

FIRST DIVISION

[G.R. No. 131874, August 22, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUDY MATORE Y GUEVARRA, ACCUSED-APPELLANT.

D E C I S I O N

YNARES-SANTIAGO, J.:

Accused-appellant Judy Matore y Guevarra was charged with murder in an information^[1] which reads:

That on or about December 13, 1994, at Sitio Ambulong, Limon Sur, Municipality of Looc, Province of Romblon, and within the jurisdiction of this Honorable Court, the accused above-named, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot one RICHARD SAMINADO with a firearm, with which said accused was then conveniently provided, thereby inflicting mortal wounds upon said Richard Saminado which caused his immediate death.

At 5:00 in the afternoon of December 13, 1994, prosecution witness Jimmy Gregorio was on his way to work as security guard at VILCO Construction in Sitio Ambulong, Looc, Romblon, when his tricycle had a flat tire in front of accused-appellant's house. While he was inflating his tire, he saw accused-appellant hiding behind a coconut tree holding a long firearm. In the meantime, the victim, Richard Saminado, was standing in front of the house of his brother Johnny Saminado, which was across accused-appellant's house. Then, accused-appellant shouted, "*Richard, halika na, magpatayan tayo.*" Fearful of being involved and realizing the danger in the situation, Jimmy pushed his tricycle despite the flat tire. When he reached a certain distance, he heard two successive shots coming from accused-appellant's direction. Looking back, Jimmy saw accused-appellant letting loose a third shot towards the direction of Johnny's house. After inflating the tricycle's tire, he proceeded to report for duty at the VILCO Construction.

While Johnny was inside his house, he heard somebody shout, "*Richard, lumabas ka diyan, magpatayan tayo.*" He also heard three successive gunshots. Johnny went out to investigate, and saw the bloodied Richard at the door, who told him that accused-appellant shot him. Johnny informed the barangay captain that Richard was shot. The barangay captain, in turn, informed the police.

Policemen took pictures of Richard's cadaver before it was brought to Dr. Leticia Formilleza's residence in Looc, Romblon for autopsy in the evening of December 13, 1994. Dr. Formilleza found two gunshot wounds on Richard's body. She concluded that the cause of Richard's death was shock due to massive internal bleeding due to penetrating gunshot wound with injuries to the major blood vessel of the heart and lungs.^[2]

Isabelita Saminado testified that she incurred expenses for the wake and interment of Richard amounting to P40,250.00.

Accused-appellant denies the killing and interposes the defense of alibi. He maintains that he only left his work as caretaker of the Municipal Cemetery at around 5:00 in the afternoon and dropped by the Municipal Hall before he went home. At 6:30 in the evening of that day, he was informed that Richard was at his mother's house brandishing a gun and creating trouble. He asked his daughter to report the matter to the police while he rested and ate dinner. He, then, proceeded to his mother's house at about 8:00 in the evening. When he learned that the policemen were at Johnny's house, he went there together with Elenita where he found Richard already dead. He was never investigated by the police. The following day, Johnny asked for his help in securing a lot inside the Municipal Cemetery for Richard's burial. He ascribed ill motives to Johnny and Jimmy. According to him, Johnny believes that accused-appellant was the bodyguard of one Harrieto Pastor who was an enemy of their father due to a land dispute. He also insists that Jimmy testified falsely against him because Isabelita gave him a tricycle and P3,000.00 monthly allowance.

Elenita Matore testified that while gathering firewood, she saw Richard Saminado together with Johnny and Isabelita in a tricycle parked in front of Johnny's house. Richard and Johnny were arguing with each other. Johnny told Richard to hide his gun. She then saw Richard and Isabelita grappling for the possession of the gun. After a while, she heard accused-appellant's mother shout, "*Tabang, tabang.*"^[3] She also saw Richard pointing a gun in the direction of the house of accused-appellant's father shouting, "*Crisostomo, lumabas ka diyan, papatayin ko kayong lahat.*" When the policemen arrived at 8:30 in the evening, she asked them to arrest Richard. The policemen informed her that they could not do so as Richard was already dead.

Another defense witness, Eugenio Guevarra, testified that he saw prosecution witness Jimmy at the latter's place of work at 4:45 in the afternoon of December 13, 1994 until 6:00 o'clock in the morning of December 14, 1994.

The trial court gave credence to the prosecution's evidence and rendered a decision,^[4] the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, this Court finds accused Judy Matore y Guevarra GUILTY beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act 7659 and hereby sentences him to suffer the penalty of Reclusion Perpetua.

Accused is further ordered to indemnify the heirs of the victim Richard Saminado the sum of TWENTY ONE THOUSAND TWO HUNDRED FIFTY (P21,250.00) PESOS as actual damages and ONE HUNDRED THOUSAND (P100,000.00) PESOS as compensatory and moral damages.

Hence, the instant appeal. Accused-appellant asserts that Jimmy Gregorio could not have been present when accused-appellant shot Richard. Accused-appellant points out that in his direct examination Jimmy testified that he looked back after hearing three successive shots.^[5] When the trial court asked clarificatory questions after his cross-examination, Jimmy was confronted with his statement in his affidavit wherein he stated, thus:

T: Ano ang iyong nasaksihan na may kaugnayan sa pagkabaril at pagkamatay ni RICHARD SAMINADO?

S: Ako po noong petsa December 13, 1994 humigit kumulang mag-aala-sais ng hapon samantalang minamaneho ko and aking tricycle ay naramdaman ko na ako ay na-plat-an ng goma sa tapat ng bahay ng tatay ni JUDY MATORE sa Sitio Ambulong, Limon-Sur, Looc, Romblon. Samantalang ako ay nagbubomba ng aking plat na goma ay napansin ko itong si JUDY MATORE na nagkukubli sa puno ng niyog na may hawak na baril na mahaba na di magazine.

T: Ano ang ginawa mo noong makita mo itong si Judy Matore na nagkukubli sa puno ng niyog na may hawak na baril?

S: Ang ginawa ko po ay itinulak ko iyong tricycle na papalayo para hindi ako madamay kung sino man and kanyang inaabangan.

T: Ano pa ang sumunod na pangyayari kung mayroon man?

S: Dahil tapos na po ang aking pagbobomba ng goma ako po ay umalis na doon sa lugar na iyon at saka baka ako ay madamay pa.

T: Nalaman mo ba kung mayroon taong nabaril doon sa lugar na pinagkakitaan mo kay JUDY MATORE noong makarinig ka ng tatlong sunod-sunod na putok?

S: Naibalita po lamang sa akin nitong si JOHNNY SAMINADO noong gabi ring iyon samantalang ako ay naka-duty sa Vilco Construction doon din sa Brgy. Limon-Sur, Looc, Romblon. Naibalita po sa akin na ang kanyang kapatid na si RICHARD ay nabaril doon sa tapat ng bahay ng tatay ni JUDY MATORE noong mga bandang humigit kumulang sa alas-sais ng hapon ng December 13, 1994.^[6] (*Italics supplied*)

The trial court's interpretation of Jimmy's statement in his affidavit, on the one hand, and his testimony during direct examination, on the other hand, seems contradictory. Nonetheless, the contradiction is more apparent than real. In fact, this point was clarified during the trial court's questioning during rebuttal, thus:

Court:

Q: Mr. Gregorio you stated during your direct examination on February 25, 1997 that they knew, meaning the heirs of the deceased, that you were a witness to the alleged shooting incident by the accused because Johnny Saminado saw you there, is that correct?

A: Yes, your honor.

Q: Did you see Richard Saminado prior to the shooting incident?

A: Yes, your honor.

Q: And you also saw the accused Judy Matore?

A: When Judy Matore was shouting, your honor.

Q: Before he shouted, you did not see him?

A: I did not notice him when he was not yet shouting.

Q: So you only noticed him when you heard "Richard, lumabas ka diyan, magpatayan tayo"?

A: Yes, your honor.

Q: And that was the time you moved your tricycle to another area?

A: He already shot Richard Saminado when I moved my tricycle.

Court:

Q: But you did not leave the area?

A: After the shooting your honor I saw the one who shot returned and that was the time I moved from the place.

Q: So you saw that it was Richard Saminado who was shot by Judy Matore?

A: Yes, your honor.

Q: And yet when you testified also on February 25, 1997, when you were asked the question by this Court "How did you come to know the death of Richard Saminado?" your answer was "When they brought the cadaver to the doctor for autopsy they passed my post and I asked them what was that and they told me it was Richard Saminado shot by Judy Matore"?

A: No, your honor, after they have gone from the doctor that was the time they passed my post and asked them what was that and that was the time I know Richard Saminado was already dead.

Q: So when you saw Judy Matore shooting Richard Saminado you never knew that Richard Saminado was hit, is that your contention now?

A: Yes, your honor.^[7]

After having clarified Jimmy's statement in his affidavit, the trial court became even more convinced after finding that:

x x x [t]here is neither principle nor logic on why he would testify falsely against the accused Judy Matore. It took him more than a month before he decided to come forward with what he knew. And understandably so as there is always the inherent fear of reprisal. This does not diminish his credibility as a witness. Delay of a witness in revealing to the authorities what he knows about a crime does not render his testimony false, for the delay may be explained by the natural reticence of most people and their abhorrence to get involved in a criminal case (citation omitted). Once the decision was made, however, he severed all ties he may have had with his community as he sought protection under the Witness Protection Program. He abandoned his friends, relatives and even his twin jobs as tricycle driver and security guard to testify against Judy Matore. This Court is not convinced that the witness made such a great sacrifice for the price of a tricycle and P3,000.00 as claimed by the defense just to testify falsely against the accused. As he later opined, he was already the