

THIRD DIVISION

[G.R. No. 127573, May 12, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE SILVESTRE Y CRUZ, ACCUSED-APPELLANT.

D E C I S I O N

GONZAGA-REYES, J.:

This is an appeal from the decision^[1] of the Regional Trial Court (RTC) of Malabon, Branch 72, dated August 7, 1996, finding the accused-appellant Jose Silvestre y Cruz alias Jojo Bungo guilty beyond reasonable doubt of the crime of murder in Criminal Case No. 16579-MN.

The accused, Jose Silvestre y Cruz alias Jojo Bungo, was charged with the crime of murder in an information^[2] that reads:

"That on or about the 18th day of January, 1996, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and with treachery and evident premeditation while armed with a gun, did then and there, willfully, unlawfully and feloniously shoot one LUISITO PALENCIA y TOBIAS hitting him four (4) times on the different parts of his body, as a consequence said LUISITO PALENCIA y TOBIAS, sustained injuries which directly caused his death."

On April 24, 1996, accused-appellant was arraigned whereupon he entered a plea of not guilty to the crime charged.^[3]

The prosecution presented three witnesses: the victim's widow, Marina Palencia; an eyewitness to the shooting, Felicitas Torres; and the arresting officer, SPO2 Benjamin Querubin.

Marina Palencia testified that she was the widow of the victim, Luisito Palencia; that they have three children: Harry, 18; Regine, 16; and Carmille, 11; and that when he was alive, he was employed as an installer and repairman of P.L.D.T. earning P14,877.00 a month. As a consequence of the death of her husband, she had incurred actual expenses in the amount of P66,500.00.^[4]

Felicitas Torres testified that on 11:45 a.m. of January 18, 1996, she bought bread from the Concepcion Bakery in Malabon, Metro Manila. While waiting for a ride in front of the said bakery, she observed a man and a woman talking with each other. She then heard two shots fired. When she turned her head, she saw a man on the ground face down and beside him, a man holding a gun. She sought cover "for a short while", then saw the man with a gun fire two more times at the fallen man. She boarded a jeep after the last two shots were fired. While boarding, she heard

someone say "binaril na ni Jojo si Palencia".

On February 5, 1996, she went to the branch office of P.L.D.T. in Malabon to pay for the telephone bill of her employer. While there, she overheard that no one was willing to testify about the shooting. She informed one of the employees that she was a witness to the incident, and was brought to the manager who asked her to testify as one of the witnesses in the case. On the same day, she was accompanied by a certain Jun, an employee of the P.L.D.T., to the police station to give her statement.

At the police station, she identified the only person presented to her for purposes of identification as the assailant. She was later informed that this person was Jojo Bungo. In court, Torres also identified the accused Jojo Bungo, whose real name is Jose Silvestre, as the assailant.^[5]

The parties dispensed with the presentation of Dr. Alberto Bondoc by making admissions concerning the manner and nature of his testimony, to wit:

- "1. that he is duly qualified and competent as a physician and medico-legal officer who had conducted an autopsy examination;
2. that he conducted the actual autopsy on the cadaver of the victim in this case by the name of Luisito Palencia to be marked as Exhibit B;
3. that in the course of the autopsy examination the witness prepared a sketch of the human body showing the locations and number of gunshot wounds sustained by the victim marked as Exhibit C;
4. that in the course of its examination he extracted a slug embedded on the said victim which cannot be traced to any gun because there was no ballistic examination; and,
5. that the final report containing the findings and conclusions particularly with respect to the fact and cause of death was prepared, thereby dispensing with the actual presentation of Dr. Bondoc as a prosecution witness."^[6]

The prosecution's last witness was SPO2 Benjamin Querubin who testified that on February 5, 1996, Jojo Bungo was arrested outside his residence at Bagong Bantay, Quezon City after a six-hour stakeout. At the time of arrest, a .38 snub nose "paltik" revolver was recovered from Silvestre after he was frisked. He also identified Jojo Bungo in court.

On cross-examination, Querubin testified that there was a witness who gave her statement regarding the crime committed on January 18, 1996 but that she did not cooperate and even failed to subscribe to her statement.^[7]

The defense presented SPO2 Angelito Balacaña, the investigating officer, who testified^[8] that he was the officer who took the statement of Felicitas Torres. On cross-examination, he stated that there was no line-up made when Torres identified the accused because when Torres' statement was taken, she readily mentioned the name of the suspect. When he presented the suspect to Felicitas, the latter

identified him as the one who shot Luisito Palencia.

The defense next called SPO1 Crizaldo Castillo who did not appear despite his being subpoenaed. Castillo was supposed to testify on a statement made by a certain Bernadette Matias, a witness to the shooting, who was not presented at the trial. His testimony was dispensed with when the prosecution admitted the existence and the contents of her written statement after the Court persuaded both parties to stipulate on his testimony.^[9]

The defense rested its case and made its offer of evidence as follows:

"I will no longer present the accused. I am offering Exh. 1, 1-A and 1-A-1 a statement taken by SPO1 Castillo immediately after the incident took the statement of witness Bernadette Matias on 18 of January, 1996 at 1:00 o'clock in the afternoon and in that affidavit statement the witness stated that the suspect that she does know the name of the suspect and he is 5'5 between 120 to 130 ang bigat and kulot ang mabuhok, maiksi ang buhok, brushed up, likewise Exh. 1-A-1 the word `kayumanggi' on Question No. 7 answer of the witness is to prove the person whom the eyewitness saw who shot the victim was a `kayumanggi' likewise offering this affidavit as part of his testimony of the witness."^[10]

The prosecution objected to the purpose for which the exhibit was offered since the affidavit was not presented for identification; and the Court admitted it only as proof of its existence and contents.

On August 7, 1996, the Regional Trial Court rendered its decision finding the accused guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused Jose Silvestre y Cruz @ Jojo Bungo GUILTY beyond reasonable doubt of the crime of murder and he is hereby accordingly sentenced to the prison term of reclusion perpetua.

Accused Silvestre is also ordered to pay Mrs. Marina Palencia, the following amounts: (1) P66,500.00 for the actual expenses spent in connection with the death and burial of Luisito; (2) P50,000.00 for the loss of Luisito's life; (3) P100,000.00 by way of moral damages for the pain and anguish suffered by the victim's family due to the untimely death of Luisito and an additional amount equivalent to three (3) years salary computed at the rate of P14,877.00 a month corresponding to Luisito's monthly salary by way of lost income.

Costs against accused Silvestre.

SO ORDERED.

Malabon, Metro Manila, August 7, 1996."^[11]

Hence, this appeal where accused assigns the following errors:

I. THE GUILT OF THE ACCUSED WAS NOT ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT OR PROSECUTION EVIDENCE HAS NOT OVER-COME ACCUSED CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

II. THE COURT A QUO ERRED WHEN IT CONVICTED THE ACCUSED SOLELY BASED ON THE LONE TESTIMONY OF PROSECUTION'S PRINCIPAL WITNESS WHO IS NOT CREDIBLE AND POSITIVE.

III. THE COURT A QUO GRAVELY ERRED IN TREATING JUDICIAL ADMISSION OF THE PARTIES AS HEARSAY IN CHARACTER.

IV. THE COURT A QUO ERRED IN APPRECIATING EVIDENT PREMEDITATION AND TREACHERY FOR WANT OF EVIDENCE.

THE COURT A QUO ERRED IN SENTENCING ACCUSED OF A PRISON TERM OF RECLUSION PERPETUA.

VI. THE COURT A QUO ERRED IN ORDERING PAYMENT OF ACTUAL, MORAL DAMAGES, LOST OF INCOME ABSENCE OF PROOF IN SUPPORT THEREOF OR FORMALLY OFFERED IN EVIDENCE."^[12]

The accused-appellant argues that the lower court erred in finding the accused guilty beyond reasonable doubt on the basis of the lone testimony of Felicitas Torres. According to the accused-appellant, Torres testified that she did not actually witness the accused shooting the victim because she merely heard two shots fired and sought cover for a short while, and hence it was doubtful whether she saw the man with a gun shooting at the fallen man two more times. As it was a startling or frightful experience for a woman, it was not probable that she was brave enough to witness the shooting which was merely five arm's length away from her; and that the prosecution witness merely speculated on the identity of the perpetrator from what she heard i.e., "binaril na ni Jojo si Palencia."^[13]

Moreover, accused-appellant claims that there was an inconsistency between the sworn statement of Torres and her testimony in Court. In her sworn statement, she had stated that "xxx nakita ko ang isang lalaki na natumba at isa pang lalaki na nakatayo sa *harapan* noong natumba xxx"^[14] while in her direct testimony, she testified that: "xxx I saw a man slumped head face down xxx *besides* that man slumped on the ground a man with a gun".^[15] He also avers that the identification made by Torres was not positive and was a "suggested identification" since no police line-up was conducted when she identified him at the police station.^[16]

In addition, appellant argues that the lower court erred in treating the statement of Bernadette Matias as hearsay despite the fact that the prosecution admitted the existence and contents of her statement. He claims that he vigorously tried to secure subpoenas *ad testificandum* for the witnesses, Bernadette Matias and SPO1 Crizaldo Castillo but the trial court opted instead to have the parties stipulate on their testimonies. It is alleged that the trial court's insistence that the parties stipulate on Matias' declaration led him to believe that it was not necessary to present her to testify under oath as the contents thereof were already admitted.

Lastly, the accused-appellant contends that the lower court erred in appreciating the

qualifying circumstances of treachery and evident premeditation, and in the absence of these circumstances, the crime is not murder but simple homicide. He finally argues that the lower court erred in awarding actual and moral damages despite the absence of proof of the factual basis therefor, and despite the absence of a formal offer of evidence.

The appellee, on the other hand, posits that the guilt of the accused has been proven beyond reasonable doubt.

First, Felicitas Torres positively identified the accused as the man who shot Luisito Palencia as she had witnessed the shooting in broad daylight, while she was merely five (5) arm's length away from the accused.

Second, Felicitas' testimony is consistent with the findings of the autopsy report which shows that the victim sustained four (4) gunshot wounds.

Third, the defense did not show any improper motive on the part of Torres to falsely impute the murder against the appellant. It was not shown that she knew the victim's family nor the accused prior to the incident.

Fourth, as regards the alleged contradictory statements of Felicitas, the prosecution argues that from the viewpoint of a "stunned" witness, the appellant could well be standing beside or in front of the victim. Assuming her statements were in fact inconsistent, such inconsistency pertains to a trivial matter as there was no inconsistency with respect to the fact of the shooting.

The appellee also argues that there is no law requiring a police line-up as a requisite for proper identification. Moreover, accused was not entitled to have counsel present at the time he was identified since he was not subjected to any investigation or interrogation.^[17]

As regards the affidavit of Bernadette Matias, the same is hearsay as she was not presented as witness. Finally, the appellee contends that the presence of treachery as shown by the sudden and unexpected assault upon the defenseless victim qualified the crime to murder.

The first issue to be resolved is whether Felicitas Torres, the lone witness to the killing was a credible witness. We have carefully gone over the records and find nothing in her account of the events that shows that her testimony suffers from incredibility. Felicitas Torres testified as follows:

"DIRECT EXAMINATION BY FISCAL ACUÑA:

Q. Now, at 11:45 in the morning of January 18, 1996, do you remember where you were?

A. I was then near Concepcion Bakery.

Q. Will you please tell us in what municipality is this Concepcion Bakery located?

A. Malabon, Metro Manila.

Q. Now, what were you doing at that time?