420 Phil. 86

SECOND DIVISION

[G.R. No. 132373, October 23, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.TIRSO ARCAY @ "TISOY" AND TEODORO CLEMEN @ "BOY," ACCUSED.TIRSO ARCAY @"TISOY," ACCUSED-APPELLANT.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision of the Regional Trial Court of Tagbilaran City, Branch 2, in consolidated Criminal Cases Nos. 8079 and 8080. Appellant Tirso Arcay was found in Crim. Case No. 8079, guilty of attempted murder and sentenced to suffer an indeterminate penalty of four (4) years, two (2) months, and one (1) day of *prision correcional* as minimum to eight (8) years of *prision mayor* as maximum. In Crim. Case No. 8080, for murder, he was sentenced to *reclusion perpetua* with all the accessory penalties provided by law. However, his co-accused in both cases, Teodoro Clemen, alias "Boy," was acquitted.

The Information against appellant Arcay and co-accused Clemen in Criminal Case No. 8079 for Frustrated Murder reads:

> That on or about the 16th day of August 1992, in the municipality of Panglao, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and without any justifiable motive, with evident premeditation and abuse of superior strength, the accused then being armed with a sliced (piece of) coco lumber, and by treachery (sic), by suddenly attacking the victim without giving her the opportunity to defend herself, did then and there, willfully, unlawfully, and feloniously attack, assault and strike Lucenda Micutuan with the piece of coco lumber, thereby inflicting upon the victim serious physical injuries which required a healing period of 9-14 days barring complication(s) and incapacitated her in the performance of her customary labor for the same period of time; the accused having performed all the acts of execution which would produce the crime of Murder, but did not, by reason of a cause independent of their will, to wit: the timely and effective medical treatment and attendance given to the victim which prevented her death; to the damage and prejudice of the victim in the amount to be proved during the trial of the case.
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> Acts committed contrary to the provisions of Article 248 of the Revised Penal Code in relation to Articles 6 and 50 of the same Code with the aggravating circumstance of (1) nighttime being purposely sought for or taken advantage of by the accused to facilitate the commission of the

> crime; and (2) with insult or in disregard of the respect due the offended party by reason of her sex and her age, the victim being a woman of the tender age of 17 years.[1]

In Criminal Case No. 8080, the Information against them states:

> That on or about the 16th day of August 1992, in the municipality of Panglao, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and without any justifiable motive, with evident premeditation and abuse of superior strength, the accused being then armed with a sliced (piece of) coco lumber, and (with) treachery, by suddenly attacking the victim without giving him the opportunity to defend himself, did then and there willfully, unlawfully and feloniously attack, assault, hit and strike the use of the said (piece of) coco lumber one Leonito Doliente, hitting the latter on the vital parts of his body (head) resulting to his death, to the damage and prejudice of the heirs of the victim.
>
> Acts committed contrary to the provisions of Article 248 of the Revised Penal Code with the aggravating circumstance of nighttime being purposely sought for or taken advantage of by the accused to facilitate the commission of the crime.[2]

When arraigned, both Arcay and Clemen pleaded not guilty to the charges. Trial on the merits ensued.

As the charges were founded on a common set of facts, which formed a series of offenses and involved the use of common evidence, the cases were consolidated. At first they were tried jointly before Branch 4 of the RTC of Tagbilaran City. On December 26, 1994, however, they were re-raffled to Branch 2 of said court. The new judge heard only the testimonies of the last two defense witnesses and then the rebuttal witnesses.

The trial court summed up its factual findings as follows:

> Positive eyewitness' account of victim Lucenda Micutuan, disclosed that on or about 10:30 in the evening of August 16, 1992, while she and her sweetheart Leonito Doliente were seated on the sand by the beach at Lagitan, Doljo, Panglao, Bohol, with their shoulders touching each other, she saw accused Tirso Arcay coming from behind, armed with a piece of coconut lumber (Exh "A", measuring 2" x 3" x 44"), suddenly struck her and her sweetheart Leonito Doliente, hitting the back of their heads. As a result of the attack Leonito Doliente died, while Lucenda Micutuan was injured and hospitalized.
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> The accused denied the charges against them, claiming that on August 16, 1992, they were at Alona Kew, Tawala, Panglao, Bohol, six (6)

kilometers away from the place where the crime was committed from 8:30 in the evening, passing the night there and leaving the place early the following morning, August 17, 1992. Accused further alleged that they had a drinking spree with the group of Roberto Doliente, whose brother, Kenneth Doliente and nephew, Clifford Tan, were having a party tendered by Alejandro Cimatti, an Italian national, who was going back to Italy the day after.[3]

On February 28, 1997, the trial court rendered its decision in the two cases, disposing as follows:

WHEREFORE, in Criminal Case No. 8079, the Court finds the accused Tirso Arcay alias Tisoy, guilty beyond reasonable doubt of the crime of Attempted Murder, defined and penalized under Article 248 of the Revised Penal Code, in relation to Article 6, par. 3 thereof, as embraced in the aforequoted information, with the aggravating circumstance of disregard of sex. There being no mitigating circumstance to offset the same, said accused Tirso Arcay @ Tisoy is hereby sentenced to the indeterminate penalty of imprisonment of from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *Prision Correcional*, as minimum, to EIGHT (8) YEARS of *Prision Mayor*, as maximum, with the accessory penalties of the law, to indemnify the offended party Lucenda Micutuan the sum of P2,500.00 as medical expenses, P5,000.00 damages, P5,000.00 attorney's fees, and to pay the costs.

In Crim. Case No. 8080, the Court finds the accused Tirso Arcay @ Tisoy guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as embraced in the aforequoted information. There being no mitigating nor aggravating circumstance adduced and proven during the trial, and applying the doctrine laid down by the Supreme Court in the case of *People v. Muñoz,* 170 SCRA 107, the Court hereby sentences the accused to suffer the penalty of *RECLUSION PERPETUA*, with the accessory penalties of the law; to pay the heirs of Leonito Doliente funeral expenses in the sum of P25,000.00; death indemnity in the sum of P50,000.00 (*People v. Tazarra,* G.R. No. 85531, Dec. 12, 1990), without subsidiary imprisonment in case of insolvency, and to pay the costs.

The charge(s) in both cases, as against accused Teodoro Clemen, for lack of evidence, is hereby dismissed. His immediate release is hereby ordered unless he is detained legally in another commitment.

Accused Tirso Arcay, who has been detained is credited in full period of his preventive imprisonment, pursuant to Article 29 of the Revised Penal Code, as amended.

SO ORDERED.[4]

Hence, this appeal assigning the following errors:

FIRST ASSIGNMENT OF ERROR

THAT THE TRIAL COURT ERRED IN NOT DECLARING THAT THE GUILT OF THE DEFENDANT-APPELLANT OF THE CRIME CHARGED WAS NOT ESTABLISHED BEYOND REASONABLE DOUBT.

SECOND ASSIGNMENT OF ERROR

THAT THE TRIAL COURT ERRED IN NOT DECLARING THAT THE PROSECUTION FAILED TO OVERCOME BY THEIR EVIDENCE THE CONSTITUTIONAL PRESUMPTION OF THE DEFENDANT-APPELLANT'S INNOCENCE.

Only one issue is before us: Did the prosecution prove appellant's guilt beyond reasonable doubt?

Appellant contends that the prosecution theory that he bore a grudge against a certain Miguel Clemen who had publicly whipped him with a belt, and that appellant killed Leonito Doliente after mistaking him for Miguel Clemen, is without basis. Appellant also avers that it was impossible for him to have mistaken Doliente for Clemen because the alleged incident happened at a place which was brightly lighted. He points out that Clemen is much older and taller than Doliente. Clemen sported a mustache, wore a red sweater and not a maroon jacket as the witness claimed. Moreover, Clemen had no girlfriend. He submits that the prosecution's witnesses erred in pointing to him as the culprit. He added he had no reason to kill the victim.

Appellant also assails eyewitness Lucenda Micutuan's credibility. He points out that Lucenda regained consciousness only on the following day, August 17, 1992. However, it was only on September 6, 1992 that she mentioned Tirso Arcay as the perpetrator on September 6, 1992. Appellant claims that Lucenda saw him with his mother and a companion during one of the fiesta festivities on August 26, 1992, but she showed no reaction whatsoever of his presence. Appellant insists that Lucenda's identification of him 17 days after her discharge from the hospital, makes her identification of him dubious.

As previously held, motive is not an essential element of a crime,[5] particularly of murder.[6] It becomes relevant only where there is no positive evidence of an accused's direct participation in the commission of a crime and evidence is purely circumstantial.[7] In this case, the prosecution's evidence is not circumstantial. The offended party in Crim. Case No. 8079, Lucenda Micutuan, positively, consistently, and categorically identified appellant as the person who clubbed her and her boyfriend Leonito Doliente, resulting to his death.[8] Where the identity of the malefactor is established, proof of motive or the lack of it is not essential to sustain a conviction.[9]

The Office of the Solicitor General (OSG) states that Lucenda's failure to denounce appellant as the malefactor when she saw him on August 26, 1992, is neither

strange nor puzzling. Lucenda suffered a severe head injury and it took time for her to recover from her mental shock. Moreover, it was not sufficiently established that she indeed saw appellant on said date. It does not affect her credibility.

Although the judge who penned the decision was not the same one who earlier heard the prosecution witnesses, after scrutinizing the records on Lucenda's testimony, we are in agreement with the findings of the trial court that "Lucenda's firsthand account albeit standing alone, is straightforward and rings with the truth that can only proceed from a trustworthy witness."[10] Said finding shows no arbitrariness nor undue partiality. Nor did the trial court overlook some material fact or significant circumstance, which could materially affect her credibility.

Mere delay in reporting the crime or pinpointing the felons does not affect the credibility of the witnesses for as long as the delay is sufficiently explained.[11] Here, the prosecution established that Lucenda needed time to fully recover from her head injury.[12] Moreover, the police did not go to her and question her during her recovery period.[13] The police only took her sworn statement, on September 6, 1992, or two days before appellant was arrested.[14] Given this background, we find the explanation of her delay in reporting the offense or naming the offender satisfactory.

While appellant claims that Lucenda did not denounce him when she saw him during the "Teacher's Night" on August 26, 1992, the records reveal that, on rebuttal, Lucenda consistently denied seeing appellant during said affair.[15] At best, appellant's story that Lucenda saw him during the affair is self-serving. Moreover, the occasion of a teacher's celebration appears inauspicious for any denunciation regarding a crime.

Appellant claims an alibi, i.e., that he and his co-accused spent the whole evening of August 16, 1992 at the Alona Kew White Beach Resort, in Tawala, Panglao. Tawala is at the southeastern side of Panglao, some five (5) kilometers from the crime scene at Lag-itan. Further, defense witnesses Roberto Doliente and Celso Labastida testified that appellant never left Alona Kew from 8:30 P.M., August 16, 1992, until the morning of August 17, 1992.

Alibi is an inherently weak defense and it must be proved to the satisfaction of the court.[16] For alibi to be considered, the defense must show: (a) that the accused was not at the scene of the crime; and (b) that it was physically impossible for him to have been there when the crime was committed.[17] We agree with the trial court when it observed,

> The [two] accused asserted that they were about 5 to 6 kilometers from the scene of the crime. However, they also admitted that this distance can be negotiated by a motorcycle for 15 to 20 minutes, hence, with this admitted fact, the indispensable element of physical impossibility for them to be present at the scene of the crime at about the time when it was committed, is not satisfied (citation omitted).[18]

Nor will appellant's reliance on the corroborative testimonies of Roberto Doliente and