

THIRD DIVISION

[G.R. No. 132069, May 31, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE T. OBOSA, ACCUSED-APPELLANT.

DECISION

GONZAGA-REYES, J.:

On December 4, 1987 two Informations for murder were filed before the Regional Trial Court of Makati regarding the shooting incident wherein then Secretary of Local Government Jaime N. Ferrer and his chauffeur, Jesus D. Calderon, sustained multiple gunshot wounds. The Informations state as follows:

CRIMINAL CASE NO. 011

"The undersigned Senior State Prosecutor of the Department of Justice hereby accuses NIEVES CONSTANCIO, JR. Y BACUNGAY, RUEL VILLAHERMOSA Y FERNANDEZ alias "Dong", JOSE OBOSA Y TUTANA, several JOHN DOES as principals and VICTORIANO TOTAAN, as accessory to the crime of "MURDER", committed as follows:

That on or about the 2nd day of August, 1987, in the Municipality of Paranaque, Metro Manila, 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 with the attendance of the following qualifying/aggravating circumstances, to wit: treachery, evident premeditation, abuse of superior strength, nighttime purposely sought, and by a band did then and there wilfully, unlawfully and feloniously shoot by means of high powered firearms JAIME N. FERRER, then Secretary of Local Government, hitting him in different vital parts of his body, thereby causing his instantaneous death and thereafter accused Victoriano Totaan taking advantage of his public function as Superintendent of the Bureau of Prison, conceals accused Jose Obosa as one of the principals of the crime of Murder, to the damage and prejudice of the victim's heirs in such amount as may be awarded to them under the provisions of the Civil Code of the Philippines.

CONTRARY TO LAW."^[1]

CRIMINAL CASE NO. 012

"The undersigned Senior State Prosecutor of the Department of Justice hereby accuses NIEVES CONSTANCIO, JR. Y BACUNGAY, RUEL

VILLAHERMOSA Y FERNANDEZ alias"Dong", JOSE OBOSA Y TUTANA, several JOHN DOES as principals and VICTORIANO TOTAAN, as accessory of the crime of "MURDER", committed as follows:

That on or about the 2nd day of August ,1987, in the Municipality of Paranaque, Metro Manila, 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 with the attendance of the following qualifying/aggravating circumstances, to wit: treachery, evident premeditation, abuse of superior strength, nighttime purposely sought, and by a band, did then and there wilfully, unlawfully and feloniously shoot by means of high powered firearms JESUS CALDERON, hitting him in different vital parts of his body, thereby causing his instantaneous death and thereafter accused Victoriano Totaan taking advantage of his public function as Superintendent of the Bureau of Prison, conceals accused Jose Obosa as one of the principals of the crime of Murder, to the damage and prejudice of the victim's heirs in such amount as may be awarded to them under the provisions of the Civil Code of the Philippines.

CONTRARY TO LAW."^[2]

The Autopsy Report revealed that Secretary Ferrer sustained eight gunshot wounds and the cause of death is five gunshot wounds on the head and neck^[3] while his driver Jesus Calderon sustained five gunshot wounds.^[4] The Ballistics Report^[5] based on the specimen submitted, i.e., one (1) deformed copper jacket from the body of Secretary Ferrer and three (3) jacketed bullets from the body of Jesus Calderon showed that the deformed copper jacket recovered from the body of Secretary Ferrer was fired from a .38 cal. pistol. Two (2) of the bullets recovered from the body of Jesus Calderon were fired from a .45 cal. pistol while the third bullet was fired from the same .38 cal. pistol that fired the bullet recovered from the body of Secretary Ferrer.

From the evidence presented by both parties the trial court made the following findings of fact:

"1. Between 5:00 p.m. and 6:00 p.m. on August 2, 1987 while Sonia Alata, a police aid, was on board a mobile patrol car with Pats. Ferrer, Saura and Reyes to respond to a call for police assistance at Dongalo Paranaque, Metro Manila she saw accused Jose Obosa holding a gun in a brown envelope and standing with another person in front of Sun Gin (Sunbeam) Restaurant located at the corner of Quirinio Avenue and Victor Medina St., Dongalo, Paranaque, Metro Manila. When they returned to the Headquarters at past 6:30 p.m., she again spotted Jose Obosa standing beside the Minute Burger also located at Victor Medina St. near Quirino Avenue. Upon arrival at the Headquarters, they heard successive shots.

2. Victor Gomez who was playing basketball at the plaza near the church

heard successive shots coming from the direction of Victor Medina St. at about 6:30 p.m. on that same day. When he peeped through the holes of the fence of the church compound shortly after he heard the shots, he saw accused Jose Obosa coming out of Victor Medina St. and holding a caliber .45 gun which he tucked on his waist. Jose Obosa proceeded towards Dongalo. Victor Gomez went to the place at Victor Medina St. where the car of Secretary Ferrer was and he saw bullet holes in it. He saw Secretary Ferrer bloody all over his body and his driver was already dead.

3. George Montabon who came from the St. Andrew Church and was in front of the Union Bank along Quirino Avenue near Victor Medina St., at about 6:30 on the same day, when he heard successive shots. He saw three (3) men firing at a car situated near the canteen at the corner of Victor Medina St. and Quirino Avenue. Two of the gunmen ran towards Quirino Avenue and fled on a jeep. The other man who was holding a caliber .45 gun whom he identified in Court as accused Jose Obosa ran towards Quirino Avenue and seemed to be looking for his companions. Jose Obosa passed in front of him about five meters away and he got scared.

4. Sometime in August or September, 1987, accused Jose Obosa confided to Ricardo Palquera, a detainee at the Maximum Security Camp at the New Bilibid Prison in Muntinlupa, that he killed Sec. Ferrer with the help of two civilian companions. Palquera revealed this matter in writing to Sec. Iletto.

Upon scrutiny and evaluation, this Court finds to be credible and convincing as true the testimonies of the aforementioned witnesses. Sonia Alata, Victor Gomez and George Montabon who positively and unhesitatingly identified Jose Obosa as the same person they saw minutes before and shortly after the shooting of Sec. Ferrer and Jesus Calderon. The actuations of Obosa as described by them are sufficient circumstances as to lead to the conclusion that he was one of those who shot the two victims. Aside from that circumstantial evidence, more weight is added to the prosecution's proof by the voluntary confession of Jose Obosa to Ricardo Palquera that he killed Secretary Ferrer with the help of two other persons, which confession is an evidence of guilt of a high quality (People vs. Zea, 138 SCRA 77). Testimony against one's own interest is of immense value as evidence. (People vs. Caparas, 102 SCRA 791)."^[6]

On May 25, 1990 the trial court rendered judgment finding herein appellant Obosa and his co-accused Nieves Constancio guilty of two counts of homicide while accused Victoriano Totaan was acquitted. The judgment reads:

"WHEREFORE, finding accused Jose Obosa guilty beyond reasonable doubt of the commission of the offense of homicide in two counts, as defined and penalized in Art. 249 of the Revised Penal Code, there being no aggravating or mitigating circumstance that attended the commission of the offense, he is hereby sentenced in each case to suffer an indeterminate penalty of imprisonment from eight (8) years and one (1)

day of prison may or medium as minimum to seventeen (17) years and four (4) months of reclusion temporal medium as maximum, to pay the heirs of Secretary Jaime Ferrer the sum of P30,000.00 for the loss of his life and another sum of P30,000 for moral damages and also to the heirs of Jesus Calderon the sum of P30,000 for the loss of his life and another P30,000.00 for moral damages, and to pay the costs of suit.

The preventive imprisonment accused Jose Obosa may have undertaken shall be deducted from the term of imprisonment imposed herein to its full extent if he signed an agreement to abide by the same rules upon convicted prisoners while in confinement or only four-fifths (4/5) thereof if he has not signed said agreement, pursuant to Art. 29 of the Revised Penal Code, as amended by Republic Act No. 6127.

Considering that accused Nieves Constancio was at the time of the commission of the offense only seventeen years of age and classified as a youthful offender, pursuant to Art. 192 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, the imposition and promulgation of the sentence on him is hereby suspended and he is committed to the custody and care of the Rehabilitation Center of the Department of Social Services and Development at the Boy's Town Vicente Madrigal, Tanay, Rizal, until he reaches the age of twenty-one (21) or a shorter period depending on the report and recommendation of the Department of Social Services and Development.

The Officer concerned at the said Rehabilitation Center is ordered to submit to this Court every four (4) months a written report on the conduct of the accused as well as his intellectual, physical, moral, social and emotional progress.

Depending on the report and recommendation of the Department of Social Services and Development, the accused shall, when the proper time comes, be dealt with under Art. 195 or Art. 196 of P.D. 603.

For lack of proof beyond reasonable doubt as against accused Victoriano Totaan, he is hereby acquitted of the offense charged against him in the information. The bail bond posted by him is hereby cancelled.

SO ORDERED."^[7]

Jose Obosa appealed. The Court of Appeals upon review of the case found that the crime committed was qualified by treachery and that Obosa should be held guilty of two counts of murder. In view of the appropriate penalty imposed which is reclusion perpetua, the Court of Appeals refrained from entering judgment and referred the case to this Court.

The appellant's main line of defense rests on the alleged disparate testimonies of the prosecution witnesses and their inherent implausibility. Victor Gomez testified that after he heard the shots he saw a man holding a gun, presumably a .45 cal. because it looks like the gun used by Fernando Poe, Jr., in the movies, and tucked the gun in his waist, and that the lone gunman came out of Victor Medina street, where the shooting incident took place, and went towards Dongalo. On the other

hand witness George Montabon stated in court that he saw three men shoot at a car along Victor Medina street. Sonia Alata, for her part, stated that she saw two men standing in front of the Sunbeam restaurant along La Huerta st. immediately before the shooting, one of whom she later identified as the appellant. The defense stands firm that if there were indeed more than one gunman it is beyond belief why these witnesses remembered only the appellant Obosa and failed to identify the others. Appellant posits that witnesses Gomez and Montabon being minors at the time were unduly pressured by the police to identify appellant Obosa while witness Alata, a police aid, who testified about three months after the incident that she saw Obosa at the scene of the crime did so only to aid the much publicized investigation. The defense claims that the trial and appellate courts erred in upholding the theory of the prosecution that the appellant, a prison inmate serving time and who based on prison records was inside the prison premises at the time of the incident, would be allowed to roam outside the prison premises to participate in the killing of a cabinet official. The testimony of Ricardo Palquerra, cell mate of appellant Obosa, that the latter confided to him during several drinking sprees inside their prison cell that Obosa shot Secretary Ferrer and was paid millions of pesos for the "hit" should not have been given credence by the trial and appellate courts. Possession of alcoholic drinks is prohibited in prison and Obosa could not have confided to Palquerra about the killing since Palquerra himself admitted that he did not know Obosa very well. If indeed such statements were made the court should have dismissed them as plain braggadocio during drinking sprees. The appellant seeks an acquittal on the ground that the appellant was tagged as the fall guy to satisfy the public clamor for the arrest of the killer of Secretary Ferrer.

The Solicitor-General filed appellee's brief praying for the affirmance of the findings of the appellate court. The argued contradictions in the testimonies of the prosecution witnesses were explained by the trial court when it stated that the three witnesses observed the incident at different stages of execution or from different vantage points. The minor differences in their testimonies signify their candor and regardless of such minor differences the witnesses attest to a common fact that the appellant Obosa was at the scene of the crime. Appellee argues that witness Alata's delay in coming forth to testify cannot be taken as a sign of fabrication; such delay may have come from a person's natural reticence to get involved in a criminal proceeding. The testimony of Ricardo Palquerra, a convict serving time, cannot be disregarded by the court on that ground alone as a convicted felon is not disqualified to testify under the Rules on evidence. It is alleged that the appellant's attack on the credibility of the prosecution witnesses fails to overcome the long-standing rule that the findings of the trial court with respect to the credibility of witnesses are respected on appeal. The Solicitor-General stresses that the contention that accused-appellant could not have been at the scene of the crime because he was in jail does not establish the physical impossibility of his presence at the scene of the crime. The appellate court aptly observed that the entry in the logbook of the South gate of the Bilibid Prisons that the appellant returned to prison at 2:15 p.m. of August 2, 1987 is doubtful as the entry could have been easily intercalated and in view of the privileges which Obosa himself admitted he enjoyed such as, spending a few days outside the prison, further convinced the court that there is no physical impossibility that the appellant was at the scene of the crime.

The accused-appellant filed Reply brief highlighting the inconsistencies in the testimonies of Gomez and Montabon, as well as Alata's delay in informing the police that she saw the appellant at the scene of the crime, seriously weakened their