

THIRD DIVISION

[G.R. No. 121983, August 11, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VITERBO MONTERO, JR., JUANILLO BAXINELA, AND SAMUEL
BIARE, ACCUSED, JUANILLO BAXINELLA, APPELLANT.**

D E C I S I O N

MELO, J.:

This concerns the appeal interposed by accused-appellant Juanillo Baxinela from the decision of the Regional Trial Court of the sixth Judicial Region (Branch 39, Iloilo city), finding him and his co-accused Viterbo Montero, Jr., who was tried in absentia, guilty beyond reasonable doubt of the special complex crime of robbery with homicide, sentencing each of them to suffer the penalty of reclusion perpetua, and ordering them to pay jointly and severally the legal heirs of the victim, Ferry Polluna, the amount of P50,000.00 for her wrongful death and another amount of P30,000.00 as moral damages and the costs of suit.

In the Information filed by the provincial Fiscal of Iloilo, Viterbo Montero, Jr., Juanillo Baxinela, and Samuel Biare were charged with the crime of Robbery with Homicide, committed as follows:

That on or about September 21, 1986, in the municipality of San Rafael, Province of Iloilo, Philippines, and within the jurisdiction of this Court the above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose, armed with firearms, and taking advantage of their superior strength and number, and with treachery and evident premeditation and with deliberate intent and decided purpose to kill, did then and there willfully, unlawfully and feloniously attack, assault, shoot , hit and wound one Mrs. Ferry Polluna with the firearms with which they were provided, thereby inflicting fatal gunshot wound on the vital part of her body which caused her death immediately thereafter; that on the same occasion, the above-named accused in pursuance of their conspiracy, with intent to gain, take , steal and carry away the wallet of Mrs. Ferry Polluna containing the amount of TWELVE THOUSAND FIVE HUNDRED (P12,500.00) PESOS, Philippine currency.

CONTRARY TO LAW.

(Decision, Rollo, pp. 20-21)

Upon arraignment, all the accused, assisted by their counsel, pleaded not guilty.

After the trial had started, Samuel Biare died, while Viterbo Montero, Jr., after having been arraigned and identified by the first witness for the prosecution,

jumped bail. His bail bond was ordered confiscated by the court a quo. Trial then proceeded against Juanillo Baxinela and also against Viterbo Montero, Jr., in absentia.

The prosecution presented three witnesses, namely Dr. Jeanne P. Declarador, Nory Polluna, and Floristo Causing.

The evidence of the prosecution tends to establish that:

At about 10 o'clock on the morning of September 21, 1986, the deceased Ferry Polluna, was walking on her way home from the market at Sitio Tacayay, Barangay san Florentino, San Rafael, Iloilo. Nory Polluna, her 12-year old daughter, was at their house watching the road awaiting the arrival of her mother. Upon seeing her mother from a distance of fifty meters, Nory went out to meet her mother.

Nory then saw accused Viterbo Montero, Jr., shoot her mother with a short firearm hitting her once at the right side of the forehead. Ferry Polluna fell on the ground. Thereupon, accused-appellant Juanillo Baxinela ran towards the fallen Ferry Polluna and took her wallet containing cash. Nory also saw Samuel Biare, who acted as look-out, on the side of the road near the kapok tree, emerge from his hiding place after Baxinela took the wallet of Ferry Polluna. Then Biare, Viterbo, and accused-appellant Baxinela ran away.

Nory Polluna shouted for help and her father, Numeriano Polluna, who was in the rice field sixty meters away responded. She told him that Viterbo Montero, Jr. shot her mother. Nory, her father and their neighbors placed Ferry Polluna in a hammock and brought her to the town plaza of San Rafael. Nory, at this time, noticed her mother was already dead. After waiting in vain for a doctor to arrive, they brought the body of Ferry Polluna to the funeral parlor in the nearby town of Barotac Viejo. Nory and her father went home at around 6 o'clock in the evening.

Nory knew that the wallet of her mother contained money because earlier in the morning, she saw her father give money to her mother intended to pay for the hospitalization expenses of Nory's grandfather who was in one of the hospitals in Iloilo City.

The entire incident was also witnessed by Floresto Causing, a vendor of dried and fermented fish. Causing was walking about 25 meters behind Ferry Polluna when she was shot by Viterbo Montero, Jr. He saw Nory Polluna when she was approaching the fallen Ferry Polluna before he proceeded to by-pass the crime scene by taking another route. He feared that he may be set upon by the robbers.

The Rural Health Physician of San Rafael, Iloilo, Dr. Jeanne Declarador, conducted an autopsy on the cadaver of Ferry Polluna on September 22, 1986. Her findings, which she confirmed on the witness stand, are embodied in her Medico-Legal Report, as follows:

1. Post Mortem Examination Findings:
 - A. Rigor Mortis beginning with blood soaked clothings.
 - B. Gunshot wound on the right fronto-parietal area of the head causing

rounded fracture of the skull and massive brain injury and hemorrhage.

C. Several bone fragme(n)ts were recovered inside the cranial vault. No wound exit noted.

Cause of Death: Cardio-Respiratory Arrest Secondary to massive cerebral hemorrhage and injury secondary to gunshot wound.

Upon the other hand, accused-appellant Juanillo Baxinela's defense is alibi and denial. He presented Apolinario Pendilla, Ernesto Baylon, and his wife Nema Baxinela as witnesses to corroborate his alibi.

Their declarations are to the effect that from September 20, 1986 to the afternoon of September 21, 1986, accused-appellant was at the farm of Apolinario Pendilla at Sitio Tacayay, Barangay San Florentino, San Rafael, Iloilo which is about 600 to 700 meters away from the place where Ferry polluna was shot. Accused-appellant was then allegedly helping in harvesting and threshing the palay in said farm, and in carrying the sacks of palay to the road. He went home only at 10 P.M. of September 21, 1986, accompanied by two sons of Apolinario Pendilla. They learned of the shooting incident only at about 3 o'clock or 3:30 o'clock on the afternoon of September 21, 1986.

It is also said that the family of Numeriano Polluna envied the families of Biare and Baxinela families because of their farm.

The defense claimed that at about 10 o'clock on the morning of September 21, 1986, Nema Baxinela was picking coffee in their yard. She heard Numeriano Polluna and Samuel Biare arguing along the road. Then she saw them grappling for the possession of a short firearm. She saw Ferry Polluna ran towards the two in an attempt to separate them. The gun then discharged and Ferry Polluna fell to the ground. Nema shouted for help and later, the brothers of Ferry Polluna arrived. It is said that Nory Polluna, the daughter of the deceased, was not there at that time. And according to Barangay Captain ernesto Baylon, Nory Polluna was not at the crime scene because she was watching a basketball game at the poblacion.

After the incident, Samuel Biare ran away and was chased by Numeriano Polluna. Nema, however, did not tell the policemen about the incident when the latter arrived at the scene and she did not also tell her husband what she had witnessed.

On April 11, 1994, the trial court rendered judgment convicting accused-appellant Juanillo Baxinela and Viterbo Montero, Jr., the dispositive portion of which reads:

WHEREFORE, premises considered, the accused Juanillo Baxinela and Viterbo Montero, Jr. are hereby found guilty beyond reasonable doubt of the crime of Robbery with Homicide and are hereby sentenced each to suffer the penalty of reclusion perpetua. Both accused are further ordered jointly and severally to pay the legal heirs of Ferry Polluna the amount of P50,000.00 for her wrongful death and another amount of P30,000.00 as moral damages and the costs of the suit.

Pursuant to the case of People vs. Ricardo c. Cortez., G.R. No. 92560,

October 15, 1991, the bail bond put up by accused Juanillo Baxinela is cancelled and the accused is hereby placed in confinement at the Iloilo Rehabilitation Center to be transferred to the national Penitentiary pending resolution of appeal in case he appeals.

Let a warrant of arrest be issued against the accused Viterbo Montero, Jr.

Judgment is likewise rendered against the property bond put up by the accused Viterbo Montero, Jr. through his bondsmen Francisco Magno, Rogelio Albelar and Pedro Albelar and Gil Azuelo in the amount of P50,000.00.

SO ORDERED.

(Rollo, pp. 39-40.)

Accused-appellant Baxinela is now before imputting to the trial court the lone assigned error that:

THE COURT A QUO MANIFESTED ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF ACCUSED-APPELLANT WAS NOT PROVED BEYOND REASONABLE DOUBT. (Rollo, p. 60.)

Accused-appellant contends that his evidence, although anchored on denial and alibi, was substantially corroborated on material points; that what matters most is the fact that he was able to account for his exact whereabouts when the incident took place; that the court a quo committed reversible error in not giving full faith and credence to the corroborating testimony of his witnesses; and that his evidence gained commensurate strength in view of the unfortified evidence of the prosecution. It is argued that one should not harbor mental prejudice against a defendant who invokes the defense of denial and alibi.

These arguments boil down to the issue of credibility of the witnesses for the prosecution and for the defense.

It is a legal truism of long standing that the court accords great respect to the factual conclusions drawn by the trial court, particularly on the matter of credibility of witnesses, since the trial judge had the opportunity to observe the behavior and demeanor of witnesses while testifying (*People vs. Soberano*, 224 SCRA 467 [1995], unless some material facts have been overlooked or misconstrued as to affect the result (*People vs. Flores*, 243 SCRA 374 [1995]). We find in this case no such material fact, after having conscientiously searched the record, that would impair the correctness of the conclusions of the trial court.

Indeed, the trial court gave credence to the testimony of the two prosecution eyewitnesses, the same being clear and convincing; and when lengthily cross-examined by the counsel for the accused, the witnesses did not waver. Their testimony simply shows that they were present when the crime was perpetrated by the accused (*Decision*, Rollo, p.28). The trial court did not believe Barangay Captain Baylon's declaration that Nory Polluna was not at the scene of the crime at the time it was committed for she was allegedly watching a basketball game at the Poblacion, because, so the trial judge said, this witness, upon the court's close observation ,

was a biased one and he is the uncle of the wife of the accused-appellant (Rollo, p. 28).

The alibi of accused-appellant that he was not at the scene of the incident when it happened because from September 20, 1986 up to the afternoon of September 21, 1986 he was working in the farm of Apolinario Pendilla and went home only at 10 o'clock in the evening of September 21, 1986 was correctly rejected by the trial court.

Alibi to be given full faith and credit must be clearly established and must not leave any doubt as to its plausibility and verity (People vs. Sagario, 121 Phil. 1257 [1965], 14 SCRA 468; People vs. Manalo, 135 SCRA 84 [1985]). The accused must be able to establish that he was at another place at the time crime was committed and that it was physically impossible for him to be at the scene of the crime at the particular moment it was perpetuated (People vs. Urgel, 134 SCRA 483 [1985]). Alibi is not credible where prosecution witnesses directly testified on how the assault was committed and positively identified the accused as the offender (People vs. Deus, 136 SCRA 660 [1985]); People vs. Rosario and Rosario, 134 SCRA 496 [1985]; People vs. Serante, 152 SCRA 510, 525 [1987]).

As it is an established fact that the farm of Apolinario Pendilla where accused-appellant said he was allegedly working at the time the crime was committed is only 600 to 700 meters away from the place of incident, it is obvious that there was no physical impossibility for accused-appellant to have been at the scene of the crime at the time of its commission. In People vs. Cristobal (252) SCRA 507; 517 [1996]), the court ruled out alibi when it was proven that the accused was only three kilometers from where the crime was committed, " a manageable distance to travel in a few minutes."

The two prosecution witnesses--Nory Polluna, who was 12 years old at the time of the incident and a daughter of the deceased Ferry Polluna; and Floresto Causing , the dried fish and "bagoong" vendor-- testified on how the crime was committed by accused-appellant and positively identified the two culprits. Nory declared:

Q What were you doing there in your house on September 21, 1986 in that particular time?

A I was waiting for my mother.

Q Your mother, Ferry Polluna?

A Yes, sir.

A My mother went marketing.

Q What did you do when you saw your mother arrive?

A I went to her.

FISCAL:

You said you went to your mother, at the time you went to your mother, how far is your mother from your house?

A About fifty meters.

Q Were you able to go near your mother?