

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE NARSICO (NARSICO) ALIAS ROGELIO LIMPIO Y SUICO AND EFREN SUICO (AT LARGE), ACCUSED, JOSE NARSICO (NARSICO) ALIAS ROGELIO ...

G.R. No. 103875. September 18, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

On 18 October 1991 the Regional Trial Court of Toledo City[1] found the accused Jose Narsico (Narciso) guilty of murder and sentenced him to suffer the penalty of reclusion perpetua, to indemnify the heirs of Eliezer Rosario in the amount of P50,000.00, and to pay the costs.[2]

As regards the accused Efren Suico who has remained at large the case was placed in the archives conformably with existing practice and procedure.

Accused-appellant assails the verdict of the court a quo. He imputes error to the trial court in sustaining his identification by prosecution witnesses Jovel Pesquera and Rogelio Estan made one month and seven days after the shooting incident.

The basis of appellant in disputing his identification by prosecution witnesses is that they never mentioned his name when they reported the matter to the police authorities immediately after the shooting and that it took them more than a month before they executed their affidavits. He also questions the delay in instituting the case against them thus making their testimonies suspicious and doubtful.

The conviction of the accused-appellant must be sustained.

The evidence for the prosecution is clear. On 20 July 1988, at around 9:30 in the evening, Eliezer Rosario was watching a betamax movie inside the store of Jovel Pesquera in the public market of Balamban, Cebu, together with Jovel, his common-law wife Delia and children, their helper Virgie, and Rogelio Estan. Rosario was directly facing the television screen while Pesquera was on his right side sitting sideways towards Rosario. After a while Jose Narsico (Narciso) and Efren Suico arrived. Suico stood beside the door while Narsico advanced inside towards Rosario. Suddenly and without any provocation, Narsico fired a volley of shots at Rosario causing the latter to collapse face down on the table. Narsico immediately walked out followed by Suico. Pesquera then went to Primitivo Rosario, brother of the victim, to inform him of the incident. When Primitivo arrived at the scene they rushed Eliezer to Balamban Hospital but were advised instead to proceed to Cebu City where Eliezer later died. This was confirmed by Rogelio Estan.

Dr. Jesus P. Cerna, Police Medico-Legal Officer, PC/INP Cebu Metrodiscom, testified that Eliezer Rosario died, of a fatal gunshot wound. When asked whether there was any indication that the victim could have been aware of any danger lurking behind him Dr. Cerna replied that it was improbable as there was no "defensive wound."

Appellant Jose Narsico denied any involvement in the killing of Eliezer Rosario. He set up the defense of alibi claiming that on the night of 20 July 1988 he was on Mabini Street, Cebu City, working as a helper in Marlyn Trading. He alleged that from February to August 1988 they were always working up to late at night making their inventory and that after work they would stay in the house of their employer at Sunrise Village in Pardo, Cebu City; in fact, he and Rey Espisa shared the same sleeping quarters. Specifically he said that from morning till around 10:00 in the evening of 20 July 1988 he was inside the store working on their inventory.

Rey Espisa, presented to corroborate the story of Narsico, testified that on the night of 20 July 1988 they finished working at Marlyn Trading at around ten o'clock and walked home together to their employer's house - he, Narsico and the latter's sister Angelina. He and Narsico slept in one room and never went out that night.

The denial of the appellant does not carry any evidentiary value at all, especially when weighed against the positive statements of the prosecution witnesses. In *Abadilla v. Tabiliran Jr.*[3] we ruled that denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving assertion which deserves no weight in law. It cannot be given greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.

Unfortunately, alibi is an inherently weak defense. It is usually cast off in favor of positive identification.[4] For alibi to prosper the person pleading this excuse must show that (a) he was somewhere else and not at the crime scene at or about the time of the killing; and, (b) it was physically impossible for him to be at the place of the crime. In the case at bench, the locus criminis was Balamban, Cebu. Appellant averred that he was nowhere in the vicinity of the shooting as he was working at Marlyn Trading in Cebu City. But only Rey Espisa corroborated this claim.

As for Espisa, his testimony can hardly be given credence. As observed by the trial court, it appeared to be rehearsed and perjured. Firstly, Espisa said that he was requested by Angelina to testify in the latter's behalf, and that he (Espisa) was "surprised" upon being informed that Narsico was charged with murder. Quite interestingly, although Espisa claimed to have been stunned when told about the charge against Narsico, his pretension soon manifested lack of natural solicitude and curiosity -

Q.

You were surprised when she asked you to testify for her brother?

A.

Yes, sir, I was surprised.

x x x x

Q.

So, you were told that this incident that you were going to testify (to) took place on July 20, 1988?

A.

No, she did not tell me.

Q.

She did not also tell you for what offense was Jose Narsico being charged with?

A.

I was told by Angeling that her brother Jose Narsico was imprisoned because he was implicated in the killing in Balamban.

Q.

And you asked her when did the incident take place?

A.

No, I did not ask.

Q.

You also did not ask Angeling who was the victim in this killing?

A.

I did not ask also.

Q.

You did not ask Angeling in what particular place in Balamban did the killing take place?

A.

I did not also ask.

Q.

You did not also ask Angeling what was the weapon x x x used in the killing x x x x

x x x x

A.

No, sir.

Q.

In other words, you just kept silent as Angeling requested you to testify in this case?

A.

I just remained silent because what x x x I (would) testify was that we were together in our work.[5]

This behavior of Espisa was unusual, not in accord with human nature and common experience. Having supposedly maintained close personal relations with the accused, sharing the same sleeping quarters for months, Espisa was expected to display some concern for Narsico; haplessly, he did not.

Espisa also testified that from February to August 1988 they were doing inventory work in Marlyn Trading, usually after store hours. This is difficult to believe, as the records show. Marlyn Trading employed only six helpers with the owner acting as cashier, accountant and bookkeeper. Certainly, the inventory-taking in a store this size would not take seven months to finish. As the trial court observed Espisa on the witness stand -

In the case at bar, the defense witness Rey Espisa when he testified to corroborate the testimony of the accused that he was in Cebu City working about at the time and date of the incident was testifying in a manner and observed by the Court while on the witness stand was feeling uneasy and uncomfortable, indicative of a fact that he was falsely testifying on matters which are (sic) untrue. Further, the testimony of Rey Espisa that they were together with accused Jose Narsico in Marlyn Trading working sometimes up to 10:00 p.m. was not

corroborated.[6]

The certification issued by Marlyn Canabe, owner of Marlyn Trading, as to the fact that Narsico was in her employ and within the store premises at the time of the killing was properly objected to by the prosecution as mere hearsay since she was never presented as a witness.

With the testimony of Espisa and the certification of Canabe discarded, the defense is left with only the denial of the accused and his alibi. Since the version of the defense is uncorroborated, the testimony of the accused is at most self-serving, particularly in light of the finding of the trial court that he harbored hatred against Pat. Rosario, brother of victim Eliezer Rosario, and therefore had vengeance in his heart against the Rosarios -

(A)ccused was aggrieved against (sic) Pat. Primitivo Rosario for filing a case of Robbery with Homicide against his brother, William Narsico, which (sic) was convicted by this Court and affirmed by the Supreme Court. And as a matter of fact, accused blamed Pat. Rosario for his arrest in Cebu City for violation of P.D. 532 where he was a suspect in snatching. In short, accused had harbored hatred against Pat. Rosario, who is the brother of the victim. In other words, accused had vengeance in his heart against the Rosarios.[7]

We hesitate to disturb the above findings of the trial court. As it has been held repeatedly, trial courts are in a better position to assess the credibility of witnesses, having heard and observed their deportment while on the stand. It is only when the trial court has overlooked facts which could have substantial bearing on the decision under review that we may alter its factual findings.[8]

Accused-appellant miserably failed to rebut successfully the testimony of prosecution witnesses positively identifying him as the assailant. No ill motive-was ascribed to them for testifying against him. But even assuming that he was somewhere else when the crime was committed, still he failed to meet the second requirement for alibi to prosper. He did not offer an iota of evidence to show that it was physically impossible for him to be at the crime scene. The distance between Balamban and Cebu City was never subject of evidence for appellant to support his claim that he could not have been in Balamban at the time of the killing because he was in Cebu City.

The allegation that prosecution witnesses failed to mention the name of appellant when they reported the matter to the police authorities is not supported by the records. On the contrary, Jovel Pesquera testified that he immediately reported the matter to Pat. Primitivo Rosario, brother of the victim, who was then assigned to guard the municipal building of Balamban. The delay in the execution of Pesquera's affidavit was sufficiently explained thus -

Q.

Now, the date of the alleged incident occurred or rather the date of the alleged incident is 20 July 1988 and you executed this affidavit only on 27th August 1988 or more than one month. Can you explain to the Honorable Court why it took you more than one month to execute this affidavit in connection with this case?

A.

I was informed by Andres Lopez that I could still execute an affidavit even though it is (sic) more than a month already.

Q.

My question to you is, please explain to the Honorable Court why it took you more than one month to execute that affidavit?

A,

Because during the incident I was not the one concerned so I did not execute an affidavit yet but when there

was a case filed against the two accused that is (sic) why they asked me to sign an affidavit prepared by Lopez.

x x x x

Q.

After the shooting incident were you investigated by a police investigator of Balamban Police Station?

A.

No.

Q.

It was only on August 27, 1988 that you were summoned to the police station to sign this affidavit, is that correct?

A.

Yes.

Q.

And it was Andres Flores or rather Andres Lopez who typewrote your affidavit which you signed, is that correct?

A.

Yes, Andres Lopez.

Q.

In fact when you arrived at the police station this affidavit Exhibit 2 was already prepared?

A.

No. I was being interrogated first and then (he) typewrote.[9]

Delay or vacillation in immediately reporting an incident does not impair or put into doubt the credibility of a witness especially if such delay is satisfactorily explained, as in this case. We have taken Judicial notice of the natural hesitancy of witnesses to come out and openly declare that they have witnessed the commission of a crime. This attitude springs from their unwillingness to get involved in the complexities and inconveniences which a criminal investigation entails.

The trial court correctly appreciated treachery as a qualifying circumstance. The prosecution sufficiently established the attack as sudden thereby giving the victim no time to defend himself. Rosario did not have a chance to notice appellant when the latter entered the store as the former was facing the television screen and concentrating on the movie being shown. On the other hand appellant knew that Rosario was inside the store before he went in so that their meeting could not have been a "chance encounter."

But nighttime was properly disregarded as it is only aggravating (a) when it facilitated the commission of the crime; or (b) when especially sought by the offender to insure the commission of the crime or for the purpose of impunity or, (c) when the offender took advantage thereof also for the purpose of impunity.[10] In the instant case, nighttime was not established to have been sought by the accused; neither was it shown to have facilitated the commission of the offense. The records are enlightening -

Q.

You told this Honorable Court that Jose Narciso fired at Eliezer Rosario while Efren Suico was looking at Eliezer Rosario. Now, how did you, or how come that you saw Jose Narsico firing at Eliezer Rosario since it was night time?

A.

There was light.

Q.

What kind of light are you talking about?

A.

Fluorescent lamp.

Q.

Where did this fluorescent lamp emanate from?

A.

Outside the store.

Q.

What light, if any, was there inside the store?

A.

It was also fluorescent lamp.[11]

WHEREFORE, the decision appealed from finding accused-appellant JOSE NARSICO (NARCISO) alias ROGELIO LIMPIO Y SUICO guilty of murder, sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of Eliezer Rosario the amount of P50,000.00 as indemnity for his death is AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Padilla (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Decision penned by Judge Gualberto P. Delgado, RTC - Br. 29, Toledo City.

[2] Id., p. 7; Rollo, p. 18.

[3] A.M. No MTJ-92-716, 25 October 1995, 249 SCRA 464, citing *People v. Amaguin*, G.R. Nos. 54344-45, 10 January 1994, 229 SCRA 166.

[4] *People v. Francisco*, G.R. No. 99058, 25 October 1995, 259 SCRA 534, citing *People v. Abo*, G.R. No. 107235, 2 March 1994, 230 SCRA 612, and *People v. Matildo*, G.R. No. 107643, 2 March 1994, 230 SCRA 635; *People v. Briol*, G.R. No. 111688, 25 October 1995, 249 SCRA 576, citing *People v. Datahan*, G.R. Nos. 77107-08, 21 January 1988, 157 SCRA 215, 219 and *People v. Jiminez*, G.R. No. 108773, 15 August 1994, 235 SCRA 322, 327; *People v. Pidia*, G.R. No. 112264, 10 November 1995, 249 SCRA 701, citing *People v. Penillos*, G.R. No. 65673, 30 January 1992, 205 SCRA 546; *People v. Castor*, G.R. No. 93664, 11 December 1992, 216 SCRA 410, *People v. Kyamko*, G.R. No. 103805, 17 May 1993, 222 SCRA 183; *People v. Lazaro*, G.R. No. 99263, 12 October 1995, 249 SCRA 242; *People v. Barquilla*, G.R. No. 99049, 11 October 1995, 249 SCRA 203,

205, citing *People v. Seillon*, G.R. No. 92154, 12 September 1994, 236 SCRA 385, *People v. Constantino*, G.R. No. 109119, 16 August 1994, 235 SCRA 384.

[5] TSN, 22 April 1991, pp. 8, 12-13.

[6] Decision p. 7; Rollo, p. 18.

[7] *Id.*, p. 6; *Id.*, p. 17.

[8] *People v. Lao*, G.R. No. 117092, 6 October 1995, 249 SCRA 146, citing *People v. Pascua*, G.R. No. 88282, 6 May 1992, 208 SCRA 393, *People v. dela Cruz*, G.R. No. 102063, 20 January 1993, 217 SCRA 283, *People v. Sibug*, G.R. No. 108520, 24 January 1994, 229 SCRA 489, *People v. Pamor*, G.R. No. 108599, 7 October 1994, 237 SCRA 462, *People v. Rodico*, G.R. No. 107101, 16 October 1995, 249 SCRA 320, citing *People v. Yambao*, G.R. No. 77778, 6 February 1991, 193 SCRA 571, *People v. Andasa*, G.R. No. 101022, 27 February 1992, 206 SCRA 636, *People v. Arce*, G.R. Nos. 101833-34, 26 October 1993, 227 SCRA 406.

[9] TSN, 11 December 1989, pp. 20-21.

[10] Reyes, Luis B., *The Revised Penal Code*, Book I, 1993, ed., p. 6.

[11] TSN, 2 February 1990, p. 6.

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