

SECOND DIVISION

[G.R. No. 111286, February 17, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIL DACIBAR AND WARLITO DICON, ACCUSED-APPELLANTS.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision dated January 25, 1993 of the Regional Trial Court of Roxas City, Branch 16, in Criminal Case No. C-3690, finding appellants guilty of the crime of murder, imposing upon them the penalty of life imprisonment, ordering appellants to pay, jointly and severally, the heirs of the victim the amount of P50,000.00 as moral damages, P29,000.00 as actual damages, and to pay the costs. Pursuant to Administrative Circular No. 6-22 on the correct application of the penalty of *reclusion perpetua*, the trial court, on February 2, 1992, rendered an amended decision sentencing appellants to the penalty of *reclusion perpetua* with its accessory penalties, instead of life imprisonment.^[1]

The facts of the case, as summarized by the Office of the Solicitor General and which we find to be supported by the records, are as follows:

"At around nine o'clock in the evening of September 5, 1991, Welda Bacalangco was sitting behind their bed near her husband, Josue, who was sitting at the end of the bed and was lifting the mosquito net. (p. 3, TSN, August 27, 1992 and p. 11, TSN, September 8, 1992) Suddenly, there was an explosion, followed by the sounds of footsteps. (p. 3, TSN, August 27, 1992) Welda looked through their window and saw appellant Warlito Dicon coming out from under their house, stooping and carrying a long firearm. (*ibid.*) Following him was appellant Ramil Dacibar who was carrying a bolo. (*ibid.*) Seeing her husband shot, Welda shouted to her children that their father was shot. (*ibid.*)

Riza who was then washing dishes at the kitchen also heard the gunshot and saw Warlito Dicon holding a long firearm and Ramil Dacibar holding a bolo emerging from under their house. Upon hearing her mother shouting that her father was shot (p. 13, TSN, August 27, 1992) she immediately ran to her father and embraced him. (p. 3, TSN, August 27, 1992) Realizing the predicament of her father, Riza together with her sister, shouted for help. (p. 13, TSN, August 19, 1992)

Riza's uncle came to help. He carried the victim with the intention of bringing the latter to the hospital. (p.4, TSN, August 27, 1992) However, by the time they reached the basketball court, the victim was already dead. Thus, he brought the victim back to the latter's house. (p. 13, TSN, August 19, 1992)"^[2]

On June 2, 1992, appellants were charged with the crime of murder under the following information:[3]

"That on or about September 5, 1991 at around 9:00 o'clock in the evening in Brgy. Balighot, Maayon, Capiz, Philippines, the above-named accused, conspiring and helping one another, accused Warlito Dicon y Demelino being armed with a long firearm and accused Ramil Dacibar being armed with a bolo, willfully and feloniously shot one JOSE BACALANGCO with the said firearm, thereby inflicting on the chest and other parts of the body of the said Jose Bacalangco gunshot wounds which caused his death immediately thereafter.

The crime is qualified by treachery and abuse of superior strength and aggravated by nighttime and dwelling."

Upon arraignment, both appellants entered a plea of not guilty.[4] Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses: (1) Dr. Alejandro Orosco, Rural Health Physician of Maayon, Capiz, who conducted the *post-mortem* examination on the victim and issued the certificate of death stating that the cause of death was "multiple gunshot wounds";[5] (2) Riza Bacalangco, the 17 year-old daughter of the victim; and (3) Welda Bacalangco, the widow of the victim. Both the widow and the daughter of the victim testified they were present in the house when the killing took place. Welda testified also on the expenses they incur: P20,000 for the funeral rites, masses and wake; and P9,000.00 for the coffin and niche, or a total of P29,000.00 in all, for the deceased. For their suffering, she prayed for P30,000.00 as moral damages.

In turn, the defense presented (1) SPO3 Paulino Durana, a member of the Philippine National Police of Maayon, Capiz, who testified on the conduct of the police investigation of the killing; (2) Magdalena Dacibar, an aunt of appellant Ramil Dacibar, who testified that the victim's daughter asked for her help on the night of the incident, and that two of the victim's sons had a previous dispute with her husband; and (3) appellant Warlito Dicon, who testified that he was at his house at the time the victim was killed.

On January 25, 1993, the trial court rendered its decision convicting appellants of the crime of murder. The decretal portion of the decision reads:

"WHEREFORE, in the light of the foregoing, and finding the accused Warlito Dicon y Demelino and Ramil Dacibar guilty beyond reasonable doubt of the crime of Murder, this Court hereby imposes to each of the accused to suffer the *penalty of Reclusion Perpetua, with its accessory penalties* that carries with it, and to indemnify jointly and severally the heirs of the victim Josue Bacalangco the sum of Fifty-Thousand (P50,000.00) Pesos in moral damages and Twenty-Nine Thousand (P29,000.00) Pesos as actual compensatory damages, and to pay the costs of this proceedings.

SO ORDERED."[6]

Hence, the present appeal. Appellants are now before us, claiming that the trial court committed the following errors:

"I

THE COURT OF ORIGIN ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BECAUSE THE DECISION IS WITHOUT FACTUAL BASES.

II

THE COURT ERRED IN BASING THE DECISION ON INFERENCE.

III

THE COURT ERRED IN NOT GIVING WEIGHT TO THE EVIDENCE AND TESTIMONIES FOR THE DEFENSE.

IV

THE COURT ERRED IN ENTERING THE DEFENSE OF ALIBI. THE DEFENSE IS NOT ALIBI. IT IS THAT DEFENDANTS DID NOT COMMIT THE CRIME."

[7]

In their consolidated brief, appellants allege that the trial court's findings are without factual basis. They contend that it was physically impossible for the victim to have been shot from under his house by the appellants. They assail the trial court's finding that the victim's relatives, Welda and Riza Bacalangco, had no reason to implicate appellants in the crime if they were not the perpetrators thereof. They also question the finding that the motive for the crime was the killing of Warlito Dicon's dog. Their failure to attend the wake of the victim despite their close relationship to him, they say, should not have been taken against them, and they contend that the delay of the victim's wife in naming them as her husband's assailants should have been considered by the trial court. Appellants also claim that the trial court should have favorably considered their non-flight from the locality of the crime, and they assert that the testimony of Magdalena Dacibar that she heard two of the victim's relatives say that the shooting was the victim's fault should have been weighed in their favor. Lastly, they contend that they do not rely on the defense of alibi.

In its brief, the Office of the Solicitor General contends that there is enough circumstantial evidence to establish the culpability of appellants in the killing, and that their defenses of denial and alibi are inherently weak.

Essentially, the core issue in this case is the credibility of witnesses and the sufficiency of circumstantial evidence to convict appellants of the crime charged.

Appellants assail the decision of the trial court for alleged lack of factual basis. They argue that: (1) the presence of powder burns around the gunshot wounds on the victim show that the assailant was inside the house of the victim, not outside; (2) the trajectory of the bullet shows that the assailant was firing from a position on level with the victim, thus negating the claim that he was shot from under the house; (3) the position of the victim and the height of the assailant would have rendered it impossible for the latter to have shot the former from under the house;

and (4) the initial blotter report of the victim's wife indicates that the assailants were "unidentified persons" at the time said report was made.^[8]

Welda Bacalangco, the victim's wife, testified that her husband, Josue, was sitting at the side of their bed and raising the mosquito net in order to get inside when he was shot.^[9] Riza Bacalangco, the victim's daughter, heard the shot and looked out from the area where she was washing dishes and saw appellants come out from under their house.^[10] Welda also saw the appellants emerge from under the house when she looked out the window right after her husband was shot, when she heard footsteps underneath the house.^[11] She also testified that she heard the gunshot come from the hole in the floor a little further from their feet.^[12] This hole, measuring at least twelve by seven inches,^[13] was estimated by Welda to be almost two arms' length from where her husband was seated on the bed.^[14] The height of the floor of the house from the ground was estimated to be around one meter and six inches, or forty-two inches,^[15] while the height of appellant Warlito Dicon, the alleged bearer of the firearm, was estimated by his counsel to be around five feet and four inches, or sixty-four inches.^[16]

These circumstances tend to affirm the trial court's finding that appellants were the victim's assailants. The alleged shooter, Warlito Dicon, could easily squat or crouch under the floor of the house in order to clear the twenty-two inch difference between his height and the floor's elevation from the ground. At that position, he would have had to aim his firearm through the hole in the floor at a slanting position, at the victim who was likewise in an oblique position at the side of the bed as he was getting inside the mosquito net at the time. This would explain the level trajectory of the pellets found on the victim's body.

Furthermore, the hole in the floor through which the victim was shot was estimated by Welda Bacalangco to be almost two arms' length from where the victim was seated. Considering that the victim was bent over at the time, the distance between the location of the victim's wounds and the hole in the floor would closely approximate the estimate of the examining physician that the muzzle of the gun was around eighteen to twenty-four inches away from the victim's body.^[17] This estimate of the examining physician was based on the presence of powder burns around the entrance of the wounds on the left arm of the victim. Hence, the presence of powder burns on the victim would not negate the trial court's finding that the victim was shot from outside the house, specifically from under the floor.

In addition, the fact that the first blotter report made by the victim's wife refers to the assailants as "unidentified persons" does not detract from the veracity of her positive identification of appellants as the perpetrators of the crime in a later report, and in the course of trial.^[18] In the first place, we have held that entries in the police blotter should not be given undue significance or probative value, as they do not constitute conclusive proof.^[19] Secondly, Welda Bacalangco testified that she initially hesitated to identify her husband's assailants during the police investigation due to her fear that her sons might carry out reprisals against appellants.^[20] She did tell the police, however, that she would come back to file a case because she knew the identity of the perpetrators.^[21] When her sons arrived from sea one week after the killing, Welda gathered all her children and relatives, revealed to them the

names of her husband's killers, and admonished them not to resort to any drastic measures.^[22] Having done this, she then filed a complaint, this time identifying appellants as the perpetrators of the crime.

The evidence for the defense confirms Welda's claim that she chose not to immediately identify appellants for valid reasons. Defense witness SPO3 Paulino Durana testified that during the police investigation of the incident, Welda Bacalangco told him that she could not yet give the names of the assailants as she still had a "problem."^[23] When he asked her what this problem was, she answered that she could not identify the assailants for "security reasons."^[24] Instead, she said that she would come back to file a case because she knew the identity of the killers.^[25] These findings show that Welda's reluctance to identify the perpetrators in the police blotter was justified by her fear of her kin's wrath against appellants, which would only complicate matters for her family. The initial reluctance of witnesses such as Welda to volunteer information about a criminal case is of common knowledge and has been judicially declared as insufficient to affect credibility,^[26] especially when a valid reason exists for such hesitance.

Appellants also allege that the trial court based its decision on inference, and that it did not give weight to the evidence for the defense. They say that the court should have relied on the evidence presented by the parties and should not have made its own conclusions without basis. They find fault in the trial court's statement concerning the prosecution witnesses to the effect that "Considering their relationship, the Court had (sic) no reason to believe for them to (sic) concoct a story and pinning (sic) the guilt of a serious crime as murder to (sic) these two accused if they were in truth and in fact not the perpetrators thereto (sic)."^[27]

This statement of the trial court is in accord with our rulings on the matter. We have held that where there is no evidence to indicate that the witness against the accused has been actuated by any improper motive, and absent any compelling reason to conclude otherwise, the testimony given is ordinarily accorded full faith and credit.^[28] We find no *indicia* of improper motive on the part of Welda and Riza Bacalangco when they testified against appellants, in spite of their relationship to the deceased victim. It is settled that in the absence of a showing of improper motive on the part of witnesses, their testimonies are not affected by their relationship to the victim.^[29] The earnest desire to seek justice for a dead kin is not served should the witnesses abandon their conscience and prudence and blame one who is innocent of the crime.^[30] A witness' relationship to the victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse thereof somebody other than the real culprit.^[31]

Appellants urge that the trial court should not have readily believed the allegations of the prosecution witnesses as to why they killed Josue Bacalangco. These allegations, however, were never refuted nor disproved by the defense in the course of trial.

Welda and Riza Bacalangco both testified that the dispute between appellant Warlito Dicon and the victim arose when the latter exchanged his rooster for a dog, which turned out to be that of the former. The dog was later slaughtered and feasted on by