PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO3 VICTOR HERNANDEZ, ACCUSED-APPELLANT.

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is an appeal from the Decision[1] dated December 1, 2011 of the Regional Trial Court of Tuguegarao City, Branch 2, in Criminal Case No. 8429, the dispositive portion of which reads:

> WHEREFORE IN VIEW OF THE FOREGOING, the court hereby finds the accused PO3 Victor Hernandez GUILTY BEYOND REASONABLE DOUBT of the crime of Homicide defined and penalized under Article 249 of the Revised Penal Code, and there being neither mitigating nor aggravating circumstances which attended the commission of the offense, but applying the Indeterminate Sentence law, the Court hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum; to pay the heirs of the deceased victim Nardito Ranay the sum of Fifty Thousand (50,000.00) Pesos as life indemnity.
>
> The bail bond put up by the accused for his provisional liberty is hereby ordered released.
>
> SO ORDERED.[2]

The factual antecedents:

PO3 Victor Hernandez [herein accused-appellant] was charged before the Regional Trial Court [Branch 2, Tuguegarao City; hereafter court a quo], with the crime of Homicide for the death of Nardito Ranay in the Information dated February 2, 2000, the accusatory portion of which states:

> That on or about the 8th of June 1999, in Peñablanca, Cagayan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Philippine National Police (PNP) Force, assigned at the Peñablanca Police Station, Peñablanca, Cagayan, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one NARDITO RANAY with the use of firearm, thereby inflicting upon the victim gunshot wounds which were the direct and immediate cause of his death, to the damage and prejudice of his family.
>
> CONTRARY TO LAW.[3]

Upon arraignment, accused-appellant pleaded "not guilty" to the charge. Trial on the merits ensued.

During the trial, the prosecution presented Rosmar Dalumay [Dalumay] and Joseph Malana [Malana] as its witnesses. The evidence of the prosecution established that on June 9, 1999, Dalumay, Malana and the victim were having a drinking spree at the porch of Dalumay's house at Agugaddan, Peñablanca, Cagayan. After their drinking session at around 8:30 in the evening, the victim proceeded to go home. Dalumay and Malana were cleaning up the table when they heard a gun report. Malana saw the accused-appellant when he fired the gun towards the victim's chest and the latter fell down. Dalumay turned his head towards the victim's direction and

saw the accused-appellant. When they ran towards the victim, the accused-appellant ran to the direction of the National Irrigation Administration (NIA) canal.

They decided to report the incident to Barangay Captain Cleofe Quizzagan [Brgy. Capt. Quizzagan]. Dalumay's wife, Raquel, went with them and she was the one who reported the incident. When they returned to the crime scene, Chief Police Investigator Cecilio Calimag inquired about what happened and eventually turned over the investigation to SPO3 Eriberto Molina [SPO3 Molina] and PO3 Primo Daquioag [PO3 Daquioag]. Dalumay and Malana were asked about the identity of the assailant but they did not reveal the same out of fear considering that the accused-appellant is also a policeman. However, on June 14, 1999, Dalumay and Malana executed their sworn statements before SPO1 Vicente Montenegro wherein they identified the accused-appellant as the assailant.

Meanwhile, the testimony of Dr. Mila F. Lingan-Simangan, who conducted the post-mortem examination on the victim, was dispensed with in view of the stipulation of the prosecution and the defense that the cause of death was hemorrhage secondary to gunshot wound as shown by the Post-Mortem Examination Report.[4]

The defense presented the following witnesses: the accused-appellant, PO3 Daquioag, SPO3 Molina, Barangay Kagawad Ireneo Guitering [Guitering], Brgy. Capt. Quizzagan. Brgy. Capt. Quizzagan testified that it was Raquel Dalumay who reported that the victim was shot but she did not know the identity of the assailant. She instructed Guitering to look for a policeman to investigate the incident. Guitering reported the incident to PO3 Daquioag who went to the police station and called for an investigator on duty. The incident was recorded in the police blotter. SPO3 Molina proceeded to the crime scene to investigate. Upon inquiry from Dalumay and Malana, they claimed that they were not able to identify the assailant considering the distance of the crime scene from Dalumay's house. Dalumay also told him that at the time of the incident, the crime scene was not illuminated and it was very dark.

For his part, the accused-appellant claimed that he is a member of the Philippine National Police and that on June 8, 1999, he was at the PTU Sub-Office at Mangga, Peñablanca, Cagayan when he received a radio message from the operator of the Peñablanca Police Station that his wife, Theresa Lauigan Hernandez, was confined at the People's Emergency Hospital. He asked for permission from SPO2 Cresencio Taguiam for him to go to the hospital on June 9, 1999. He arrived at the hospital at around 4:30 in the afternoon of June 9, 1999 and stayed with his wife until she was discharged on June 11, 1999. The following day, SPO4 Isidro Ramirez arrived and told him to report to their chief of police. Accused-appellant was ordered by the chief of police to report to the Regional Command (RECOM) and to undergo a paraffin test which eventually yielded negative results.

Accused-appellant denied the accusations against him and claimed that the present case was merely filed to destroy his name considering that he previously confiscated forest lumber from Dalumay and Malana sometime in 1998. The chief of police interceded and settled the matter, however, Dalumay warned him, "our day will come". Accused-appellant claimed that an administrative case for Grave Misconduct based on the same shooting incident was filed against him but was "dropped and closed for lack of merit and for being bereft of truth" in the Decision[5] dated June 8, 2001 of the Regional Internal Affairs Service (RIAS).

After a formal offer of the parties' respective evidence, the court a quo rendered the assailed Decision on December 1, 2011 and ruled therein that the prosecution was able to prove the guilt of the accused-appellant beyond reasonable doubt for the crime of Homicide. Hence, this appeal by the accused-appellant raising the following assignment of errors:

> I.THE COURT A QUO ERRED AND WITH GRAVE ABUSE OF DISCRETION IN NOT GIVING CREDENCE TO THE IMMEDIATE REPORT ON THE INCIDENT THAT THE VICTIM WAS SHOT BY AN UNIDENTIFIED PERPETRATOR AS PART OF THE RES GESTAE.

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> II.THE COURT ERRED IN PUTTING CREDENCE TO THE TESTIMONIES OF DALUMAY AND MALANA DESPITE THE FACT THAT THEIR TESTIMONIES OBVIOUSLY LACKING IN CREDIBILITY.
>
> III.THE COURT ERRED AND WITH GRAVE ABUSE OF DISCRETION IN NOT REJECTING THE AFTERTHOUGHT EXPLANATION OF WITNESSES DALUMAY AND MALANA ON THEIR FAILURE TO NAME AND IDENTIFY THE ACCUSED AT THE EARLIEST OPPORTUNITY WHEN THEY WENT TO REPORT TO THE BARANGAY CAPTAIN CLEOFA QUIZZAGAN AND LIKEWISE DURING THE SPOT INVESTIGATION BY ERIBERTO MOLINA.
>
> IV.THE COURT A QUO BLATANLY ERRED IN DECREEING THAT THE APPELLANT WAS POSITIVELY IDENTIFIED AS THE AUTHOR OF THE CRIME CHARGED WHEN EVEN A CURSORY EVALUATION OF THE EVIDENCE ADDUCED IN THE TRIAL WILL UNVEIL THE IMPOSSIBILITY AND DUBIOUSNESS OF SUCH IDENTIFICATION.
>
> V.THE COURT A QUO ERRED AND WITH GRAVE ABUSE OF DISCRETION IN NOT APPRECIATING FULLY THE TOTALITY OF THE EVIDENCE POINTING TO THE ABSENCE OF GUILT OF THE ACCUSED BEYOND MORAL CERTAINTY.[6]

In his brief, the accused-appellant argues that the prosecution miserably failed to present proof beyond reasonable doubt of his complicity in the Homicide case. He contends that the court a quo erred in giving credence to his identification by Dalumay and Malana as the assailant considering that from the time that the incident was reported to Brgy. Capt. Quizzagan up to the time that the police conducted an investigation, they failed to immediately disclose the identity of the assailant. He insists that their failure could be attributed to the fact that they did not see how the incident happened because of drunkenness or because there was no light at the place of the incident as testified to by SPO3 Molina. He also contends that their subsequent identification of the assailant is doubtful since the place where the victim was shot was 15 to 20 meters away from where Dalumay and Malana were at the time of the incident.

We deny the appeal.

For the charge of homicide to prosper, the prosecution must establish the following elements beyond reasonable doubt, viz.: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[7] In the case at bar, the charge of homicide was duly established by the prosecution beyond reasonable doubt. It was sufficiently proven that the victim died due to "internal hemorrhage secondary to gunshot wound."

In the present case, the victim was killed and the Post-Mortem Examination shows the following injuries he sustained:

> 1. Gunshot wound, 1.5 x 3.0 cm, bluish black discoloration at the edges of the wound, penetrating, 4cm from the midsternal line, 5th intercostal space, left.
>
> 2. Gunshot wound, 2 x 2cm, with irregular borders, penetrating 3cm from the posterior axillary line, lateral side of the scapula, left.[8]

The prosecution was also able to establish that the killing is not murder, parricide or infanticide. Moreover, the accused-appellant's intent to kill may be deduced from the fact that death resulted from his unlawful act.[9]

Anent the identity of the assailant, Dalumay and Malana positively identified the accused-appellant as the one who shot the victim. Malana declared in his sworn statement and testified in court that the accused-appellant was

about one (1) meter away from the victim when he shot the latter on his left breast with the use of a revolver. He also declared that the place where the victim was shot was illuminated by an electric light bulb. His testimony was corroborated by Dalumay who also declared that when they ran towards the victim, the accused-appellant hurriedly left and proceeded to the NIA canal.

The rule is that where the prosecution eyewitness was familiar with both the victim and accused, and where the locus criminis afforded good visibility, and where no improper motive can be attributed to the witness for testifying against the accused, his version of the story deserves much weight.[10] In this case, Dalumay and Malana were familiar with the victim and the accused. They personally know the accused-appellant because he is a policeman in their town. Even if accused-appellant surmised that Dalumay and Malana did not see how the incident happened because of drunkenness, no evidence whatsoever was produced to show that they suffered from such a level of intoxication as to impair their faculties and disable them to identify the accused-appellant.[11] Ergo, the fact that they had just finished drinking is not enough to render their identification doubtful. In fact, both Dalumay and Malana also identified the accused-appellant in open court.

With respect to accused-appellant's stance that there was no light at the place of the incident as testified to by SPO3 Molina, a perusal of the Transcript of Stenographic Notes shows otherwise. It may be true that SPO3 Molina initially testified that on the sketch he made, "[t]here is no indicated lighting because there was not even street light that was installed located at the road where the victim was shot at the time of the incident." Nonetheless, he also testified and corroborated the testimonies of Dalumay and Malana that there was an electric bulb hanging on the fence near the victim, to wit:

> Q:
>
> x x x are there no lights installed within the premises of the house that time?
>
> A:
>
> Upon my arrival to the scene of the incident there was electric bulb that was temporarily hanging at the fence near the victim that time, sir.
>
> Q:
>
> You concluded that the bulb is the source of light that time when you arrived which was temporarily hang, why do you say so?
>
> A:
>
> It is temporarily (sic) sir because it was only hang and it can be removed anytime, sir.
>
> x x x x x x x x x
>
> Q:
>
> You mentioned awhile ago that there was an electrical bulb temporarily hanging on the fence when you conducted your ocular inspection?
>
> A:

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It was hanging here, sir.

COURT INTERPRETER: The witness pointed to a drawing of a fence in Exhibit 'F' which is about three meters more or less away from the victim's body, your honor.

x x x x x x x x x

COURT:That light which was temporarily hang was it lighted at the time you conducted the ocular inspection?

A: Yes, sir.

Q:

What time did you conduct the ocular inspection?

A:

Around 8:30 in the evening. Upon receipt of the report by SPO2 Daquioag, I immediately proceeded there, sir.

Q:

So you mean to say you were there minutes after the incident?

A:

Yes, sir.[12]

Thus, since the place where the victim was shot was illuminated by an electric bulb and Dalumay and Malana were familiar with the accused-appellant, their identification of the accused-appellant is worthy of full faith and credit. It should be noted that the accused-appellant was not wearing anything to cover his face or hide his identity during the shooting incident and there was no obstruction which might have prevented Dalumay and Malana from seeing him since he was only several meters away from where they stood.

Further, the fact that they failed to immediately disclose his identity during the investigation should not be taken against them. Delay in making a criminal accusation will not necessarily impair the credibility of a witness if such delay is satisfactorily explained,[13] as in this case. Dalumay and Malana declared that they failed to disclose accused-appellant's identity to the police investigator because they were afraid as the accused-appellant himself is a policeman in their town.

At this juncture, it bears stressing that when an accused challenges the witness’ identification of the perpetrator, the credibility of the witness is put to doubt.[14] On this score, well settled is the rule that the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies.[15] Thus, appellate courts will not disturb the credence accorded by the trial court to the testimonies of witnesses unless it is clearly shown that the trial court has overlooked or disregarded arbitrarily facts and circumstances of significance in the case.[16] In the present

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case, the court a quo found:

> Both witnesses of the prosecution pointed to the accused as the perpetrator of the crime. Both gave a thorough account of the incident that transpired at Dalumay's house. x x x When the victim excused himself to go home, both witnesses testified hearing a gunshot. Both also positively identified the accused as the person they saw fleeing from the scene of the crime after they responded to give aid to the victim. The fact that they only disclosed the identity of the accused five days after the shooting incident out of fear of the accused is believable since the accused is known to them as a police officer. The fact also that there was a lighting source illuminating the area allowing them to see the person of the accused before he fled is also telling. In fact, one witness, Joseph Malana, testified that he actually saw the accused shoot the victim. The Court finds no irregularity in the manner the two prosecution witnesses testified. Their testimonies are likewise deserving of faith and credit from the court as they gave a detailed account of what transpired on the night of the incident. The testimony of witness Rosmar Dalumay corroborated the testimony of Joseph Malana on material points.[17]

We find no cogent reason to deviate from the aforestated rule as none of the foregoing exceptions was shown in this case. Besides, there is no showing of any improper motive on the part of Dalumay and Malana as to why they would falsely accuse or implicate the accused-appellant in the present case. Even as the accused-appellant testified that the present case was merely filed because he previously confiscated forest lumber from Dalumay and Malana, this claim was unsubstantiated and uncorroborated by any other evidence. The basic rule is that mere allegation is not evidence, and is not equivalent to proof.[18]

Against the prosecution's evidence, the accused-appellant put up the twin defenses of denial and alibi. Nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the positive and categorical testimony of the witnesses.[19] Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[20] In this particular case, the accused-appellant failed to adduce strong and credible evidence to bolster his denial and to overcome the testimonies of Dalumay and Malana pointing to him as the assailant. While he presented a certification as to the caliber of the revolver issued to him, this does not constitute sufficient evidence to disprove the categorical testimonies of the prosecution witnesses. In the same vein, the Physical Science Report No. C-37-99 stating that he tested negative for gunpowder nitrates is not sufficient to overturn the court a quo's finding of guilt. It is worthy to note that the paraffin test was conducted on June 12, 1999 or three (3) days after the shooting incident. Since gunpowder nitrates stay for 72 hours in the hands of a person who fired a handgun, a timely paraffin test, if positive, will definitely prove that a person had fired a handgun within that time frame. A negative result, however, does not merit conclusive proof that a person had not fired a handgun.[21] As held in the case of People vs. Tomas, Sr.,[22] even negative findings of the paraffin test do not conclusively show that a person did not fire a gun and that a paraffin test has been held to be highly unreliable. This is so since there are many ways, either deliberately or accidentally, that the residue of gunpowder nitrates in the hands of a person who fired a handgun can be removed.[23] Thus, the negative results of the paraffin test of the accused-appellant is not indicative of his innocence and cannot exculpate him from the crime.

Accused-appellant's defense of alibi likewise fails. For alibi to prosper, it must be proven that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the locus criminis.[24] In support of his alibi, the accused-appellant presented the following documents: an excerpt from the Log Book of the Pulisya Ti Umili stating that the accused-appellant left the police station and proceeded to the People's Emergency Hospital and the Medical Certificate issued by the hospital attesting to the fact that his wife was confined at the People's Emergency Hospital from June 7 to June 11, 1999. However, these documents do not necessarily prove that it was physically impossible for the accused-appellant to be at the crime

scene when the crime was committed. Aside from his allegation that he was at the hospital from June 9 to June 11, 1999, the accused-appellant failed to present any witness, even his wife, to corroborate the same. Hence, accused-appellant's defense of alibi being inherently weak, it cannot prevail over the clear and positive identification of the accused-appellant by Dalumay and Malana as the perpetrator of the crime.[25]

We have noted that during the trial, the accused-appellant testified that the administrative case against him was "dropped and closed for lack of merit and for being bereft of truth" in the Decision[26] dated June 8, 2001. The rule is that administrative liability is separate and distinct from penal and civil liabilities.[27] Moreover, the purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust while the purpose of the criminal prosecution is the punishment of crime. Ergo, the dismissal of the administrative case for Grave Misconduct will not absolve accused-appellant from criminal liability for the crime of Homicide.

In view of all the foregoing, the court a quo correctly found the accused-appellant guilty beyond reasonable doubt of the crime of Homicide and correctly meted upon him an indeterminate prison term of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.[28] Likewise, civil indemnity was correctly awarded to the heirs of the victim.[29] However, in line with the prevailing jurisprudence, the amount thereof should be increased to P75,000.00.[30] Notably, the court a quo failed to award moral damages. Moral damages is granted without need of further proof other than the fact of the killing.[31] Thus, moral damages of P50,000.00 is likewise awarded in favor of the victim's heirs.

WHEREFORE, the appeal is DENIED. The Decision dated December 1, 2011 of the Regional Trial Court of Tuguegarao City, Branch 2, in Criminal Case No. 8429, is AFFIRMED with MODIFICATION in that accused-appellant PO3 Victor Hernandez is hereby ordered to pay the heirs of the victim P75,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

Zalameda, and Diy, JJ., concur.

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[1] Rollo, pp. 78-85.

[2] Rollo, p. 85.

[3] Records, p. 2.

[4] Records, p. 44.

[5] Records, pp. 341-342.

[6] Rollo, p. 71.

[7] People vs. Badriago, G.R. No. 183566, May 8, 2009 citing Nerpio vs. People, G.R. No. 155153, July 24, 2007

[8] Records, p. 6.

[9] Seguritan vs. People, G.R. No. 172896, April 19, 2010 citing United States vs. Gloria, 3 Phil. 333, 335 (1904).

[10] People vs. Mapalo, G.R. No. 172608, February 6, 2007 citing Baldeo vs. People, G.R. No. 152205, February 5, 2004.

[11] People vs. Mapalo, G.R. No. 172608, February 6, 2007.

[12] TSN, pp. 4-5, 9-11, May 27, 2008.

[13] People vs. Martin, et al., G.R. No. 177571, September 29, 2008 citing People vs. Abendan, G.R. Nos. 132026-27, June 28, 2001.

[14] People vs. Martin, et al., G.R. No. 177571, September 29, 2008.

[15] People vs. Talaro, et al., G.R. No. 175781, March 20, 2012 citing People vs. Molina, G.R. No. 184173, March 13, 2009.

[16] People vs. Escote, et al., G.R. No. 151834, June 8, 2004.

[17] RTC Decision, p. 6; Rollo, p.83.

[18] Villanueva vs. Philippine Daily Inquirer, Inc., G.R No. 164437, May 15, 2009.

[19] People of the Philippines vs. Bulasag, G.R. No. 172869, July 28, 2008.

[20] People of the Philippines vs. Bulasag, G.R. No. 172869, July 28, 2008 citing People of the Philippines vs. Penaso, G.R. No. 121980, February 23, 2000.

[21] People vs. Tomas, Sr., G.R. No. 192251, February 16, 2011.

[22] People vs. Tomas, Sr., G.R. No. 192251, February 16, 2011 citing Revita vs. People, G.R. No. 177564, October 31, 2008.

[23] People vs. Tomas, Sr., G.R. No. 192251, February 16, 2011.

[24] People vs. Macapanas, G.R. No. 187049, May 4, 2010 citing People vs. Alfaro, G.R. Nos. 136742-43, September 30, 2003.

[25] People vs. Talaro, et al., G.R. No. 175781, March 20, 2012 citing People vs. Molina, G.R. No. 184173, March 13, 2009.

[26] Records, pp. 341-342.

[27] Ferrer, Jr. vs. Sandiganbayan, G.R. No. 161067, March 14, 2008 citing Tecson vs. Sandiganbayan, 376 Phil. 191 (1999).

[28] Article 249, Revised Penal Code; Seguritan vs. People of the Philippines, G.R. No. 172896, April 19, 2010 citing United States vs. Gloria, 3 Phil. 333, 335 (1904).

[29] Seguritan vs. People of the Philippines, G.R. No. 172896, April 19, 2010 citing People vs. Diaz, 443 Phil. 67, 90-91 (2003) and People vs. San Gabriel, 323 Phil. 102, 108 (1996).

[30] People vs. De Jesus, G.R. No. 186528, January 26, 2011.

[31] People vs. Amodia, G.R. No.177356, November 20, 2008.

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