

SECOND DIVISION

[G.R. No. 104930, March 01, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX BELLO @ "BONG" AND JOHN DOE, ACCUSED-APPELLANTS.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] dated August 28, 1991, of the Regional Trial Court of Masbate, Masbate, Branch 45, finding accused-appellant guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the decision reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused Alex Bello alias 'Bong' guilty beyond reasonable doubt of the Crime of Murder qualified by (Alevosia) Treachery and is sentenced to suffer the penalty of RECLUSION PERPETUA in the absence of any mitigating or aggravating circumstance, and to pay the heirs of the victim the amount of Fifty Thousand (P50,000.00) Pesos, in line with the prevailing jurisprudence.

The bail bond posted by the accused for his temporary liberty is ordered cancelled.

SO ORDERED."^[2]

The Provincial Prosecutor of Masbate had charged the appellant in an Information, stating as follows:

"That on or about October 6, 1989 in the morning thereof, at the Corner of Danao St., and Zurbito St., Municipality of Masbate, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused confederating together and helping one another with intent to kill, evident premeditation, treachery and superiority of strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot with handguns one Pancho Capinig, hitting him on the different parts of the body which caused his death.

CONTRARY TO LAW."^[3]

On February 16, 1990, accused was arraigned. He pleaded not guilty.

During the trial, the prosecution offered the testimonies of the following witnesses: Antonio Diche, a by-stander eyewitness; Cpl. Virgilio Cabujat, the investigating officer; Dr. Artemio Capellan, the municipal health officer who conducted the autopsy; and Anilyn Capinig, the wife of the victim. The prosecution also introduced a signed sworn statement of Gerardo Jaca,^[4] an eyewitness turned hostile witness. For rebuttal evidence, the prosecution presented Judge Nilo Barsaga, the

investigating judge, and Cpl. Ramon "monet" Aganan Jr., a police officer.

Diche stated in his affidavit and reiterated in his testimony in open court, that on October 6, 1991, at around 5:00 A.M., he was waiting for his turn to buy bread at Glory's Bakery located at the corner of Danao and Zurbito streets. He then saw appellant approach then shoot the victim from behind. He was three meters away. People scampered outside the bakery and as the victim ran outside, appellant chased him. Another man joined appellant and both continued firing at Capinig who was already lying on his back. Diche readily identified Bello as one of the assailants. He reported the incident to the police. He later found that the victim was Pancho Capinig. During his testimony in open court, on August 5, 1990, Diche said he met the appellant who threatened to kill him if he gave his testimony.^[5]

Cpl. Cabujat testified he received report of the shooting from police officer Danilo Labitania and then he conducted the investigation. They were able to contact eyewitness Antonio Diche. With two other policemen, they arrested appellant in the compound of then Congressman Tito Espinosa. In open court, Cpl. Cabujat identified the signatures in the statements of both Diche and Jaca, who both affixed their signatures in his presence. He further testified that he has known Bello even before the killing of Capinig since Bello was involved in a prior stabbing case, later amicably settled. Cabujat confirmed that on the day of the shooting and the day following, there were plans to bring Bello to Legaspi City for paraffin testing but the trips were cancelled for lack of travel funds.^[6]

Dr. Capellan reported and testified that that victim suffered six gun shot wounds, five of them in major organs of the body and fatal. Only one was inflicted from the back; the others were inflicted frontally at close range. He also said he extracted a bronze splinter from the corpse, which appeared to be a part of a bullet slug, and gave it to Cpl. Cabujat.^[7]

Anilyn Capinig testified that after being informed of her husband's death she ran to the scene and found her husband already lifeless. She said her husband earned five thousand (P5,000.00) a year and she spent ten thousand (P10,000.00) pesos for funeral expenses. She added information that the death of her husband was politically motivated since her husband was a witness to the ambush of Atty. Joly Fernandez who was a political rival of Congressman Espinosa, the alleged employer of appellant.^[8]

Appellant Bello testified in his own behalf. Narciso Bravo, Jr., son-in-law of Congressman Espinosa, and Gerardo Jaca, the eyewitness turned hostile witness, also offered their testimonies to corroborate appellant's story.

Appellant's defense consisted of denial and alibi. He claims that at the time of Capinig was killed, he was inside the house of the congressman and could not have gone out since the doors were kept locked by the owners up to early morning. He woke up at about six A.M. and later as he did his chores some policemen arrived and invited him to the police station. In a line up, he was pointed to by a man he later learned was Jaca. Before Jaca pointed to him he observed a policeman named Monet Aganan approach Jaca. He also confirmed that he was brought twice to the pier to go to Legaspi City, for paraffin testing, but the trips did not push through.

During cross-examination he insisted he did not know where Zurbito St. is. This, despite having lived in the area for twenty-nine years and despite having passed the street numerous times going to work in the pier, prior to his employment as houseboy. He also denied he was a bodyguard of the congressman.^[9]

Narciso Bravo Jr., son-in-law of the congressman, corroborated the story of appellant that it was not possible for appellant to shoot Capinig inasmuch as appellant was inside the locked house whose door keys he personally kept. He testified appellant passed the night inside the house on the evening of October 5 up to six A.M. of October 6, 1989.^[10]

Gerardo Jaca corroborated the entire story of eyewitness Diche in the affidavit he signed in the presence of Cpl. Cabujat dated October 10, 1989, before Investigating Judge Nilo Barsaga. He stated he did not personally know the appellant and found out his name only in the police station where he gave his statement and where he identified the accused among five others presented to him.^[11] Later on, in open court, Jaca retracted the statement in his affidavit, and testified for the defense, that he had not actually identified appellant Bello as Capinig's assailant. Jaca said Cpl. Monet Aganan had instructed and intimidated him into identifying Bello in the line up.^[12] He explained that his conscience started bothering him so he decided to retract his testimony that it was appellant whom he saw shoot Capinig.^[13] During cross-examination, Jaca admitted that months after the incident, on January 18, 1991, appellant asked him to testify in this case.^[14] He also admitted he was a mechanic in the cinema owned by a brother of Congressman Tito Espinosa.^[15]

To rebut Jaca's testimony that he did not state in his affidavit that he identified appellant Bello as the assailant, the prosecution called to the witness stand, Judge Barsaga who categorically said Jaca had named Bello as the assailant when Jaca was asked the identity of the assailant^[16] during the preliminary investigation conducted by the Judge.

Cpl. Aganan Jr. also testified during rebuttal. He denied being in the station when Jaca pointed to appellant Bello in the line up. He swore he was at home at that time.^[17]

After weighing the evidence for the prosecution as well as the defense, the trial court found Bello guilty beyond reasonable doubt of the crime of murder and sentenced him to *reclusion perpetua*.

Appellant now raises the following errors:

- (1) THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND DISREGARDING THE EVIDENCE OF THE DEFENSE;
- (2) THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.