

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO MANALO Y CABISUELAS, ACCUSED-APPELLANT.

G.R. Nos. 96123-24. March 08, 1993

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Rodolfo Manalo prays for the reversal of the judgment of the Regional Trial Court of the Fourth Judicial Region (Branch 31, City of San Pablo) in Criminal Cases No. 2740-SP and 2741-SP, which pronounced him guilty beyond reasonable doubt of two separate counts of Murder and sentenced him in each case to suffer the penalty of reclusion perpetua and to separately indemnify the heirs of the two victims in the sum of P30,000.00, to pay P5,215.40 as actual damages to Marcelo Bonilla, the father and father-in-law, respectively, of the victims Warlito Bonilla and Carlito Diomampo, and to pay the costs of suit (p. 116, Rollo).

On March 9, 1982, two separate amended informations were filed by San Pablo Assistant City Fiscal Lourdes M. Escondo charging accused-appellant with the crime of Murder committed as follows:

AMENDED INFORMATION

That on or about November 29, 1981, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot one WARLITO BONILLA with an unlicensed pistolized Colt Caliber .45, with Serial No. 362134, with which the accused was then conveniently provided, thereby inflicting mortal wound upon the person of said Warlito Bonilla which caused his immediate death.

CONTRARY TO LAW.

AMENDED INFORMATION

That on or about November 29, 1981, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above named, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot one CARLITO DIOMAMPO with an unlicensed pistolized Colt Caliber .45, with Serial No. 362134, with which the accused was then conveniently provided, thereby inflicting mortal wound upon the person of said Carlito Diomampo which caused his immediate death.

CONTRARY TO LAW. (pp. 38-39, Rollo)

When arraigned, accused-appellant entered a plea of not guilty to both charges and after trial on the merits, the trial court handed down its verdict in this wise:

WHEREFORE, in view of the foregoing facts and circumstances, this Court, after a careful study of the evidence adduced in each of the two above-entitled cases, hereby finds the accused herein, RODOLFO MANALO Y CABISUELAS, guilty beyond reasonable doubt of the crime of MURDER in each of the two above-entitled cases, committed in relation to a violation of Presidential Decree No. 1728 and, in accordance

with provisions both of the Revised Penal Code and of Article III, Section 19(1) of the 1987 Constitution of the Republic of the Philippines, hereby sentences him to suffer the penalty of imprisonment, consisting of RECLUSION PERPETUA, in each of the two above-entitled cases with all accessory penalties in connection therewith, which shall be served by him in accordance with law, and hereby orders him to indemnify the heirs of the deceased victim Carlito Diomampo in the amount of Thirty Thousand Pesos (P30,000.00), Philippine Currency, as well as the heirs of the deceased victim Warlito Bonilla in a similar amount and to pay the amount of Five Thousand Two Hundred Fifteen Pesos and Forty Centavos (P5,215.40), Philippine Currency, as actual damages, to Marcelo Bonilla, the father and father-in-law of the deceased victims Warlito Bonilla and Carlito Diomampo, respectively, without subsidiary imprisonment, however, in case of insolvency; and to pay the costs of suit in each of the two above-entitled cases.

The period of preventive imprisonment undergone by the accused shall be credited in the service of his sentence in accordance with Article 29 of the Revised Penal Code as amended by Republic Act No. 6127.

SO ORDERED. (p. 116, Rollo)

Accused-appellant urges reversal upon the following assigned errors:

I

The trial court erred in giving undue weight and credence to the uncorroborated, unreliable and unbelievable testimony of prosecution witness Carlos Lacbay which was belied by no less than another prosecution witness Dr. Francisco Perez, an unbiased and very credible witness.

II

The trial court erred in overlooking a vital fact that there is no physical evidence that appellant fired a gun.

III

The trial court erred in convicting accused-appellant. (p. 6, Appellant's Brief, ff. p. 141, Rollo.)

The People's version is summarized by the Solicitor General, thus:

At about 5:00 p.m. of November 29, 1981, witness Carlos Lacbay, a forty-eight year old sales agent of TL Marketing Corporation and a resident of Barangay San Rafael, San Pablo City, visited Carlito Diomampo at the latter's house at Villa Antonio Subdivision, San Pablo City ... They partook of some wine and camote and conversed about the motorcycle which Diomampo was interested in buying [and after] about two (2) hours, Lacbay decided to leave. Diomampo and his brother-in-law, Warlito Bonilla, offered to accompany him home. Thereupon, Lacbay rode on and drove his office service motorcycle while Diomampo and Bonilla rode in tandem on their own motorcycle with Diomampo driving it. (tsn, July 27, 1982, pp. 3-8).

Upon their arrival at Barangay San Rafael, San Pablo City, at about 7 p.m., Lacbay parked his motorcycle in front of the Barleta Engineering Rebuilder Shop and unloaded the camote he brought along with him. Diomampo and Bonilla likewise parked their own motorcycle in front of the said shop. While they were thus parking, appellant Rodolfo Manalo, Lacbay's neighbor and co-resident of the same barangay and also an acquaintance of Diomampo and Bonilla, arrived and invited Diomampo and Bonilla to his house for a drink of wine to which the two (2) acceded after insisting that Lacbay would go, as he did, with them. (Ibid., pp. 8-13).

From Barleta Engineering Rebuilder Shop along the highway, they walked along a pathway to the house of appellant in the following order, namely: Diomampo and Bonilla were ahead, followed by appellant who was, in turn, followed by Lacbay at about one (1) step behind, passing one (1) house before reaching appellant's house. (Ibid).

After Diomampo and Bonilla entered the house of appellant and were about to reach the interior portion thereof, appellant, who was then at the doorway followed behind by Lacbay, suddenly and without any warning shot Diomampo once on the head and then Bonilla also once on the temple at a distance of about three

(3) meters from behind, with a .45 caliber pistol with a magazine. Diomampo and Bonilla fell down to the floor dead. Thereafter, appellant again fired one more [shot] at Diomampo. Lacbay who was standing a meter behind appellant, was so shocked that he was unable to move. Appellant told him that he shot Diomampo and Bonilla because Diomampo had impregnated his daughter, Dina Manalo. Thereafter, appellant asked Lacbay to dig but the latter refused. Thereupon, appellant warned him not to leave the place as he (appellant) would look for somebody to do the digging, then left. (Ibid., pp. 17-19).

After appellant left him, Lacbay walked toward the place where his motorcycle and Diomampo's motorcycle were parked. As he neared the said place, he saw appellant with Edelito Batralo, another neighbor, returning. Lacbay surreptitiously pushed his motorcycle away without starting its engine and rushed home. (Ibid., pp. 20-22).

The medico-legal examination conducted by Dr. Francisco Perez, City Health Officer of San Pablo City, on the bodies of Diomampo and Bonilla which were dug from a shallow pit under the 'banggerahan' of appellant's house on December 1, 1981 revealed that both deceased sustained gunshot wounds caused by a .45 caliber gun, described as follows: Diomampo - a gunshot wound, 1 cm. in diameter, circular in shape, with smudge and located on the upper eyelid, directed posteriorly, piercing the brain through the orbital fossa, fracturing the occipital bone of the skull, with the slug embedded under the skin with pieces of bone fragments; as well as a closed, depressed comminuted fracture of the maxilla on the left side of the face (Exhibit 'B'); Bonilla - a gunshot wound, 0.9 cm. in diameter, located on the right tempo-parietal region, directed obliquely and posteriorly towards the left, piercing the brain, fracturing the occipito--parietal region, skull, left, with the slug embedded under the skin (Exhibit 'F'). Both slugs were extracted by Dr. Perez and were determined to be as those fired from a .45 caliber gun. The proximate cause of death of each of two (2) victims was due to shock and hemorrhage secondary to the gunshot wound. (tsn, May 2, 1983, pp. 11-18, 30). (pp. 3-8, Appellee's Brief, ff. 153, Rollo)

On the other hand, the defense maintains that accused-appellant is not responsible for the treacherous acts, but that rather, he is just an unwilling witness to the horrible event perpetrated by persons unknown to him. Accused-appellant asseverates that on that fateful day, after attending a meeting at the Iglesia ni Cristo chapel, he went home and saw two unknown men in front of his house. One of them asked him if he was Ma Rody and accused-appellant answered in the affirmative. The two then requested permission to stay for a while to wait for somebody. A few moments later, prosecution witness Carlos Lacbay together with Carlito Diomampo and Warlito Bonilla, arrived on board two motorcycles. Carlito and Warlito approached appellant and the two unknown persons as Lacbay left saying "You two, stay there and I will bring this motorcycle home."

Carlito, upon seeing the two unknown persons, sort of greeted them saying, "Boss", to which one of the two unknown persons retorted, "Boss Ka ng Boss, busisi Ka namang putang-ina mo", at the same time striking Carlito's face. After Carlito fell on his back the man who struck him drew a gun from his waist and shot Carlito. Warlito rushed to Carlito but he was blocked by the other unknown man who boxed him on the face. Warlito fell and while in the act of rising and "trying to draw something from his waist", he was shot on the face by the other unknown man. Afterwards, the two unknown men asked accused-appellant whether he had a spade, and answering in the negative, he was ordered to look for one. When accused-appellant returned with a spade, the two men inquired where they could dig and accused-appellant pointed to a place under his "banggerahan". The two men started digging but not before telling accused-appellant to keep watch as somebody might arrive. About an hour later, the two men dumped the dead bodies of Carlito and Warlito into the hole they dug. They then brought accused-appellant towards the highway and told him not tell anyone about the incidents, otherwise his life and those of his children will be in jeopardy. (pp. 11-12, Appellant's Brief, ff. p. 141, Rollo.)

We have examined with care the evidentiary record and We find that the same supports the judgment of the trial court.

Under his first assigned error, accused-appellant tries to make capital out of the discrepancy between Lacbay's testimony and the necropsy report and testimony of the City Health Officer concerning the distance and the manner in which the victims were shot. Lacbay stated that accused-appellant was more or less three meters away from the victims when he fired at them from behind. Dr. Francisco Perez, on the other hand, testified that the assailant could not have been farther than eighteen inches owing to the gunpowder smudge found on the wound of Carlito Diomampo. Dr. Perez also claimed that the victims sustained frontal gunshot wounds indicating that they were shot while facing their assailant.

Accused-appellant is clutching at reeds. The variance in the distance from which the victims were shot is insignificant and does not take into account that even as Lacbay said that accused-appellant was 3 meters away from his victims when he fired, the distance would be considerably lessened because of the arm extension when he fired. Then too, the relative positions of accused-appellant and the victims need not necessarily be directly contradictory, one following the others according to Lacbay, and the victims facing accused-appellant according to accused-appellant using the statement of Dr. Perez that the victims sustained frontal gunshot wounds. It could very well have been that the dramatis personae were following each other, but that as accused-appellant shot Diomampo and Bonilla, they turned towards or had their faces turned towards accused-appellant. This could very well have been the case especially in regard to Bonilla the second victim, for his natural reaction after accused-appellant fired the first time at Bonilla was to look at the direction from which the shot was fired.

In any event, Lacbay's emphatic and positive identification of accused-appellant as the gunman deserves full merit and weight despite any supposed inconsistency (*People vs. Mesias*, 199 SCRA 20 [1991]). Verily, establishing the identity of the malefactor through the testimony of witnesses, is the heart and cause of the prosecution. All other matters, albeit of considerable weight and importance, generally assume lesser consequence, and in this regard, the identification by Lacbay of accused-appellant as the gunman is positive and unshakeable.

The second assigned error would stress the alleged absence of physical evidence showing that accused-appellant fired a gun. To this, We need only remark that such circumstance neither proves his innocence as well. In fact, even if he were subjected to a paraffin test and the same yields a negative finding, it cannot be definitely concluded that he had not fired a gun as it is possible for one to fire a gun and yet be negative for the presence of nitrates as when the hands are washed before the test (*People vs. Talingdan*, 191 SCRA 333 [1990]; *People v. Roallos*, 113 SCRA 584 [1982]). The Court has even recognized the great possibility that there will be no paraffin traces on the hand if, as in the instant case, the bullet was fired from a .45 Caliber pistol (*People vs. Rebullar*, 188 SCRA 838 [1990]).

In answer to accused-appellant's last assigned error, which really is only a conclusion on his part, We find the observations of the trial court persuasive and well-taken, portions of which are worth quoting, thus:

CARLOS LACBAY, who is the principal witness for the prosecution, has positively identified in court the accused herein as the sole perpetrator of the killing of Carlito Diomampo and Warlito Bonilla. He had vividly testified in court on the time, the place and the manner how said killings were perpetrated by the accused...

... Lacbay, being a neighbor of the accused, can never be said to be a prejudiced or biased witness. The accused himself testified that he does not know of any reason why Carlos Lacbay testified against him inasmuch as, prior thereto, he never had any misunderstanding with him whatsoever. While it might be contended that there was a little delay on the part of Carlos Lacbay in reporting the aforesaid killings to the police authorities concerned... he sufficiently explained this by stating that because he was shocked, confused, and fearful... he had to wait and consult his 'bilas' who was then a member of the Philippine Marines.

X X X

X X X

X X X

... the accused executed an extrajudicial statement... (Exh. "I-17") wherein he admitted the killings but sought to justify his acts by alleging that one of the victims Carlito Diomampo tried to abuse his daughter. On direct testimony, however,... the accused testified that he did not shoot the victims but there were two unidentified men who came to his place and were the ones responsible for the killings. The accused has, thus, adopted two postures which are irreconcilable. The accused, when he made a complete turnabout from his earlier statement given to the police, renders himself totally incredible considering that his inconsistency was on a very material point which is actually the heart of the case. The accused, by his own acts, rendered himself unworthy of credit and belief.

X X X

X X X

X X X

In the several letters (Exhs. 'JJ' and 'KK') sent by the accused to Mr. Marcelo Bonilla, the accused has repeatedly begged Mr. Bonilla to agree to the amount of P14,000.00 which he was offering as a settlement for the death of the two victims.

X X X

X X X

X X X

The accused, in his letter to Asst. City Fiscal Escondo... requested said Asst. Fiscal not to charge him for Murder but only for Homicide because according to him, he did not have any intention to kill the victims but was prompted to do so only because of circumstances beyond his control.

X X X

X X X

X X X

In one of the letters of the accused to Mr. Bonilla... he is asking for forgiveness for the offenses he had committed. Again, We submit that when a person asks for forgiveness, then he is admitting that he has committed something wrong... (pp. 104--105; 107; 109-110, Rollo)

Finally, one cannot but express wonder, if not bewilderment at the tale under which accused-appellant seeks shelter. He presents the story of two persons, conveniently unknown to him and unseen by any other, doing the slaying. The story is not even believable fiction. For who are the assailants who would, while waiting for their victims, station themselves in front of the house not of the victims but of one whom they were not even sure would at that precise moment be visited by the victims. And these killers would then ask the homeowner (accused-appellant) if he is Ma Rody - thereby not even attempting to hide their identities but on the contrary, impressing into the memory of a witness their faces. Further, they would, after killing the victims in front of accused-appellant, tarry around, ask accused-appellant to obtain a shovel, dig at a place - under accused-appellant's "banggerahan" - which accused-appellant inexplicably offered. Surely, these are not the acts of assassins, who, strangers as they are in the place, would naturally seek protection under that very same anonymity, and not allow time for other persons to recognize them and later identify them. The story of accused-appellant is nothing but an unbelievable concoction.

In view of overwhelming evidence supporting the trial court's judgment of conviction, We cannot reverse the same. However, the civil indemnity should be increased to P50,000, conformably with current jurisprudence.

WHEREFORE, except for the slight modification whereby the civil indemnity to be paid by accused-appellant to each set of heirs of the two victims is increased to Fifty Thousand Pesos (P50,000.00), the decision under review is hereby AFFIRMED.

SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[*] Hugo E. Gutierrez, Jr., J., On Terminal Leave.

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