

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEOPOLDO TRAYA, ACCUSED-APPELLANT.***G.R. No. L-48065. January 29, 1987*

Ponente: NARVASA, J.

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Defendant-appellant Leopoldo Traya alias "Dady" was one of four persons accused before the Circuit Criminal Court of Tacloban[1] City of the killing of Dr. Pedro Alvero in Abuyog, Leyte on November 19, 1967. The others were Octavio Traya, Leopoldo's father, who was acquitted after trial on the ground of reasonable doubt, Wenceslao Verterra alias "Winnie", who was convicted of homicide and sentenced to reclusion temporal in its maximum period, and Antonio Natulla alias "Titoy", who was never apprehended and remained at large throughout the trial. Leopoldo Traya was found guilty of homicide, but because the Trial Court did not assess against him the aggravating circumstances of disregard of the respect due the victim (who was vice-mayor of Abuyog when he was slain) and grave abuse of superior strength alleged in the information, he only drew an indeterminate prison term of six (6) years, four (4) months and one (1) day of prison mayor to thirteen (13) years and ten (10) months of reclusion temporal. Both Traya and Verterra, who were also sentenced, jointly and severally, to indemnify the heirs of the victim in the amount of P12,000.00, appealed; and their appeal was docketed in the Court of Appeals as CA-G.R. No. 15325-CR. Verterra later withdrew his appeal, leaving Leopoldo Traya as the lone appellant.

The Court of Appeals, in an Amended Decision promulgated on June 1, 1979, rendered judgment modifying the appealed decision of the Trial Court and found the appellant guilty of murder qualified by treachery, sentencing him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs. That decision is now before the Court for review pursuant to Section 12 (par. 2) of Rule 124, Rules of Court.[2]

There is no dispute that the victim, Dr. Pedro Alvero, met his death when he was gunned down in the afternoon of November 19, 1969 in a billiard hall in Abuyog, Leyte, of which he was then the vice-mayor. The post-mortem report, Exhibit "A", lists no less than nine (9) wounds sustained in various parts of his body and establishes the cause of death as "*** (h)emorrhage, profuse, internal and external due to probably multiple gunshot wounds."

The prosecution's version of the facts surrounding the killing, based in the main on testimony elicited from Demetrio Sartorio, Jose Vera, Victoriano Selleza (or Silleza) Denis Cernal, Sofronio Alvero and Hermites Alvero, is as follows:

In the local elections of 1967, a rift or feud had developed between the deceased, Dr. Alvero, and Octavio Traya, when the former had run for vice-mayor and the latter for mayor, of Abuyog, Leyte. Though both belonged to the same political party, Traya had thrown his support behind another candidate for vice-mayor, despite which Dr. Alvero had won. In fact, while they both won, Alvero as vice-mayorality candidate, obtained 500 votes more than Traya did as candidate for mayor.[3]

In the morning of November 17, 1969, Demetrio Sartorio was at the house of Octavio Traya in Abuyog to remind the latter about his promise to answer for the expenses that Sartorio had incurred for the treatment of an injury by an errand boy of Traya. While waiting, Sartorio heard Traya, as the latter was going down the stairs, tell his son, Leopoldo, to take "Winnie" and "Titoy" and kill the Alveros, starting with "Pedring". Leopoldo thereupon went upstairs and returned shortly, with a carbine and two Thompson submachine guns. He handed the carbine to Winnie Verterra and one of the submachine guns to Titoy Cinco, keeping the other.[4]

Early in the evening of the same day, the Trayas, father and son, Winnie Verterra, Titoy Cinco and a certain Patrolman Himonangan, all of them armed and riding in a jeep, stopped and accosted Jose Vera, then riding a motorcycle, in the Vito District of Abuyog. Octavio Traya asked Vera, whose sister was the wife of Felipe Alvero, a brother of Dr. Pedro Alvero, where Dr. Alvero was, and when Vera professed ignorance of the doctor's whereabouts, pistol-whipped him, hitting him in the nape of the neck. Then, while he and his men trained their guns on Vera, Octavio told him, "You tell the Doctor that if I see him I am going to kill him, if I will not be able to personally kill him, my boys will kill him." [5]

Later that same evening, while the deceased was attending a party for Congressman Mate in the house of Victoriano Selleza in the Bantay District of Abuyog, Octavio and Leopoldo Traya arrived near the front of the house. Octavio was heard to shout, "Palusara ngadi si Vice Mayor." (Let the Vice Mayor come down here.) After some whispered conferences with other persons at the party, Congressman Mate went down to where the Trayas were and returned in a few minutes. Sometime later, shots were heard from the direction of where the Trayas were. Some commotion ensued inside the Selleza residence, and one lady "collapsed", but the party went on.[6]

Two days afterwards, at about 4:30 in the afternoon, Leopoldo Traya, Titoy Cinco and Winnie Verterra walked into the billiard hall in Abuyog owned by Dr. Pedro Alvero, who was then seated at one of the tables watching the billiard and mahjong games in progress. All three were armed, Leopoldo and Cinco with submachine guns and Verterra with a carbine. While Verterra posted himself near the entrance, Leopoldo and Cinco separated and went toward Dr. Alvero, Leopoldo approaching from the right and Cinco from the left. Nearing Dr. Alvero, Leopoldo levelled his gun at him, and Alvero was only able to utter the word "Pare", before Leopoldo opened fire, causing Alvero to jump from his seat and crouch down on the floor, clutching the edge of the billiard table. While Alvero was in that position, Leopoldo and Cinco fired at him several times until he slumped to the floor. Alvero tried to crawl toward the wall, but Leopoldo, having in the meantime exchanged weapons with Verterra, shot him in the right backside with Verterra's carbine. Alvero collapsed on the floor, face down. Titoy Cinco then approached and fired at him. Verterra also fired his gun. The three then left the billiard hall.[7]

Hermes Alvero, brother of Dr. Alvero, whom the latter had earlier left at a restaurant near the market after being informed that there already was a "quorum" (a full complement of players) at the billiard hall, heard the sound of gunfire and saw people running from the hall. One of them told him that his brother had been killed by Leopoldo Traya and his companions. He ran toward the billiard hall and upon hearing the entrance, he saw Leopoldo Traya with a gun pointed at the dead body of his brother. Upon spying him, Leopoldo fired at him, but he was able to flee and reach the house of Victoriano Selleza, where he remained in hiding for two days.[8]

The body of Dr. Alvero was taken to his mother's house in Abuyog where an autopsy was performed by the municipal health officer, Dr. Lorenzo S. Tiongson. Dr. Tiongson later testified that four of the multiple wounds sustained by the deceased were fatal wounds, two of which would have caused death instantaneously.[9]

Appellant Leopoldo Traya, for his part, asserted his innocence of the killing which he ascribed to Winnie Verterra. He declared that he had gone to the billiard hall, alone and unarmed, to play billiards; that among the persons he saw inside the place were Dr. Alvero and Winnie Verterra; that when Dr. Alvero saw him, he (Alvero)

said angrily, "Good that you are already here," lunged at him and grappled with him; that he succeeded in pushing the doctor away, and the latter lost his balance and fell to the floor on his back; that he (appellant) then made for the door, but stumbled over a billiard table, at which moment he heard gunshots and looked back to see Winnie Verterra, pistol in hand, and Dr. Alvero down on the floor, breathing hard; that as he ran for the door again, he heard more gunshots, this time from outside the hall and, looking back once more, saw Winnie Verterra bent over and about to fall as if he had been hit; and that Verterra managed to leave the hall with him (appellant), but he was limping and his shoes were stained with blood.[10]

In a statement given to a military investigator and sworn to before the provincial fiscal on April 28, 1970 (before the information was filed), Winnie Verterra substantially confirmed the prosecution's version — already recounted — of the events that occurred in the evening of November 17, 1969 as well as of the actual killing of Dr. Alvero two days later.[11] At the trial, however, and on the witness stand, he sought to repudiate said statement, saying that he subscribed and swore to the same only because he had been assured by the fiscal that no harm would come to him if he did so.[12] He testified in support of the appellant's version of the incident and admitted that he had fired several shots at Dr. Alvero who, he claimed, had at that moment been rising from the floor, where he had fallen after a scuffle with the appellant, and aiming his pistol at the latter. He also stated that as he was running for the door afterwards, he had been fired at by Hermites Alvero and had been hit in the right thigh and left knee.[13]

Also presented by the defense to corroborate wholly or in part the appellant's version of the killing were Patrolman Anatolio Loreno and Ciriaco Anadia.

In his appeal to the Court of Appeals, the appellant assailed the Trial Court's decision convicting him as vitiated by threefold error which consisted in: (a) finding that the Traya family had evil designs (motive) against the deceased; (b) according full faith and credit to the testimony of Sofronio Alvero and Denis Cernal, the prosecution's principal witnesses to the actual killing; and (c) (in consequence) convicting him (appellant).

The Court of Appeals found no merit in those submissions, advertent to the well-established rule that in matters involving the credibility of witnesses, the findings of trial courts, which are better situated to resolve the same, having heard the witnesses testify and observed at first-hand their deportment on the stand and manner of testifying, will not ordinarily be disturbed on appeal.[14]

This Court finds no reason to disagree, not only because it is equally well settled that the findings of fact of the Court of Appeals — and said Court's determination of the appellant's guilt is a finding of fact or a conclusion based upon findings of fact — are conclusive upon the parties as well as this Court,[15] subject only to recognized exceptions[16] none of which obtains here, but also because a thorough review of the record shows that the Trial Court appraised the evidence meticulously and eminently well and in reaching a conclusion of guilt against the appellant did not overlook or misappreciate any fact or circumstance of weight.

Motive, rooted in bad blood that arose between Octavio Traya, the appellant's father, and the deceased following the elections of 1967, was sufficiently established by testimony which, as far as the record shows, was not disputed. The actions of the Trayas, father and son, and their men two days before the deceased was killed evidencing a resolute purpose to do him in are attested by witnesses whose veracity the Trial Court saw no reason to doubt. At any rate, motive becomes relevant, and its absence may assume determinative significance, only when the accused has not been positively identified,[17] and proof thereof becomes essential only when evidence of commission of the crime is purely circumstantial or is inconclusive.[18] This Court has time and again ruled that lack of motive does not preclude conviction when the crime and the participation of the accused therein are definitely established.[19]

The imputation of bias to the two eyewitnesses, Sofronio Alvero and Denis Cernal, the latter a ten-year old boy,

because they allegedly lived with and were supported by the Alveros, and the allusion of certain defects in their testimony fail to overcome the belief that is induced by their substantially cohesive and mutually corroborative declarations as to how Dr. Alvero met his death and at whose hands. While the Trial Court expressed some reservations about the testimony of Sofronio Alvero, mainly because he admitted to having been convicted of qualified theft and served a one-year jail term,[20] it seemed to have none about that of Denis Cernal, whom it found to have testified "**** with firm directness and disarming candor ****" and to have had " *** the steadfast courage to remain, in the midst of firing from high caliber guns, so as to stamp indelibly in his mind and memory the details of the criminal conduct of the three accused." [21] If the Trial Court was persuaded to accept the testimony of Sofronio Alvero because of its congruence with that of Cernal or, as more appropriately appears, because its truth is confirmed by the totality of the other evidence for the prosecution, that, surely, was not error. Indeed, the appellant's conviction could stand even without Alvero's testimony and on that of Cernal alone, it having been held that the testimony of a single witness, when credible, is sufficient to convict.[22]

The Court of Appeals correctly ruled that the crime committed by the appellant was murder, not homicide, the same being attended by the qualifying circumstance of treachery. The civil indemnity imposed should, however, be raised to P30,000.00.[23]

WHEREFORE, the Decision of the Court of Appeals under review is modified to increase the civil indemnity adjudged payable to the heirs of Dr. Pedro Alvero to P30,000.00 and is affirmed in all other respects, with costs against the appellant.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Cruz, and Feliciano, JJ., concur.

Gancayco, J., on leave.

[1] In Criminal Case No. CCC-XIII-23-L (s. '70)

[2] Said provision states: "Whenever in any criminal case submitted to a division, the said division should be of the opinion that the penalty of death or life imprisonment should be imposed, the said court shall refrain from entering judgment thereon and shall forthwith certify the case to the Supreme Court for final determination, as if the case had been brought before it on appeal." It was avowedly pursuant to this provision that an earlier decision of the Court of Appeals — dated February 1, 1978, finding the appellant guilty of murder but without entering judgment — was certified by it to this Court. However, this Court by Resolution dated March 30, 1979, remanded the case back to the Appellate Court" ** for rendition of the proper judgment **", i.e., for express imposition of the appropriate penalty in accordance with the rule laid down in *Peo. vs. Daniel*, L-40330, Nov. 30, 1978 , 86 SCRA 511, 540.

[3] Pp. 50-52. TSN. May 17, 1971.

[4] Pp. 51-53, TSN, June 4, 1970.

[5] Pp. 349-353, TSN, July 9, 1970.

[6] Pp. 261-270, TSN, September 10, 1970; pp. 104-121, TSN, July 10, 1970.

[7] Pp. 321-332, TSN, August 11, 1970; pp. 104-121, TSN, July 10, 1970.

[8] Pp. 242, 261-263, TSN, July 9, 1970.

[9] Pp. 51-61, TSN, April 19, 1971.

[10] Pp. 116-123, TSN, Id.

[11] Exhibit "L".

[12] Pp. 142-147, TSN, April 20, 1971

[13] Pp. 116-123, TSN, Id.

[14] Rollo, p. 332; *People vs. Mercado*, 131 SCRA 501; *People vs. Bado*, 128 SCRA 38; *People vs. Galicia*, 123 SCRA 550; *People vs. Palon*, 127 SCRA 529.

[15] *Tolentino vs. de Jesus*, 56 SCRA 67, and cases cited therein; *Cesar vs. Sandiganbayan*, 134 SCRA 105, 121.

[16] E.G., where (1) the finding is grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the Court of Appeals are contrary to those of the Trial Court; (8) the findings are without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

[17] *People vs. Milflores*, 115 SCRA 570; *People vs. Araja*, 105 SCRA 133.

[18] *People vs. Aniel*, 96 SCRA 199.

[19] *People vs. Lumantas*, 28 SCRA 764; *People vs. Dorico*, 54 SCRA 172; *People vs. Herila*, 51 SCRA 31.

[20] Pp. 141-144, TSN, July 11, 1970.

[21] Rollo, pp. 161-162.

[22] *People vs. Salazar*, 58 SCRA 467; *People vs. Boduso*, 60 SCRA 60.

[23] *People vs. de la Puente*, 126 SCRA 518; *People vs. Centeno*, 130 SCRA 198.

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