

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NARCISO NAZARENO, RAMIL REGALA, ORLANDO HULAR AND MANUEL LAUREAGA, ACCUSED, NARCISO NAZARENO AND RAMIL REGALA, ACCUSED-APPELLA...

G.R. No. 103964. August 01, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1], dated May 28, 1991 of the Regional Trial Court of Makati (Branch 136), finding accused-appellants Narciso Nazareno and Ramil Regala guilty of murder for the killing of Romulo "Molet" Bunye II in Muntinlupa, Metro Manila on December 14, 1988 and sentencing them to suffer the penalty of reclusion perpetua. In addition, the two were ordered to pay jointly and severally to the heirs of the deceased the amount of P50,000.00. Two others, accused with them, Manuel Laureaga and Orlando Hular, were acquitted.

The evidence for the prosecution shows that on December 14, 1988, between 8:00 a.m. and 9:00 a.m., Romulo Bunye II took a tricycle (referred to in the record as "stainless" tricycle evidently because its body was made of stainless steel), which was driven by Fernando Hernandez. Unknown to Bunye was that two men were waiting outside his house and that the two hailed another tricycle in order to follow him.

Bunye alighted at the corner of T. Molina and Mendiola Streets in Alabang, Muntinlupa and crossed to the left side of the street. Shortly after, the tricycle, driven by Rogelio de Limos, arrived and stopped in front of Hernandez's "stainless" tricycle. One of the men jumped out of the tricycle and shot Bunye at the back of the head. When Bunye fell face down, the assailant fired another shot at Bunye's head. Then, the other man approached Bunye and shot him also in the head.

Rogelio de Limos and Fernando Hernandez, the tricycle drivers, executed sworn affidavits relating what they had witnessed.[2] The two described the assailants and stated that they could recognize the killers if they saw them again. There was another witness, a woman, who was also a passenger of the "stainless" tricycle on which Bunye rode but her identity had remained unknown.

The autopsy report on the victim showed that he died of gunshot wounds in the head.[3]

On December 28, 1988, Ramil Regala, Narciso Nazareno, Orlando Hular and Manuel Laureaga were arrested. Regala and Nazareno were put in a police line-up. They were identified and pointed to as the assailants by the tricycle drivers Hernandez and de Limos. Hernandez and de Limos executed additional sworn affidavits.

Ramil Regala executed affidavits, dated December 28, 1988[4] and January 2, 1989[5] admitting participation in the slaying of Bunye and pointing to Narciso Nazareno and a certain Rey Taling as his co-conspirators. He claimed that they had been hired by Orlando "Boy" Hular to kill the victim and told that they would be paid P30,000.00 by Manuel Laureaga. His affidavits were corroborated by Orlando Hular who, in an affidavit, executed on the same day, December 28, 1988,[6] stated that it was Laureaga who wanted Bunye killed,

apparently in connection with Bunye's job as administrator of the public market in Alabang.

However, Regala and Hular subsequently recanted. Regala claimed that he had been tortured.[7] On the other hand, Hular claimed that, although he was not tortured, he admitted to the crime and signed the affidavit because he was afraid he would also be tortured.[8] Narciso Nazareno also claimed to have been tortured to admit to the crime but refused to sign any written statements.[9]

The trial court ruled the confessions of Regala and Hular to be inadmissible. However, it held Regala and Nazareno guilty on the basis of their positive identification by Hernandez and de Limos during the police line-up on December 28, 1988 and their testimony in court. The trial court stated:

As between the aforecited testimonies of Rogelio de Limos and Hernandez on one hand and the testimonies of Narciso Nazareno and Ramil Regala on the other, the Court would place its reliance on the testimonies of the prosecution witnesses, because firstly, there is no showing in the record that Rogelio de Limos and Fernando Hernandez are manufactured evidence. As a matter of fact, none of the defense witnesses had ever made such an imputation; and neither did the defense lawyers do so in their extensive memoranda. Secondly, it is a well-settled doctrine in this jurisdiction that as between positive testimonies and denials, the Court should place more weight on the former (*People v. Mostoles, Jr.* 124 SCRA 906). Thirdly, the testimonies of Narciso Nazareno and Ramil Regala are in the nature of alibis, and it is also settled that because they can easily be concocted the Courts should exercise extreme caution in accepting them as defense (*People vs. Bagsica*, 65 SCRA 400).

Orlando Hular and Manuel Laureaga were acquitted for lack of evidence against them.[10]

Hence this appeal by Nazareno and Regala.

In his brief, accused-appellant Narciso Nazareno assigns the following errors:

THE LOWER COURT ERRED IN FAILING TO CONSIDER THE VIOLATION OF THE ACCUSED-APPELLANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS AS A FATAL FLAW IN HIS PROSECUTION AND SUBSEQUENT CONVICTION.

THE LOWER COURT ERRED IN FAILING TO ACQUIT THE ACCUSED-APPELLANT ON REASONABLE DOUBT.

Accused-appellant Ramil Regala, on the other hand, contends:

THE TRIAL COURT ERRED IN NOT CONSIDERING THE UNLAWFUL ARREST OF RAMIL REGALA AS A GROSS VIOLATION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS.

THE TRIAL COURT ERRED IN NOT CONSIDERING THE TESTIMONY OF THE EXPERT WITNESS FROM THE NATIONAL BUREAU OF INVESTIGATION IN DETERMINING THE PROBABILITY OF GUILT OF APPELLANT.

THE TRIAL COURT ERRED IN RELYING ON THE INCREDIBLE TESTIMONIES OF FERNANDO HERNANDEZ AND ROGELIO DE LIMOS IN CONVICTING HEREIN APPELLANT.

We have reviewed the record and the evidence, and we find accused-appellants' contentions to be without merit.

First. Accused-appellants claim that their arrests without warrant were illegal and justify the nullification of the proceedings of the trial court. The contention is untenable. The warrantless arrest of accused-appellant Narciso Nazareno was upheld by this Court in 1990 in a petition for habeas corpus. It appears that, on January 9, 1989, Nazareno filed a motion for bail.[11] As the trial court denied his motion, a petition for habeas corpus was filed on his behalf with this Court. It was alleged that Nazareno's arrest was illegal because it was made without

warrant fourteen days after the killing of Romulo Bunye II. This Court dismissed the petition in its decision of July 9, 1990.[12] He filed a motion for reconsideration which the Court also denied on the ground that the warrantless arrest was in accordance with Rule 113, 5(b) of the Revised Rules of Criminal Procedure.[13] The question which Nazareno raises has thus been settled long ago in a final decision of this Court.

Furthermore, Nazareno and Regala waived objections based on the alleged irregularity of their arrest, considering that they pleaded not guilty to the charges against them and participated in the trial. Any defect in their arrest must be deemed cured when they voluntarily submitted to the jurisdiction of the court.[14] For the legality of an arrest affects only the jurisdiction of the court over the person of the accused.[15] Consequently, if objections based on this ground are waived, the fact that the arrest was illegal is not a sufficient cause for setting aside an otherwise valid judgment rendered after a trial, free from error.[16] The technicality cannot render the subsequent proceedings void and deprive the State of its right to convict the guilty when all the facts on record point to the culpability of accused.[17]

Second. Accused-appellants argue that the trial court erred in giving credence to the testimony of Hernandez and de Limos. Accused-appellant Nazareno claims that the decision of the trial court does not contain an analysis of the testimonies of Hernandez and de Limos and suggests that the killing of Bunye was executed by professionals and not by a simple fruit vendor. Nazareno claims that the witnesses were reluctant, evasive and fearful and that they never had the opportunity to fully observe the incident as there was traffic and they merely had a side view of the assailants. Nazareno claims that the evidence of torture and maltreatment and the other circumstances were indications of manipulation and manufacture of evidence to frame him.[18] Similarly, accused-appellant Regala claims that the testimonies of Hernandez and de Limos were confused and confusing. He then suggests that the manner the killing was perpetuated shows that it was done by professional assassins.[19]

These arguments are without merit. Far from being confused, the testimonies of Hernandez and de Limos were straightforward and unwavering and justified the trial court in giving them full faith and credit. The accused-appellants were positively identified by Hernandez and de Limos under circumstances which were ideal for identification. The incident happened in daylight and only two meters away from them.[20] They did not only see the assailants but they also witnessed the whole incident.

The testimonies of Hernandez and de Limos during direct and cross examinations corroborate each other on the material facts. A summary of Hernandez's direct examination[21] reveals that on December 14, 1988, between 8:00 to 9:00 in the morning, a woman took a ride in his tricycle, followed by a man whom he identified as Molet Bunye, who asked to be taken to Purok 6, T. Molina St. Upon reaching his destination, Bunye alighted and walked across the street. Hernandez said that just then he noticed a man approach Bunye, point a gun and fire at him. He saw the face of the assailant. He then saw the assailant position himself near Bunye's head and fire another shot when Bunye fell. Hernandez said he got confused and afraid and, as his other passenger was screaming, he tried to turn his tricycle around to leave. As he was doing so, he noticed accused-appellant Ramil Regala on his right approach Bunye and fire a shot at the victim. When asked if he could identify the assailants, Hernandez answered "yes." When asked to point to the assailants, he identified accused-appellant Narciso Nazareno as the first one who shot Bunye and Ramil Regala as the second one.

In his cross-examination, defense counsel tried to show that Hernandez did not see what really happened. This is not so. His testimony on cross examination, follows slightly edited, follows:[22]

Q

On Dec. 14, 1988, you were driving your tricycle. Is that correct?

A

Yes, sir.

Q

You know that Rogelio de Limos was also driving his tricycle on the morning of Dec. 28, 1988?

A

Yes, sir.

Q

While you were driving your tricycle on that faithful morning, who was ahead you or Mr. de Limos?

A

I.

Q

After you took the woman and the man who was shot, did you know that Mr. de Limos was following you?

A

I don't know.

Q

How do you know that you were ahead?

A

I learn[ed] it later on when Mr. de Limos overtook my tricycle.

Q

In what place, when [did] Mr. de Limos overtake your tricycle?

A

Also at T. Molina Street, Purok 6.

Q

When Mr. de Limos overtook your tricycle, where you on stop position or were you ,still running?

A

Already stopped.

Q

In other words you stopped your tricycle and that was the time when Mr. de Limos went ahead or overtook your tricycle?

A

Yes, sir.

Q

To what side of you, left side or right side, did Mr. de Limos pass?

A

To my left.

Q

He stopped his tricycle in front of yours?

A

Yes, sir.

Q

When Mr. de Limos stopped his tricycle in front of yours, how far was his tricycle from the front side of your tricycle?

A

Almost touching the front side of my tricycle.

Q

Can you tell us, how many minutes after you have stopped when Mr. de Limos overtook you?

A

I don't remember.

Q

Maybe five (5) minutes after you have stopped that Mr. de Limos arrived?

A

I can not estimate.

Q

Was it very short period or was it in reasonable period of time after you stopped when Mr. de Limos arrived?

A

Only for a while.

Q

When Mr. de Limos stopped his tricycle, what was the position of his tricycle in relation to yours? Was it directly in front of you or was it towards your left side?

A

His tricycle stopped directly in front of me, but a little sway to the right.

Q

Would you say that the distance of your tricycle when both of you stopped was about one (1) foot only?

A

About two (2) to three (3) feet.

Q

Is it not correct to say that the tricycle touched each other at that time?

A

I was surprised when he suddenly overtook me.

Q

So your previous statement is not correct that the tricycle almost touched each other, because they were between two (2) to three (3) feet?

A

Because I don't remember the distance because the incident happened a long time ago.

Q

When the two (2) tricycles [were] already on stopped position, was there enough space for a person to pass?

A

Yes, sir.

Q

Your two (2) passengers, the man and the woman who alighted your tricycle first?

A

The man (Bunye).

Q

After Molet Bunye alighted from your tricycle, he walked to the left, crossed the street crossing in front of your tricycle?

A

After Molet Bunye alighted from my tricycle, he walked in front of me and paid his fare. After that he walked across the street towards the left.

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Q

Was Molet Bunye able to reach the other side of T. Molina Street?

A

Yes, sir.

Q

This tricycle of Mr. de Limos, tell us when the tricycle arrived was it after Molet Bunye paid his fare to you or after?

A

While Molet Bunye was paying the fare, that was the time when Mr. de Limos overtook me.

Q

Molet Bunye was still near you or beside you when the tricycle of Mr. de Limos arrived?

A

Yes, sir.

Q

After paying his fare, you said, Molet Bunye walked to the other side of the street. How long did it take Molet Bunye to go to the other side of the street?

A

I don't remember.

Q

When the tricycle of Mr. de Limos overtook you, you did not know that that was Mr. de Limos?

A

I noticed him when he was already in front of me, and he was at the back.

Q

When Molet Bunye paid his fare to you, you back-tract your tricycle because you were preparing to turn around?

A

Yes, sir. I back-up my tricycle a little so that I'll be prepared to leave the place.

Q

Were you supposed to leave the place after embarking Molet Bunye, because you were to bring another lady to another destination?

A

Yes, sir.

Q

When you back-up to which direction were you looking?

A

To the direction of Molet Bunye. I was looking to the direction of Molet Bunye, because I was about to call him because he still had change, and I was about to return it back to Molet Bunye.

Q

When you were backing-up your tricycle preparing to leave the place, you were looking at Molet Bunye?

A

Yes, sir.

Q

Did you not look behind, so that you will be able to see him?

A

I look[ed] at my side mirror.

Q

Did you call Molet Bunye, so that he can hear you, because you wanted to give his change?

A

Yes, sir, but he did not hear me.

Q

How far was he when you call[ed] him?

A

About three (3) to four (4) meters.

Q

And he was walking away from you?

A

Yes, sir.

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Q

How much [did] Molet Bunye give you, when he paid his fare to you?

A

Two pesos (2.00).

Q

Why did you not give his change when he was still near you?

A

Because he was in hurry.

Q

In other words, when he alighted he did not approach you anymore but he just handed to you his two (2.00) pesos?

A

Yes, sir, he handed his two (2.00) pesos to me. He said "BOY BAYAD KO." (Witness demonstrating by stretching his left hand forward.)

Q

And you immediately received the money?

A

Yes, sir.

Q

And Molet Bunye proceeded to walk away from you?

A

Yes, sir.

Q

When was it when the tricycle of Mr. de Limos overtook you, was it when Molet Bunye paid his fare to you or after Molet Bunye has paid?

A

I can not remember.

Q

You said that the first person who shot Molet Bunye was Narciso Nazareno, is that correct?

A

Yes, sir.

Q

Did you see that?

A

Yes, sir. I saw that the gun was poked at the head.

Q

And you heard the shot?

A

Yes, sir.

Q

Can you demonstrate how the gun was pointed to the head of Molet Bunye?

A

Like this (witness demonstrating stood up stretching his right hand forward as if holding a gun and poked it at the back of the head of the interpreter).

Q

Assuming that the Court Interpreter is Molet Bunye, please demonstrate which part of the head was the gun pointed [at]?

A

(Witness stood up demonstrating by pointing somewhere above the neck or maybe center of the neck of the interpreter.)

Q

Can you tell us, how tall is Molet Bunye in relation to our Court Interpreter here?

A

Shorter than the interpreter.

Q

When the gun which you said was pointed at the head of Molet Bunye, Molet Bunye was walking away from you? Is that correct?

A

Yes, sir.

Q

He was walking. Right?

A

Yes, sir.

Q

The man whom you said pointed a gun at the head of Molet Bunye, he was also walking away from you, is that correct?

A

Yes, sir.

Q

He was not walking towards you?

A

No, sir. Away from me.

Q

So that you were from the position from where you were, you were still in your tricycle?

A

Yes, sir.

Q

From that position you can see Molet Bunye and the person whom you said fired a shot?

A

Yes, sir.

Q

The man whom you said fired the first shot was also walking when he fired the first shot?

A

The man who was holding a gun stopped first and he fired it.

Q

Tell us how far was this man who fired the first shot to Molet Bunye when the first shot was fired?

A

About one (1) meter.

Q

What did you see after the first shot was fired?

A

He positioned himself near the head of Molet Bunye, and he was already facing me and he fired another shot.

Q

At that time if your narration is correct Bunye was already lying on the ground?

A

Yes, sir.

Q

So the first shot was fired when Molet Bunye was walking?

A

Yes, sir.

Q

That was to the head?

A

Yes, sir.

Q

Do you know what part of the body of Molet Bunye was hit by the shot?

A

I don't remember what part of the body was hit, but he fired it at the head.

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Q

All the while when the gun was pointed at the head of Molet Bunye, and it was fired, Molet Bunye was lying on the ground, and the man fired another shot. During this period were you looking at Molet Bunye?

A

Yes, sir, because I was shocked, surprised at what had happened so I looked at Molet Bunye.

Q

Can you tell us in seconds or minutes, how long did this happening last?

A

I can not estimate.

Q

All the while you were looking at Molet Bunye while this was happening?

A

Yes, sir.

Q

Where you then worried about the change of Molet Bunye while you were looking at him?

A

Yes, sir. It is like that.

Q

After the second shot did you turn your tricycle and went home?

A

Yes, sir.

Q

And you went home?

A

I also noticed that the other person was approaching.

Q

How far where you positioned from Molet Bunye when he fell to the ground?

A

About three (3) to four (4) meters.

Q

Do you know the width of T. Molina Street?

A

No, sir.

Q

At that time you claimed that you were at the right side of the road?

A

Yes, sir.

Q

And the incident happened at the edge of the left side?

A

Yes, sir.

Q

And you said that the distance between your tricycle and the edge of T. Molina is only four (4) meters?

A

My estimate is more or less three (3) to four (4) meters.

Q

The second person did you see him approach Molet Bunye?

A

Yes, sir.

Q

What did he do with Molet Bunye?

A

I also noticed that the second person also pointed a gun at the head of Molet Bunye.

Q

The second man did he fire a shot?

A

Yes, sir.

Q

To the head of Molet Bunye?

A

Yes, sir.

Q

Do you know if he hit the head?

A

Yes, sir.

Q

How about the face? Do you know if he hit the face?

A

It was poked very near the head.

Hernandez's testimony was corroborated by Rogelio de Limos. De Limos testified that on December 14, 1988, between 8:00 to 9:00 in the morning, two men, standing in front of Bunye's house on Ilaya Street, hailed his tricycle. He identified in court the two as Narciso Nazareno and Ramil Regala. De Limos said that he was told by Nazareno to follow the "stainless" tricycle ahead and that upon overtaking it as it stopped at the corner of T. Molina St. and Mendiola St., he also stopped his vehicle. One of the passengers, Nazareno, jumped out of the tricycle, pulled something from his waist and fired at Bunye. When Bunye fell down, Nazareno fired another shot at the head of Bunye, after which Ramil Regala got off the tricycle, approached Bunye and also shot him in the head. Accused-appellants then boarded the tricycle and ordered him to take them to the rotunda, where they alighted from the tricycle and fled.

De Limos was unshaken by questions asked during the cross examination.[23] His testimony, slightly edited, follows:

Q

When you were operating your tricycle last Dec. 14, 1988, you were flagged by two (2) persons who became your passengers. Tell us where is this stainless tricycle at the time you were flagged down in relation to your tricycle?

A

The stainless tricycle was already running.

Q

When you stopped your tricycle and you picked up these two (2) persons, how far away was the stainless tricycle from you?

A

I don't remember.

Q

Can we say about twenty (20) meters away and still running at the time you stop your tricycle?

A

Not more than twenty (20).

Q

What would be your estimate if it is less than twenty (20) meters away?

A

I am not sure of my estimate.

Q

When these two (2) passengers got in your vehicle and at the moment you started your tricycle, how far away is this first tricycle from you?

A

It is not far.

Q

Give us your estimate in meters the distance between you when you started your tricycle and the stainless tricycle that you were to follow?

A

About more or less twenty (20) meters.

Q

Were their other vehicles including tricycles that were between you and the stainless tricycle when you commence running?

A

I don't remember, sir.

Q

So that the space between you and the first tricycle was totally clear of vehicle?

A

Yes, sir.

Q

How many meters did this first tricycle travel from where you picked up your passengers until it stopped and unloaded its passengers?

A

More or less 200 meters.

Q

What street were you traveling at that time?

A

Ilaya Street, Alabang Muntinlupa.

Q

When you were traveling along Ilaya Street following this stainless vehicle were you exactly behind?

A

Yes, sir.

Q

How far away from your starting point where you able to approach the vehicle that you are going to follow?

A

Near the corner of Mendiola and Timolin Street.

Q

When the first tricycle already stopped you were able to get near that vehicle?

A

Yes, sir.

Q

But at any time when you were running and traveling along Ilaya Street you were able to get [to] this stainless tricycle?

A

No, sir.

Q

When your first passenger alighted from your vehicle you were still running x x x your vehicle was still running. Is that correct?

A

Yes, sir.

Q

Where was this stainless vehicle situated at that moment when your first passenger alighted from your vehicle?

A

The tricycle was behind me.

Q

You mean to say that you overtook the stainless tricycle?

A

Yes, sir.

Q

And the passenger of the stainless vehicle got off?

A

Yes, sir.

Q

Who got off their respective vehicle[s] first, your passenger or the passenger of the stainless tricycle?

A

The passenger of the stainless tricycle.

Q

When the passenger of the stainless tricycle got off, the tricycle was on your right side. Is that correct?

A

No, sir. The stainless tricycle was behind me.

Q

Directly behind your tricycle?

A

Yes, sir.

Q

How far away was it from you?

A

About one (1) foot behind me.

Q

At that moment when your first passenger alighted from your tricycle where was the victim in relation to where you were situated at that moment?

A

He was in front of me walking.

Q

So you can see him directly in front of you walking?

A

Yes, sir.

Q

Your tricycle was on the right portion of the left side of the street. Is that correct?

A

Yes, sir.

Q

And the victim was walking also on the right portion of the street of the road?

A

At the left side.

Q

How far away from you was the victim when you said he was shot for the first time?

A

More or less two (2) meters.

Q

Will you please clarify. Was he walking in front of you or to the left of you when he was first shot?

A

To the left.

Q

At that moment, meaning, when the victim was first shot where was the stainless tricycle?

A

He was still behind me.

Q

How did you know that the vehicle was still behind you?

A

Because I saw and I could not leave the place.

Q

When did you see the stainless tricycle, was it still behind you in relation to the first shot?

A

At the time when I heard the first shot.

Q

When you heard the first shot. You want to impress [to] us that you looked back and you saw the stainless tricycle still there behind your tricycle?

A

Because the tricycle could not run or move.

Q

But when the first shot was fired you did not look back?

A

I did not.

Q

So you did not really know that the tricycle was still there?

A

Because the tricycle was "NAKATOTOK" behind me and I could not move my tricycle.

Q

It was only your impression that the stainless tricycle was still there but you did not see it actually?

A

No, sir. I see.

Q

When did you see it?

A

At that time because I could not overtake coz of that incident.

Q

After the first shot, did you see the stainless tricycle still there?

A

Yes, sir.

Q

You mean you looked back?

A

Yes, sir.

Q

Why did you look back?

A

Because the passenger of the stainless tricycle scramble[d].

Q

After the second shot was the stainless tricycle still there?

A

Yes, sir.

Q

Did you look back?

A

Yes, sir, through my side view.

Q

Did you look back and see that stainless tricycle still there after the second shot?

A

I saw the driver of the stainless tricycle moving his tricycle.

Q

You said there were three (3) shots fired. After the third shot where was the stainless tricycle?

A

After the third shot, the driver of the stainless tricycle was still moving his tricycle back and forth to get out of the place.

Q

Was he able to get out?

A

Yes, sir.

Q

How long after the third shot was he able to get out from where he was?

A

I don't remember.

Q

Was this stainless tricycle blocked by your tricycle so that he can not get out?

A

Yes, sir.

Q

How about to his rear was he blocked by any other vehicle?

A

No, sir.

Q

Of your knowledge he was free to move out by backing away from your vehicle?

A

Yes, sir.

Q

You claimed that immediately after the second shot was fired, this stainless tricycle was already moving his

vehicle back and forth to get out of the place. Is that correct?

A

Yes, sir.

Q

How far was this stainless vehicle from the victim when the latter fell down the street after the first shot?

A

I don't remember.

Q

When your second passenger got off you did not see him get off?

A

I did not.

Q

You felt movement of your tricycle?

A

Yes, sir.

Q

You claim that your two (2) passengers rode your vehicle again after the shooting. Is that correct?

A

Yes, sir.

Q

Who boarded your vehicle first, the first one who alighted or the second one who alighted?

A

I don't remember.

Q

How far was it after the third shot was fired that these passengers boarded your vehicle again?

A

Minutes only.

Q

How many minutes?

A

More or less five (5) minutes.

Q

What were their instructions to you when they boarded?

A

Before answering your question I made [a] mistake on the preceding question. Not minutes only seconds.

Q

Will you now answer my question?

A

They told me to bring them to "Rotonda."

Q

In what dialects or language was the instruction given to you?

A

Tagalog.

Q

Was that all they said to you during that occasion when they boarded your vehicle for the second time?

A

Yes, sir.

Q

From the scene of the shooting to where you discharged your passengers, how far was it?

A

I can not estimate the distance.

Q

You were driving your tricycle along that road for many years already?

A

Yes, sir.

Q

Why did you say that you can not estimate the distance between these two places?

A

I am not sure.

Q

How many minutes did it take you to drive them to the place where they alighted from your vehicle?

A

Few minutes only.

Q

How many minutes?

A

Seconds only.

Q

How many seconds?

A

More or less ten (10) seconds.

Q

Did your passenger pay you his fare?

A

No, sir.

Q

Did you not run after him to be able to collect the fare?

A

No, sir.

Q

When your two (2) passengers alighted, where did you go next?

A

I went home.

As we have held in other cases,[24] testimonies given in simple, straightforward manner, giving details of the incident that could not have been merely concocted, indicate sincerity in the narration of events of the incident and truth as to what, actually happened, specially, if those giving them have not been shown to have any improper motive to testify falsely against the accused. The weight to be given to testimonies of such witnesses depends chiefly upon their observation and means of knowing the facts testified to by them.[25] Accused-appellants point to inconsistencies in the testimonies regarding distances and time lapse as an indication that the testimonies are lacking in veracity. These are inconsistencies on minor points which do not affect the truth of the testimonies. They are discrepancies to be expected from uncoached witnesses.[26] What is important is that the testimonies corroborate each other on important and relevant details concerning the principal occurrence.[27]

Third. Accused-appellant Nazareno makes much of the fact that he was recognized by Hernandez only in the police line-up. Nazareno claims that Hernandez was his classmate in the elementary grade in one subject[28] and therefore should have been able to identify and name him on December 14, 1988, when Hernandez gave his first sworn statement. It is contended that because Hernandez did not then recognize Nazareno shows that Hernandez's testimony was "manufactured."

Other than Nazareno's claim, however, there is no other evidence showing that he and Hernandez were classmates. This matter was brought up only once during Hernandez's cross examination in the hearing for bail, where the following appears:[29]

ATTY. MATUNOG:

Q Mr. Hernandez is it correct that you signed a statement dated 28 December 1988 before Capt. Jose Manuel?

FISCAL:

Admitted.

Q On Exhibit "C" [which] appears to be signed by you question No. 9. The question raised to you,

"YONG TAONG BUMARIL DITO KAY MOLET, NAKIKILALA MO BA ITO?" and your answer:

YAON ISA LANG HO. (affiant pointing to the person of Narciso Nazareno y Barro 22 taong gulang, binata, walang trabaho, tubong Catanduanes at kasalukuyang naninirahan sa Prk. 6-B, Alabang Muntinlupa, MM.)

Is this correct? This was the answer you gave?

ATTY. BAUTISTA:

May it please be placed on record that the witness refused to answer.

FISCAL:

May I remind the witness he is under oath.

COURT:

MAY ANSWER.

A Nazareno (pointing to Nazareno). Yes, sir.

Q Why do you know the accused Nazareno?

FISCAL:

The best evidence is the statement.

COURT:

MAY ANSWER.

A When I looked to my left, I saw him.

Q Since when have you known the accused Nazareno?

A Only on that day.

Q You do not remember you were a classmate of Nazareno sometime in 1979-1980?

A I cannot remember sir. I don't remember.

There is nothing in the sworn statements of Hernandez nor in his testimony in court which shows that he ever

claimed to know Nazareno because they had been classmates eight years before he identified him in the police line-up. He said he only came to know Nazareno at the police line-up on December 28, 1988. He was able to identify Nazareno because he remembered his face as that of the one who shot Bunye on December 14, 1988. Indeed, Hernandez should first have been asked whether he and Nazareno had not been classmates in the elementary grades. There was no basis for defense counsel's questions premised on this fact.

Be that as it may, even if they had been classmates, it is possible Hernandez had forgotten Nazareno. After all, as Nazareno claimed, they were classmates in only one subject in the elementary grades and that had been eight years before the incident.

Fourth. Accused-appellant Nazareno assails the testimony of the eyewitnesses as contrary to the evidence. He contends that Bunye was 5'6" tall, while he is only 5'4". Considering the downward angle of the bullet wound at the back of Bunye's head, he theorizes that the assailant must have been taller than Bunye or Bunye must have been shot while he was in a kneeling position.

This contention is without merit. In the first place, there is no basis for the claim that Bunye was 5'6" tall and Nazareno only 5'4." Bunye's cadaver was not measured. Nothing in the record shows how the figure 5'6" was reached. His death certificate,[30] the Certificate of Post-Mortem Examination[31] and the autopsy report[32] do not contain data as to his height. It appears that the basis of accused-appellant Nazareno in claiming that Bunye was 5'6" is the testimony of the wife of the victim, Evelyn Bunye, who said during her cross examination that barefoot, the height of her husband was 5'6". Her only basis for saying so was "because he was [her] husband." [33] Nor was there evidence as to Nazareno's height. It is only in his appellants brief that his height is said to be 5'4". This Court then, for lack of any basis, cannot give credence to this assertion.

In the second place, only accused-appellants claim that, on the basis of the autopsy report, the trajectory of the bullet was "sharply downwards"[34] and that therefore the conclusion was that the gun was fired from a certain position in such a way that "(1) the gun was aimed at the head of victim; (2) the gun was positioned with the barrel pointed downwards - not upwards and neither laterally; (3) the gun was held at a point approximately five (5) feet four (4) inches from the ground; and (4) was fired while at that position." [35]

The autopsy report does not say what accused-appellants say. It reads:[36]

Wounds Gunshot:

I. Entrance, oval, edges inverted, 0.9 x 1.0 cm. in size, located at the scalp, parietal region, along the posterior median line, 13.0 cm. above and 5.0 cm. behind the left external auditory meatus, directed forwards, downwards and laterally, involving the skin and underlying soft tissues, fracturing the parietal bone along the posterior median line, perforating the left side of the parietal bone along the posterior median line, perforating the left sides, of the parietal and temporal lobes of the brain, making an Exit, roughly oval in shape, edges averted, located at the face, left side, 1.0 cm. below and 2.5 cm. in front of the left external auditory meatus.

II. Entrance, oval, edges inverted, 0.9 x 1.0 cm. in size, located at the face, right side, 3.0 cm. above and 5.5 cm. in front of the right external auditory meatus, directed backwards, downwards and from right to left, involving the skin and underlying soft tissues, fracturing the right side, of the temporal bone, perforating the right side of the temporal lobe of the brain, piercing the left side of occipital lobe of the brain, with two (2) fragments lodged and recovered in that area.

There are no findings in the report regarding the relative positions of the victim and the accused-appellants. The medico-legal officer, when asked if he could determine the position of the victim from the gunshot wound located at the back, said, "Since the entry of the gunshot wound is at the back, naturally it is in the back." [37] The answer is vague and does not shed light on the positions of those involved.

No further clarification was made as accused-appellants' counsels waived the right to cross examine the medico-legal officer. Evidence could have been presented showing that the road was level and not sloping or that the angle could not have been caused by the recoil affecting the assailant. As it is, the mere assertion of disparity in height cannot persuade this Court to do away with the positive identification of the accused-appellants by the witnesses.

Moreover, the position of a victim when he was shot vis-a-vis an assailant is difficult to ascertain considering the mobility of the head.[38] It is entirely possible that the victim's head in this case was slightly inclined upward. As the autopsy report shows, the trajectory of the bullet was "directed forwards, downwards and laterally" and not, as accused-appellants claim, "sharply downwards." This downward angle could be due to the bullet hitting a specific bone (scalp) causing a slight deflection.[39]

On the other hand, accused-appellant Ramil Regala contends that the failure of the prosecution to investigate Rey Taling, his alleged companion and Mang Doming, Mang Romy, and Nick Peñalosa, as those who supplied the guns, raises doubt as to accused-appellant's guilt. However, the manner by which the prosecution of a case is handled is within the sound discretion of the prosecutor and the non-inclusion of other guilty parties is irrelevant to the case against an accused.[40]

Fifth. Indeed, accused-appellants' defense consists of denial and alibi. Nazareno claims that at the time of the incident he was in the market selling fruits, while Regala claims that he was at home in Cavite.[41] Accused-appellant Regala failed to present any witness to corroborate his alibi, while accused-appellant Nazareno presented his mother Gloria Nazareno who testified that she asked her son to go to the market to tend their fruit stand because she wanted to stay at home to rest.[42] His mother could not thus testify positively whether he was in the market at the time of the killing. Nor were accused-appellants strangers to each other. Regala hauled fruits for Nazareno's family.[43] This circumstance rules out the possibility raised by the defense that the accused-appellants had simply been picked up at random[44] by the police. Bare denial and alibi are insufficient to overcome the positive identification given by the prosecution witnesses. As the trial court held, between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence and weight.[45]

But we find that the qualifying circumstance of evident premeditation was not proven and therefore should not be appreciated. There is neither evidence of planning or preparation to kill nor of the time when the plot was conceived.[46] However, the qualifying circumstance of treachery was correctly appreciated by the trial court to qualify the killing to murder. The testimonies of the prosecution witnesses show that Bunye was not in a position to defend himself and that the manner by which the killing was done shows that his assailants consciously and deliberately adopted a particular method or form of attack to insure the accomplishment of their purpose.[47] The attack was sudden and unexpected, giving Bunye no chance to defend himself, thereby insuring the execution of the crime without risk to its perpetrators.

WHEREFORE, the judgment of the Regional Trial Court of Makati, Branch 136, being in accord with the law and the evidence, is AFFIRMED.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and Torres, Jr., JJ., concur.

[1] Per Judge Manuel M. Cosico in Criminal Case No. 731.

[2] Exhs. J & M, Volume I of Records, pp. 469 and 472.

- [3] Exh. L, id., p. 471.
- [4] Exh. D, id., pp. 24-25.
- [5] Exh. N, id., pp. 473-474.
- [6] Exh. E, id., pp. 26-27.
- [7] TSN, pp. 4-7, 8-11, March 2, 1990.
- [8] TSN, pp. 33-34, April 2, 1990.
- [9] TSN, pp. 20-22, March 19, 1990.
- [10] Rollo, p. 42.
- [11] Vol. I of Records, p. 37.

[12] 187 SCRA 311 (1990)

[13] 202 SCRA 251, 271 (1991)

- [14] *People v. Dural*, 223 SCRA 201 (1993); *People v. De Guzman*, 224 SCRA 93 (1993); *People v. Codilla*, 224 SCRA 104 (1993).
- [15] See *Callanta v. Villanueva*, 77 SCRA 377 (1977); *Bagcal v. Villaraza*, 120 SCRA 525 (1983); *People v. Abapo*, 239 SCRA 373 (1994).
- [16] *People v. De Guzman*, 224 SCRA 93 (1993)
- [17] *People v. Briones*, 202 SCRA 708 (1991); *People v. Manlulu*, 231 SCRA 701 (1994).
- [18] Appellant's Brief, Rollo, pp.110, 114 and 117.
- [19] Appellant's Brief, Rollo, p.160.
- [20] Three to four meters in the case of Hernandez. TSN, p.28, Aug. 29, 1989.
- [21] TSN, pp. 3-8, Aug. 29, 1989.
- [22] Id., pp. 17-29.
- [23] TSN, pp. 4-14, July 3, 1989.
- [24] *People v. Banez*, 214 SCRA 109 (1992).
- [25] *People v. Lago*, 220 SCRA 578 (1993).
- [26] *People v. Fuentes*, 229 SCRA 289 (1994); *People v. Israel*, 231 SCRA 155 (1994).
- [27] *People v. Inocencio*, 229 SCRA 517 (1994).
- [28] TSN, p. 27, March 19, 1990.
- [29] TSN, pp. 15-17, Jan. 9, 1989.
- [30] Vol. I of Records, p. 33.
- [31] Id., p. 34.

[32] Id., p. 471.

[33] TSN, p. 74, Sept. 1, 1989.33

[34] Appellant's Brief, Rollo, p. 157.

[35] Ibid.

[36] Vol. 1 of Records, p. 471.

[37] TSN, p. 27, July 3, 1989.

[38] People v. Maranan, 124 SCRA 716 (1983); People v. Cruz, 142 SCRA 576 (1986).

[39] People v. Taaca, 178 SCRA 56 (1989).

[40] People v. Armamento, 211 SCRA 82 (1992).

[41] TSN, pp. 8-10, March 19, 1990; TSN, pp. 19-21, Feb. 27, 1990.

[42] TSN, pp. 6-7, March 26, 1990.

[43] TSN, pp. 17, March 2, 1990.

[44] Appellant's Brief, Rollo, p. 117.

[45] People v. Andasa, 206 SCRA 636 (1992); People v. Antud, 215 SCRA 190 (1992); People v. Dela Cruz, 217 SCRA 283 (1993).

[46] People v. Salvador, 224 SCRA 819 (1993).

[47] People v. Villanueva, 225 SCRA 353 (1993).

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