

SAMUEL MARTINEZ, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 104315. March 30, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

Samuel Martinez and Ernesto Baltazar were childhood friends and compadres. For allegedly raping Martinez's sister, Anita, Baltazar was formally charged in a criminal complaint filed by her parents. On February 5, 1983, Martinez shot Baltazar to death.

In due time, Martinez was charged with the murder of Baltazar in the Regional Trial Court of Malabon. After trial, he was convicted of homicide and sentenced as follows:[1]

WHEREFORE, in view of the foregoing, the Court finds accused Samuel Martinez guilty beyond reasonable doubt of the crime of Homicide and sentences him to an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum, to fourteen (14) years, eight months and one (1) day of reclusion temporal, as maximum, to indemnify the heirs of Ernesto Baltazar in the amount of P30,000.00 for the death of the latter and the further sum of P10,056.00 as actual damages and to pay the costs.

On appeal, the decision was affirmed by the respondent court,[2] prompting this petition for review. It is here contended that the trial court should have given credence to the evidence not of the prosecution but of the defense.

The issues raised are mainly factual. The rule is that the findings of fact of the lower court are binding on appeal as long as they are based on substantial evidence. Nevertheless, such conclusions shall be re-examined in this case in view of certain serious misgivings raised by the petitioner, besides the fact that the trial was conducted by not one but three judges in succession.[3]

It is noted that at the hearing on the petition for bail, the prosecution declared that it would prove its case only by circumstantial evidence because its lone eyewitness was dead.[4] Surprisingly, however, the prosecution later presented two witnesses, namely, Restituto Baltazar and Severina Manansala, who claimed to have seen the killing.

Restituto testified three years,[5] and Severina four years,[6] after the incident. Restituto said he thought he was not qualified to testify because he was a first cousin of the victim. Manansala said she did not want to be involved at that time because she was then planning to go to the United States.

Significantly, the two alleged eyewitnesses offered conflicting testimonies.

According to Restituto, Martinez met Baltazar on the night in question and without much ado pulled a gun and shot Baltazar at close range.[7]

Manansala had a different story. She said she was boarding a tricycle when she saw Martinez chasing Baltazar. She did not actually see the killing. She just heard several shots and minutes later Martinez returned holding a

gun.[8]

Jose Baltazar, the victim's grandfather, also testified for the prosecution and said that the victim twice identified his assailant as Martinez.[9]

Dr. Rodolfo Lizondra, who conducted the autopsy of the victim's body, reported that Baltazar died from one gunshot wound. The fatal bullet entered the left side of his chest and exited at the right side of his chest.[10]

The accused admitted the killing but said it was an accident. He said that on the evening in question, Baltazar berated him for the complaint filed by his parents for the rape of his sister by Baltazar. In the heat of their argument, Baltazar suddenly pulled a gun which Martinez tried to wrest from him. As they were grappling, Baltazar kicked him in the groin, causing him to fall on his knees in pain. It was then that the gun fired, hitting Baltazar in the chest.[11]

The contradictions between the alleged eyewitnesses have already been noted. While Restituto said that Martinez shot Baltazar at close range, Manansala said Martinez was chasing Baltazar when she heard several shots presumably fired by Martinez.

The trial court doubted Restituto's credibility thus:

The prosecution's alleged eyewitness, Restituto Baltazar, merely testified that while he and the deceased were walking, the latter was met by the accused, who suddenly drew his revolver and fired at the deceased at close range, but he was not sure whether the latter was hit as, in fact, the deceased managed to run; that he also ran and then he heard two or three more gunshots. However, the credibility of said witness is impaired by the fact that while he claims to be an eye-witness, he did not give any statement to the police regarding the circumstances about the killing of the deceased who was even his first cousin (tsn Sept. 26, 1986, p. 8.). Moreover, while he claims to have been the one who informed his grandfather, Jose Baltazar, about the shooting incident (Ibid, p. 6), the latter, however, declared that it was a young boy who called for him and told him that the deceased was shot.[12]

If it is true that Martinez shot Baltazar at close range, then the bullet would have had a straight trajectory, entering the front of the victim's body and exiting directly opposite at the back. But that was not what the autopsy report revealed.

Manansala did not see the actual shooting and so could not testify on the relative positions of the two protagonists when the shot was fired.

As for Jose Baltazar's testimony, the victim's identification of Martinez as his assailant cannot be regarded as a dying declaration because there is no showing that it was made by Baltazar under a consciousness of impending death.[13] At any rate, that identification is not important because Martinez has already admitted that it was he who killed Baltazar.

The Court cannot convict the accused on the basis of the feeble evidence of the prosecution. It has failed to establish Martinez's guilt beyond reasonable doubt. Even the People's brief was half-hearted.

But the accused-appellant cannot rely on the constitutional presumption of innocence because he has admitted the killing although he claims it was an accident. In this situation, the accused-appellant cannot invoke the weakness of the prosecution to secure his acquittal. His admission has shifted the burden of proof to him and he must now rely on the strength of his own defense notwithstanding the weakness of the prosecution.[14]

Is the defense strong enough? We think so.

Martinez testified that Baltazar was a "toughie" and that he was afraid of him.[15] That is why Martinez did not

confront Baltazar even when he learned that Baltazar had raped Anita Martinez, his 17-year old sister. It was Baltazar who approached Martinez and angrily demanded why the complaint for rape had been filed against him when he said the girl had consented. Not satisfied with Martinez's explanation, Baltazar pulled out his gun that in the ensuing struggle between them went off and caused his death.

Even if Martinez might have had cause for resentment against Baltazar, he had no reason to kill him because a complaint had after all already been filed against him by Anita's parents. The law was taking its course. What triggered the killing was the argument between Martinez and Baltazar and the resultant grappling for the gun that accidentally fired and killed the latter.

Martinez's version of the shooting is more credible. As the two were struggling for the possession of the gun, their figures were, as might be expected, contorted rather than composed and erect as Restituto averred. Baltazar was probably pulled down when Martinez slumped in pain after being kicked in the groin and this was how the protagonists were positioned when the gun went off. This would account for the path of the bullet, which entered the victim's left chest and exited at his right chest.

We hold that the evidence of the prosecution is insufficient to convict Martinez, and that his defense of accident is credible enough to acquit him.

ACCORDINGLY, the challenged decision is REVERSED and the accused-appellant is ACQUITTED. No costs.

SO ORDERED.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Rollo, p. 40. Decision dated May 16, 1989, penned by Judge Marina L. Buzon.

[2] Ibid., p. 30; Torres, J., ponente, with Francisco and Ynares-Santiago, JJ., concurring.

[3] Hon. Vicente B. Echaves, Jr., from July to November 1984; Hon. Alicia V. Sempio-Diy, from August 1985 to June 1986; and Hon. Marina L. Buzon, from July 1987 up to May 16, 1989.

[4] TSN, July 9, 1984, pp. 2-3; Records, pp. 289-290.

[5] On September 26, 1985; Records, pp. 343-351.

[6] On July 7, 1986; Records, pp. 361-370.

[7] TSN, September 26, 1985, p. 5; Records, p. 347.

[8] Ibid., July 7, 1986, pp. 3-4; Records, pp. 363-364.

[9] Id., July 9, 1984, pp. 9-10; Records, pp. 296-297.

[10] Exhibit "L," Records, p. 236; TSN, June 26, 1986, p. 5; Records, p. 356.

[11] TSN, November 9, 1988, pp. 7-11; Records, pp. 401-405.

[12] Rollo, p. 44.

[13] TSN, July 9, 1984, p. 9; Records, p. 296; Section 37, Rule 130, Rules of Court.

[14] People v. Literado, G.R. No. 77114, May 27, 1992, 209 SCRA 319.

[15] TSN, November 9, 1988, p. 6; Records, p. 400.

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