

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR A. DELA CRUZ, ACCUSED-APPELLANT.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

Repugned in this Appeal is the Decision[1] dated 9 March 2012 of the Regional Trial Court of Manila, Branch 30, for Frustrated Homicide, in Criminal Case No. 08-259415, the fallo of which reads:

“WHEREFORE, accused NESTOR DELA CRUZ y AGBAYANI is found GUILTY beyond reasonable doubt of FRUSTRATED HOMICIDE. He is hereby sentenced to an indeterminate imprisonment of 4 years and 2 months of prison correctional as minimum to 8 years, 8 months and 1 day of prison mayor as maximum and ordering him to pay Isaac S. Ulep, Jr. the amount of Php65,919.60 as actual damages and Php25,000.00 as moral damages.

SO ORDERED.”[2]

The Information,[3] inculcating accused-appellant Nestor Dela Cruz (NESTOR) for the crime of Frustrated Homicide, set forth the following accusatory averments:

“That on or about October 22, 2006, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, real identities and present whereabouts is (sic) still unknown and helping one another, did then and there willfully, unlawfully, and feloniously attack, assault, and use perso-nal violence upon the person of one ISAAC S. ULEP, JR., by then and there, suddenly shooting the latter with a gun hitting him on his back, thereby inflicting upon him serious physical injuries which are necessarily fatal and mortal, thus performing all the acts of execution which should have produced the crime of Homicide as a consequence but nevertheless did not produce it by reason of causes independent of the will of said accused, that is the timely and able medical assistance rendered to said ISAAC S. ULEP, JR., which prevented his death.

Contrary to law.”

Arraigned, NESTOR pled not guilty to the charge.[4] Thereafter, trial on the merits ensued.

The evidence for the prosecution cashes in on the testimonies of its witnesses.

On 22 October 2006, at around 9:00 o'clock in the evening, private complainant Isaac Ulep, Jr. (Isaac), a resident of No. 624, Cayco St., Sampaloc, Manila, was standing in front of his house with his wife, Sincerely Ulep (Sincerely); their helper, Gina Fulgoso (Gina); and neighbors, Felix Osias and Clifford Alba. In a trice, Isaac noticed a Blue Daewoo Racer car circling within the vicinity of his residence. He saw NESTOR as one of the passengers when the latter opened the window of the car. Isaac then uttered: “Nandito na naman kayo, palagi mo na lang akong tinatakot.” NESTOR retorted: “Ayaw mo talagang umalis ha.”

When Isaac turned his back on NESTOR, Sincerely promptly told him to go inside the house as the former was about to shoot him. Isaac suddenly heard a gunshot and felt blood coming from his chest. He turned his head and

saw the car of NESTOR speeding away. Isaac was timely brought to the hospital and treated for his wounds. Sincerely and Gina both saw NESTOR as the one who shot Isaac.[5]

Fulminating against the prosecution's imputations, the defense recounted a different version—

On the time and date of the incident, NESTOR was in San Mateo, Rizal presiding over a meeting of the AFP Village Homeowners Association. He learned of the shooting incident only in February 2007 when he chanced upon a subpoena left inside his former residence at No. 6 Camarilla St., Quezon City.[6]

After trial, the court a quo rendered the judgment of conviction. NESTOR moved for reconsideration but failed to attain favorable relief as the court a quo denied his plea.[7]

Unfazed, NESTOR (now, appellant) seeks refuge before Us asserting that the court a quo gravely erred—

I

IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION'S WITNESSES DESPITE THEIR GLARING AND GROSS INCONSISTENCIES, CONTRADICTIONS AND FABRICATIONS.

II

IN CONVICTING APPELLANT BEYOND REASONABLE DOUBT WHEN ANY ONE OF THE MULTIPLE GROSS INCONSISTENCIES, CONTRADICTIONS AND FABRICATIONS OF THE PROSECUTION'S WITNESSES SHOULD HAVE BEEN ENOUGH TO CREATE AN IOTA OF DOUBT IN FAVOR OF HIS INNOCENCE.

The Appeal is barren of merit.

Appellant posits that his conviction is not supported by proof beyond reasonable doubt and that the court a quo erred in relying heavily on the testimonies of the prosecution witnesses. Otherwise stated, appellant assails the factual findings of the court a quo and the credibility of the prosecution witnesses.

Ingrained in Our jurisdiction is the rule that full weight and respect are usually accorded by the appellate court to the findings of the trial court on the credibility of witnesses, since the trial judge had the opportunity to observe the demeanor of the witnesses.[8] In the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[9]

In the case at bench, We find no cogent reason to deviate from the findings of the court a quo that appellant was the one responsible for shooting Isaac.

The prosecution demonstrably established beyond reasonable doubt the essential elements of the crime of frustrated homicide— (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.[10]

For one to be criminally liable for a consummated, frustrated or attempted homicide or murder, there must be, on the part of the accused, an intent to kill the victim. Intent to kill is an internal act but may be proved by evidence, inter alia, that the accused used a lethal weapon; the nature, location and number of wounds sustained by the victim.[11]

Here, the prosecution tellingly demonstrated that appellant intended to kill Isaac as he used a gun and aimed his upper back hitting his right lung. The gunshot wound was fatal had it not been for the timely medical attention

accorded to Isaac. If the victim's wound would normally cause death, then the last act necessary to produce homicide would have been performed and death would have resulted were it not for the timely medical attention given to the victim.[12]

Along this grain, prosecution witnesses Sincerely and Gina positively identified appellant as the perpetrator of the crime. Consider the following open-and-shut testimonial avowals:

“Q

Now, can you tell us if on October 22, 2006 at about 9:30 in the morning --- in the evening, where were you? (sic)

A

We were standing in front of our house and my husband and I were conversing.

Q

And aside from you and your husband, were there other persons also with you?

A

Yes, sir.

x x x x x

A

Felix Osias, Gina Toposo and Clifford Alban.

Q

Now, can you tell us if on that day and night and time, if you have encountered any unusual incident?

A

There was, sir.

Q

And what is this incident all about?

A

My husband was shot.

Q

And do you know who ever shot your husband?

A

Yes, sir.

x x x x x

Q

Will you kindly look around inside the courtroom and point to him?

INTERPRETER:

Witness is pointing to a male person inside the courtroom wearing blue polo shirt, who, when asked his name, identified himself as Nestor Dela Cruz y Agbayani.

x x x x x

Q

And how far were you from --- and do you know who ever shot your husband? Do you know who ever shot him?

A

Yes, sir.

x x x x x

A

Nestor Dela Cruz.

Q

Nestor Dela Cruz. And you are referring to the accused?

A

Yes, sir.

Q

Now, how far were you from where Nestor Dela Cruz was? How far were you? How far were you? Distance. Gaano kalayo? Sabihin mo kung ga'no kalayo d'yan.

A

About six to seven meters.

Q

Now, where was the accused at the time that you saw him shot your husband? Where was he?

A

Inside the car, sir.

x x x x x

Q

You know him. Now, how many times - - - did you - - - did you always see this car going to your place?

A

Yes, sir.

Q

Why?

A

That's the car being used by Nestor Dela Cruz who together with companions every time he goes to the apartment.
(sic)

x x x x x

Q

More than five. Now, can you explain to us how was your husband shot by the accused?

A

Nestor was inside the car. I recognized him, sir, and I knew he was the one who shot my husband.

Q

Now what about - - - what is the lighting condition in the place?

A

Well-lighted, sir.

x x x x x

Q

Now, describe to us now(,) how the accused here shot your husband.

x x x x x

A

I saw Nestor aiming to shoot my husband so I told my husband to enter the house.

X X X X X

Q

And did you know where that - - - where did that gunshot come from?

A

It came from the car where Nestor was boarded.

Q

And did you know who of the passengers ever shot your husband?

A

Yes, sir.

Q

Who?

A

Nestor, sir.

X X X X X

Q

Now, you said that your husband was shot by the accused. Did you come to know what part of the body of your husband was ever hit by that gunshot?

A

Yes, sir.

Q

What part of the body?

A

The right portion of the chest, sir.

X X X X X”[13] (Emphases supplied)

Q

Will you kindly tell us, Madam witness, where were you on October 22, 2006 at 10:00 o'clock in the evening? Where were you?

A

I was in front of the apartment, sir.

Q

And, do (sic) you have any companion at the time that you were in front of the apartment?

A

Yes, sir.

x x x x x

A

Mr. Ulep, Mrs. Ulep, and Mr. Osias, sir.

x x x x x

Q

Now, what part of the apartment were you then?

A

I was in front of 624 Cayco St., sir.

Q

While you were there together with Mr. Ulep, Mrs. Ulep and Felix Osias, could you tell the court whether there was anything (sic) unusual incident that took place?

A

Yes, sir.

x x x x x

A

Mr. Nestor Dela Cruz shot Mr. Ulep, sir.

x x x x x

A

Nestor Dela Cruz shot Mr. Ulep, sir.

Q

And, where was Nestor Dela Cruz at that time when you saw him shot (sic) Mr. Ulep?

A

He was inside his car, sir.

x x x x x x"[14] (Emphases Ours)

Appellant's alibi and denial when juxtaposed with the positive identification by the prosecution witnesses pale into insignificance. Defense of alibi cannot prevail over the positive testimony of the prosecution witness and their unequivocal identification of appellant as the perpetrator of the crime. To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving, puny and implausible. Settled is the rule that the defense of alibi is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters. Greater weight is given to the categorical identification of the accused by the prosecution witness than to the accused's plain denial of participation in the commission of the crime. Courts view the defense of alibi with suspicion and caution not only because it is inherently weak and unreliable, but also it can be fabricated easily. 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.[15]

Case law teaches Us that alibi and denial are outweighed by positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[16] Hence, it is incumbent upon appellant to prove that he was at another place when the felony was committed, and that it was physically impossible for him to have been at the scene of the crime at the time it was committed. Here, the records are devoid of any indication of such physical impossibility that appellant was at the scene of the crime at the time it was committed.

In a feeble attempt to reverse the judgment of conviction, appellant takes issue with the discrepancies between Isaac's testimony in court and his sworn statement.

Appellant's posture could hardly carry the day for him.

It should be stressed that appellant was convicted not on the strength of the testimony of Isaac but on the positive identification made by the prosecution witnesses, Sincerely and Gina. We reverberate the explication made by the court a quo—

"However, it should be noted that while Isaac may have been unsure or was in a situation that would have prohibited him from actually seeing the gunman, having been shot from the back, his two other companions were in a good position to see the whole event including the very identity of the assailant. This positive identification cannot be simply ignored notwithstanding the different shade that was painted by Isaac in his Sinumpaang Salaysay.

x x x x x x

Sincerely and Frugoso has been very insistent, categorical, and explicit in claiming that they have witnessed the shooting and saw the accused as the one who shot Isaac. This tips the scale favorably for the prosecution, especially against an alibi."[17] (Emphasis supplied)

Jurisprudence teems with pronouncements that certain discrepancies between declarations made in an affidavit and those made on the witness stand seldom could discredit the declarant. Sworn statements, being taken ex parte, are almost always incomplete and often inaccurate for various reasons, sometimes from partial suggestion or for

want of suggestion and inquiries. They are generally inferior to the testimony of the witness given in open court. Our case law is unequivocal in saying that the testimony of a witness prevails over an affidavit. In short, affidavits are generally subordinated in importance to open-court declarations; or, more bluntly stated, whenever there is inconsistency between an affidavit and the testimony of a witness in court, the testimony commands greater weight. In a plethora of cases, the Supreme Court ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects that would justify the reversal of a judgment of conviction.[18] Sworn statements are often executed when an affiant's mental faculties are not in such a state as to afford the affiant a fair opportunity of narrating in full the incident which transpired.[19]

Records reflect that Isaac's credibility and witnesses Sincerely and Gina, were put to the test on the witness stand. They did not turn a hair in light of the defense's grueling cross-examination. They stood by what they declared in open court that it was appellant who perpetrated the crime. Indeed, their testimonies spell a ring of truth.

One final point. Appellant looks askance at the credibility of the prosecution witnesses claiming that they gave different accounts on the following: 1) type of firearm used; 2) identity of the driver of the vehicle used; 3) their distance from the alleged gunman; 4) the alleged companion of appellant at the time of the incident; 5) who took pictures and the film used; and 6) the position of the get away car at the time of shooting.

We find and so rule that the alleged inconsistencies refer merely to inconsequential details and not to the crux of the case—that the prosecution witnesses actually saw appellant shoot Isaac. Well-ensconced is the rule that “inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses for they erase the suspicion of rehearsed testimony.”[20]

Anent the damages awarded by the court a quo, We deem it judicious to impose on all amounts thereof an interest of six percent (6%) from this date until fully paid, in line with the current jurisprudential teaching enunciated by the Supreme Court.[21]

WHEREFORE, the Appeal is hereby DENIED. The Decision of the Regional Trial Court of Manila, Branch 30, in Criminal Case No. 08-259415, is AFFIRMED with MODIFICATION in that accused-appellant Nestor dela Cruz is further ordered to pay an additional interest at the rate of six percent (6%) per annum on the actual and moral damages imposed from the finality of judgment until fully paid.

SO ORDERED.

Ybañez, and Paredes*, JJ., concur.

* Vice Justice Carmelita S. Manahan, per Office Order No. 149-14-RSF dated 21 April 2014.

[1] Original Records, Vol. III, pp. 736-755.

[2] Id., p. 754.

[3] Original Records, Vol. 1, p. 1.

[4] Id., p. 81.

[5] TSN, 10 March 2008, pp. 24-26, 28-30; 17 March 2008, pp. 7-14; 17-24; 5 August 2008, pp. 4-7, 13-17.

[6] Id., 18 August 2009, pp. 9-10; 8 June 2010; 29 June 2010.

- [7] Original Records, Vol. III, pp. 800-801.
- [8] See Sanchez v. People, 588 SCRA 747, 762 (5 June 2009).
- [9] See People v. Desuyo, 625 SCRA 590, 605 (26 July 2010).
- [10] Serrano v. People, 623 SCRA 322, 339 (5 July 2010). (Emphasis not Ours)
- [11] People v. Darilay, 421 SCRA 45, 60 (26 January 2004).
- [12] See Novicio v. People, 563 SCRA 681, 691-692 (29 August 2008).
- [13] TSN, 17 March 2008, pp. 7-14; 17-20.
- [14] TSN, 5 August 2008, pp. 6-7; 13.
- [15] See Velasco v. People, 483 SCRA 649, 664-665 (28 February 2006).
- [16] See People v. Rarugal, 688 SCRA 646, 653 (16 January 2013), citing Malana v. People, 549 SCRA 451, 465-466 (26 March 2008).
- [17] Original Records, Vol. III, pp. 748, 750.
- [18] See Tarapen v. People, 563 SCRA 577, 594 (28 August 2008).
- [19] People v. Tamsi, 388 SCRA 604, 623 (11 September 2002).
- [20] People v. Navarro, 351 SCRA 462, 477 (12 February 2001).
- [21] Fe Abella y Perpetua v. People of the Philippines, G.R. No. 198401, 7 October 2013.

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