

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE ALDEGUER, ACCUSED-APPELLANT.

G.R. NO. L-47991. April 03, 1990

Ponente: CORTES, J.

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CORTES, J.:

For the death of Romeo Ferraris, Vicente Aldeguer was charged with Murder in Criminal Case No. 2626 before the then Court of First Instance of Iloilo, Branch V, in an information which reads:

That on or about November 28, 1969, in the Municipality of San Dionisio, Province of Iloilo, Philippines and within the jurisdiction of this Court, the above-named accused armed with a firearm, with intent to kill, treachery and evident premeditation, did then and there willfully (sic), unlawfully and feloniously attack and shoot ROMEO FERRARIS with the firearm he was then provided, inflicting upon him gunshot wounds on the various parts of his body which caused his death immediately thereafter.

Contrary to law.

Iloilo City, Philippines, April 16, 1973. [Rollo, p. 3.]

When arraigned on September 11, 1973, the accused pleaded "not guilty" [Rollo, p. 223.] The prosecution presented as evidence the autopsy report and the oral testimonies of Moreno Alkonga, Dr. Antonio Tedoco, Jr. and Fiscals Florentino Visitacion and David Tobongbanua. On the other hand, the defense presented the accused himself, as well as Sotera Albania and Eliseo Salazar.

The main prosecution witness, Moreno Alkonga, testified to the following:

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In the evening of November 28, 1969, witness [Moreno Alkonga] was playing mahjong together with the following persons namely, a certain "Nene" from Anilao, whose family name he does not know, who was seated on his left; Romeo Ferraris who was seated on his right; and Sotera Albania who was seated on his front. As the players were thus situated, the stairs to the second storey of the house where the mahjong was being played was in front of Alkonga and behind Sotera Albania. Alkonga was facing the stairs and he could see anybody who would go up or go down the second storey of the house of Jose Gonzales.

On the ground floor of said house, a portion was dedicated to a sort of carinderia and another portion to a place where gambling such as "pula-puti" used to be played.

While the mahjong game was in progress, the accused Vicente Aldeguer came up the house at around 7:30 p.m. He and Romeo Ferraris greeted each other. Aldeguer proceeded towards the bed situated behind Sotera Albania and sat on it and read a comic magazine.

Shortly thereafter, Aldeguer stood up, approached the mahjong table towards the right side of Ferraris and fired at Ferraris hitting him mostly on the right side of his body. Ferraris died instantaneously. After that, Aldeguer went down the house. [Trial Court Decision, pp. 7-8; Rollo, pp. 50-51.]

The prosecution also presented Dr. Antonio Tedoco, Jr., Municipal Health Officer of Sara, Iloilo, who conducted the autopsy on the body of the victim. Dr. Tedoco, Jr. testified that the death of Romeo Ferraris was due to multiple gunshot wounds [See also Exhibit "A" for the Prosecution, Record, p. 115.]

The accused, however, denies having committed the crime with which he is charged. His version of the incident, as summarized by his counsel is as follows:

At about 6:00 o'clock in the evening of November 28, 1969, he boarded a passenger jeepney in Sara, Iloilo, bound for San Dionisio, a distance of ten kilometers, to confer with his PMT instructor, Mr. Anastacio Gonzales, concerning matters of their parade and review [tsn, p. 111, March 8, 1977.] At about 6:30 in the evening of said date, the accused arrived at the house of Jose Gonzales, father of his instructor, in the poblacion of San Dionisio (tsn, pp. 112 and 119, *ibid.*). The accused was informed that his instructor had not yet arrived and so he decided to wait. The accused went to the second storey of the house where Moreno Alkonga, Sotera Albania, Romeo Ferraris and a person known only as "Nene" were playing mahjong (tsn, p. 121, *ibid.*) The accused sat down on a bed and read a comics magazine. Moments later, about ten people came from the "pula-puti" game downstairs and they wanted to put another table for mahjong game. However, there were not enough chairs. So the accused offered to allow them to use the bed on which he was sitting. After that, the accused went down to the eatery (carinderia) and refreshed himself with Coca-Cola. At about 7:00 o'clock, the passenger jeep on which he rode from Sara arrived, and the driver told the accused that he was already going back to Sara. . . The accused boarded the jeep for Sara and arrived there at about 7:30 in the evening. When the accused left the house of Jose Gonzales, this incident had not yet occurred. The accused came to know of the killing of Ferraris only the following morning from some people in the market place of Sara, Iloilo, who said that Romeo Ferraris was shot by a suspected smuggler, a stranger to the place (tsn, p. 114, March 8, 1977.) [Appellant's Brief, pp. 19-20.]

The defense also presented Sotera Albania as witness whose testimony was summarized by the trial court as follows:

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. . . This witness testified that she knows Vicente Aldeguer, the accused. She also knows Moreno Alkonga since childhood. She also knew Romeo Ferraris who died last November 28, 1969, in the second storey of the house of Jose Gonzales in San Dionisio. At the time of the death of Romeo Ferraris, she, together with a certain "Nene", Romeo Ferraris, and Moreno Alkonga were playing mahjong. While she alleged that Vicente Aldeguer was in the second storey of the house where the mahjong was being played, it was not Vicente Aldeguer who shot Romeo Ferraris because at the time of the shooting, Vicente Aldeguer was no longer there. After Vicente Aldeguer had left, several persons who played "pula-puti" in the lower storey of the house came up the second storey and then the shooting started.

Witness Albania also testified that at the time of the firing, she lay flat on the floor. At the same time, Moreno Alkonga was also lying face down under the table such that he could not have witnessed the shooting incident.

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[Trial Court Decision, pp. 4-5; Rollo, pp. 8-9.]

After trial, the trial court found the accused guilty of the crime charged and accordingly rendered a judgment on December 27, 1977, the dispositive portion of which reads:

WHEREFORE, the Court hereby finds the accused Vicente Aldeguer guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Art. 248 of the Revised Penal Code and sentences said accused to suffer the penalty of RECLUSION PERPETUA: to indemnify the heirs of the deceased Romeo Ferraris the sum of Twelve Thousand Pesos (P12,000.00), without subsidiary imprisonment in case of insolvency together with all the accessory penalties provided for by law and to pay the costs.

SO ORDERED. [Trial Court Decision, p. 17; Rollo, p. 21.]

The accused filed a notice of appeal from the aforesaid decision on January 31, 1978. The case is now before us on appeal.

The sole issue raised in this appeal is whether or not the guilt of the accused had been established beyond reasonable doubt.

In convicting the accused of the crime charged, the trial court gave full credit to the testimony of witness Moreno Alkonga that he saw the accused fire successive shots at Romeo Ferraris. The trial court found Alkonga's testimony to be "clear, positive and free from any infirmity of substantial importance." [Trial Court Decision, p. 11; Rollo, p. 15.] The accused, however, disputes the trial court's reliance on the testimony of Alkonga as basis for his conviction. The accused impugns Alkonga's credibility as witness.

The general rule is that the findings of the trial court on the credibility of witnesses are accorded great weight and will not be disturbed, as it was the trial judge who had the opportunity to observe the demeanor of the witness while testifying [People v. Aborada, G.R. No. 50041, January 27, 1989.] However, the Court cannot rely on the aforestated rule in this case since the judge who decided the case is not the same judge who heard the testimony of the prosecution witness [People v. Salas, G.R. No. L-35946, August 7, 1975, 66 SCRA 126; People v. Escalante, et al., G.R. No. L-37457, August 22, 1988, 131 SCRA 237; People v. Villapana, G.R. No. 53984, May 5, 1988, 161 SCRA 72; People v. Songcuan, G.R. No. 73070, August 11, 1989.] The record shows that it was then Judge Venicio Escolin [later Associate Justice of the Supreme Court] who heard the testimony of Moreno Alkonga [TSN, February 28, 1974, March 27, 1974 and June 18, 1974] while the testimonies of all the defense witnesses were heard by Judge Ricardo Ilarde who penned the decision appealed from. Since reliance, in this case, cannot be made on the trial court's findings on the credibility of witnesses, it becomes necessary for this Court to make its own evaluation of the testimony of witnesses, especially that of prosecution witness Moreno Alkonga.

Alkonga testified that in the evening of November 28, 1969 he was playing mahjong with Romeo Ferraris, Sotera Albania and a certain "Nene" in the sala of the second floor of the house of Jose Gonzales situated in Poblacion San Dionisio, Iloilo [TSN, February 28, 1974, pp. 2-4.] Alkonga was seated on the mahjong table right behind the window of Gonzales' house while Nene was seated on his left, Ferraris on his right and Albania sat opposite him. As thus situated, Alkonga could see anybody who would go up or down Gonzales' house as he was facing the stairways [TSN, February 28, 1974, p. 11; June 18, 1974, p. 71.]

At about 7:30 of the same evening, the accused Vicente Aldeguer went up the second floor of the Gonzales residence where the mahjong session was in progress. Aldeguer sat on the bed behind Sotera Albania and read a comic magazine [TSN, February 28, 1974, pp. 6-7.] A few minutes after the accused had seated himself on the bed, there was an explosion from a low caliber firearm [Id., p. 8.] Immediately after the gun explosion was heard, Alkonga, Albania and Nene dove under the mahjong table with their stomachs touching the floor. Soon after the firing had subsided, Alkonga saw Aldeguer going down the stairs holding a gun with his right hand [Id., p. 15.] After Aldeguer had gone down the house Alkonga, Albania and Nene saw Romeo Ferraris lying on the floor gasping for breath and with several wounds causing blood to ooze from his wounds [Id., pp. 16-17.] Venancio Toquillo, Vice Mayor of San Dionisio, Iloilo arrived at the second floor of the Gonzales residence and asked Romeo Ferraris who shot him but the latter did not answer [Id., pp. 18-20.] Soon thereafter, Romeo Ferraris died [Id., pp. 20-21.]

On the same evening Alkonga was investigated by the Vice Mayor and Mayor of San Dionisio, Iloilo. Alkonga told them that he did not know who shot Ferraris [Id., pp. 21-22.] The San Dionisio Chief of Police also arrived at the Gonzales residence right after the shooting but he did not ask questions from Alkonga. It was only on the

following day that the Chief of Police through PC Sgt. Gabuan investigated Alkonga about the shooting. The PC Sergeant asked Alkonga who were present during the shooting and who shot Ferraris. Alkonga answered that the only persons present were his mahjong playmates, Sotera Albania, Nene and deceased Ferraris. Alkonga told the peace officer that he did not see who shot Ferraris [TSN, March 27, 1974, pp. 30-33.]

It was only after Alkonga was again summoned by the Chief of Police of San Dionisio, Iloilo on January 17, 1973 that he decided to testify as to who really killed the late Patrolman Romeo Ferraris [Id., p. 36.] In an investigation conducted by PC Sgt. Loreto Guitollo of the Iloilo PC Detachment at San Dionisio, Iloilo, he executed a sworn statement giving in detail how Ferraris was gunned down by Vicente Aldeguer [Exhibit "D", Record, pp. 118--121; TSN, March 27, 1974, pp. 27-29.]

In impugning the credibility of prosecution witness Alkonga, the accused points to the fact that Alkonga did not identify him as the killer during the investigations conducted by the Mayor, Vice-Mayor and Chief of Police of San Dionisio, Iloilo, immediately after the shooting. Moreover, the accused finds significance in the fact that Alkonga revealed the accused's alleged culpability only after Alkonga was ejected by the accused from the latter's land.

The rule is well-established that the failure to reveal or disclose at once the identity of the accused does not necessarily affect, much less impair, the credibility of the witness [People v. Valdez, G.R. No. 75390, March 25, 1988, 159 SCRA 152.] The initial reluctance of witnesses to volunteer information about a criminal case and their unwillingness to be involved in criminal investigations due to fear of reprisal is common and has been judicially declared not to affect credibility [People v. Rosario, G.R. No. L-46161, February 25, 1985, 134 SCRA 497.]

According to Alkonga, his failure to report to the authorities that the accused was responsible for the death of Ferraris was due to his fear of the accused who was always armed with a gun before the declaration of martial law. When he was investigated by the Philippine Constabulary investigators on January 17, 1973, he was emboldened to reveal all that he knew about the Ferraris murder because the country was already in a state of martial law [TSN, March 27, 1974, p. 25.]

In People v. Mendoza, G.R. No. L-39335, March 15, 1983, 121 SCRA 149, the witnesses to the crime did not immediately reveal the identity of the assailants because they feared the latter. They finally identified the assailants more than one year after the commission of the crime because according to them, martial law, by that time, had been declared and the semblance of law and order had given them enough courage to denounce the offenders. This explanation for the delay was accepted by the Court in that case. There is no reason why it should not do so in the instant case.

But the accused insists that Alkonga is not a credible witness claiming that the latter testified against the accused to avenge his ejection from the land owned by the accused. However, save for the allegation of the accused, no evidence was presented to prove that such ejection occurred and that Alkonga was motivated to testify against the accused as a result thereof. Alkonga was not even confronted with this issue during the hearings. The Court has always been cautious in dealing with allegations of ill will on the part of witnesses. Ill-motive imputed to the prosecution witness, because of the facility by which the accused can fabricate the same, must be proved by clear and sufficient evidence [People v. Paco, G.R. No. 76893, February 27, 1989.] Where, as in this case, there is an absence of convincing proof that the principal prosecution witness acted because of improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit [People v. Campana, G.R. No. L-37325, August 30, 1983, 124 SCRA 271; People v. Patig, G.R. No. 69620, September 24, 1986, 124 SCRA 429; People v. de Jesus, G.R. Nos. 71942-43, November 13, 1986, 145 SCRA 521.]

As stated earlier, the trial court found Alkonga's testimony to be "clear, positive and free from any infirmity of

substantial importance." [Trial Court Decision, p. 11; Rollo, p. 15.] The Court, after a careful reading of the entire record of the case, including the transcript of stenographic notes finds the trial court's conclusion as to the credibility of Alkonga to be well-founded. The claims made by the accused have not impaired Alkonga's credibility as witness.

The accused next takes issue with the fact that among the persons who were present during the shooting of Ferraris, namely Moreno Alkonga, Sotera Albania and "Nene", only Alkonga was presented as witness by the prosecution.

In criminal cases, the Court has consistently held that the non-presentation of all the probable witnesses does not detract from the prosecution's case since the number of such witnesses who should be called to testify is addressed to the sound discretion of the prosecuting officers [People v. Castillo, G.R. No. 32864, March 8, 1989.] The testimony of a single witness, if positive and credible, is sufficient to support a conviction [U.S. v. Dacotan, 1 Phil. 669 (1903); People v. Boduso, G.R. Nos. L-34050-51, September 30, 1974, 60 SCRA 60; People v. Gutierrez, G.R. No. L-39383, March 14, 1988, 158 SCRA 614; People v. Salufrawa, G.R. No. 50884, March 30, 1988, 159 SCRA 401.]

The accused next contests the claim of Alkonga that the latter saw the accused shoot Ferraris. In Alkonga's sworn statement executed on January 17, 1973, and presented as Exhibit "D" for the prosecution, he categorically stated that he saw the accused fire successive shots at Romeo Ferraris [See paragraphs 26-27, Exhibit "D", p. 3; Record, p. 120.] This was reiterated by Alkonga during his direct examination [TSN, February 28, 1974, pp. 10-15.] However, on cross-examination, Alkonga admitted that he did not actually see the person who fired the successive shots at the victim. He admitted that from his position under the mahjong table, he only heard the successive shots which caused the death of Romeo Ferraris. When pressed by the trial judge as to why he said the accused shot Romeo Ferraris, Alkonga claimed that he saw the accused holding a gun at the time when the latter was going down the stairs after the shooting (TSN, April 13, 1977, pp. 133-134.)

It is apparent that Alkonga was making a factual conclusion when he stated that he saw the accused shoot Ferraris. What he actually saw was the accused going down the stairs with a gun immediately after the firing of the shots which killed Ferraris. He had not directly seen the accused shoot Ferraris. Nevertheless, direct evidence is not always necessary to prove the guilt of the accused [People v. Roa, G.R. No. 78052, November 8, 1988, 163 SCRA 783.] Guilt may also be established through circumstantial evidence [People v. Alcantara, G.R. No. 74737, July 29, 1988, 167 SCRA 116.] Time and again, the Court has held that:

Where the events constitute a compact mass of circumstantial evidence, the existence of every bit of which was satisfactorily proved, and the proof of each is confirmed by the proof of the other, and all without exception leading by mutual support to but one conclusion, the circumstantial evidence are sufficient to establish the culpability of the accused beyond reasonable doubt.

x x x In determining the sufficiency of circumstantial evidence to support a conviction, each case is to be determined on its own peculiar circumstances and all the facts and circumstances are to be considered together as a whole, and, when so considered, may be sufficient to support a conviction, although one or more of the facts taken separately would not be sufficient for this purpose. . . . No general rule has been formulated as to the quantity of circumstantial evidence which will suffice for any case but that matters not. For all that is required is that the circumstances proved must be consistent with each other, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt. . . . [People v. Madriaga IV, G.R. No. 73057, March 8, 1989; Citations omitted.]

In the instant case, the evidence for the prosecution has established the following circumstances:

1. In the evening of November 28, 1979 at about 7:30 o'clock while Alkonga, Sotera Albania, "Nene" and the late Romeo Ferraris were playing mahjong at the second floor of the residence of Jose Gonzales situated in San Dionisio, Iloilo, the accused arrived. Immediately upon arrival, the accused seated himself on a bed and proceeded to read some comic magazines.
2. Ten minutes later, the accused stood up and approached the mahjong table towards the right side of Ferraris. Suddenly, there was an explosion from a low caliber firearm.
3. Thereafter, the mahjong playmates of Ferraris dove under the mahjong table and while in that position six (6) successive shots were fired and heard by Alkonga.
4. Soon after the firing, Alkonga saw the accused going down the stairs with a gun in his right hand.
5. After the accused had gone down the house, Alkonga saw the body of Romeo Ferraris sprawled on the floor gasping for breath with several wounds causing blood to ooze from said wounds.

These circumstances, albeit circumstantial, having been proved with certainty by clear and convincing evidence are of such nature that an analysis and combination of all of them would lead to no other conclusion than that the accused is guilty of the crime charged.

The defense of alibi put up by the accused does not destroy the damaging effects of the evidence for the prosecution. Courts look upon the defense of alibi with suspicion and always receive it with caution, not only because it is inherently weak but also because of its easy fabrication [People v. Padilla, 48 Phil. 718 (1926); People v. Lumantas, G.R. No. L-16383, May 30, 1962, 5 SCRA 157; People v. Genoguin, G.R. No. L-23019, March 28, 1974, 56 SCRA 181; People v. Gaddi, G.R. No. 74065, February 27, 1989; People v. Salcedo, G.R. No. 78774, April 12, 1989; People v. Somera, G.R. No. 65589, May 31, 1989.] For alibi to succeed, it must be shown not only that the accused was at some other place but that it was physically impossible for him to have been at the site of the crime at the time of its commission [U.S. v. Oxiles, 29 Phil. 587 (1915); People v. Alcantara, G.R. No. L-26807, June 30, 1970, 33 SCRA 812; People v. Pigon, G.R. No. 76048, May 29, 1989.] In People v. Lumantas, G.R. No. L-28355, July 17, 1969, 28 SCRA 764, where the accused claimed that at the time of the killing he was in another barangay two kilometers away from the scene of the crime, the Court held that it was not impossible for him to have been at the place where the crime was committed at the time of its commission. In the case at bar, the accused admitted his presence at the Gonzales residence where the killing occurred but claims that he had left the scene of the crime minutes before the shooting [TSN, June 1, 1976, pp. 111--113.] The required physical impossibility of being present at the scene of the crime not having been proved, alibi as a sufficient defense becomes unavailing to the accused.

It is true that the defense presented a witness, Sotera Albania, whose testimony contradicted the testimony of prosecution witness Moreno Alkonga. But the reliability of her testimony is extremely suspect.

Sotera Albania stated in her testimony that the accused could not have shot Ferraris because when the shooting occurred, the accused had already left the Gonzales residence [TSN, April 28, 1976, p. 88.] But this statement is a retraction of her previous statement sworn before the assistant provincial fiscal of Iloilo on April 16, 1973 where she categorically stated that it was the accused who shot Ferraris [Exh. "E"; Records, pp. 233-235.] Albania admits having signed the sworn statement but claims that the contents thereof were not fully explained to her. [TSN, April 28, 1976, pp. 98-106.]

Retractions are exceedingly unreliable [People v. Domenden, G.R. No. L-17822, October 30, 1962, 6 SCRA 343.] The Court has looked with disfavor upon retractions of testimonies made before the court [Reano v. CA. G.R. No. 80992, September 21, 1988] as well as recantations of extra-judicial statements made before investigating officers

[People v. Navasca, G.R. No. L-28107, March 15, 1977, 76 SCRA 70.] Hence, as between the testimonies of defense witness Sotera Albania and prosecution witness Moreno Alkonga, the Court finds the latter to be more credible.

In fine, the Court, after a careful examination of the entire record of the case, rules that the evidence presented by the prosecution, taken together with the inherent weaknesses of the defense, is of a sufficient quantum to establish the guilt of the accused of the crime charged to a moral certainty.

WHEREFORE, in view of the foregoing, the judgment of the trial court is **AFFIRMED** with the modification as to the civil indemnity which is hereby raised from Twelve Thousand Pesos (P12,000.00) to Thirty Thousand Pesos (P30,000.00) [People v. Dela Fuente, G.R. Nos. 63251-52, December 29, 1983, 126 SCRA 518.]

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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