereabouts of the alleged real killer as hiding in the swamps of Mambalite Daet were likewise presented in evidence. Two letters dated September 17, 1983 - one of them a bloodstained unfinished letter to "Lillian" allegedly written when she was hacked to death and another unsigned letter to "Etchie" were introduced to bolster one aspect of their defense that Glorina was taking drugs and that this was related to her being boloed to death. The letters attributed to Glorina are unsigned. No effort to ascertain their authorship by scientific means was taken. Most of Glorina's letters were supposedly written on the same day that she was killed, and most were undated. The production of these letters is likewise suspicious. These were brought to court without the order from P/Cpt. A. Mirasol's superior. Mirasol's explanation as to how he got the letters are doubtful as well. And most important, the probative value of the letters in establishing the appellant's efforts to pass criminal liability to unknown persons is nil.

There is enough evidence that the accused was at the scene of the crime at the time of its commission. The testimonies of the witnesses likewise corroborated each other and the documentary evidence. There is sufficient evidence to convict the accused.

When it comes to the appreciation of testimony and the making of factual finding, the trial court's determinations count heavily. The trial judge who heard key prosecution witnesses and presided over the entire presentation by the defense of its evidence gave credence to the evidence of the prosecution. The judge declared the defense as practically "worthless" when weighed against that of the prosecution. The appellant has failed to create even reasonable doubt so as to reverse or modify the questioned judgment.

WHEREFORE, premises considered, the decision of the trial court is hereby **AFFIRMED**.

SO ORDERED.

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

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