

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AVELINO ESCALANTE, RODOLFO ESCALANTE, EUGENIO ESCALANTE AND NENE ALDAMIA, ACCUSED, AVELINO ESCALANTE, ACCUSED-APPELLANT.

G.R. No. 106633. December 01, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

In Criminal Case No. 120(88) of the Regional Trial Court of Davao del Sur, Branch 19, Digos, Davao del Sur, Avelino Escalante, together with his brother, Rodolfo Escalante, his father, Eugenio Escalante and Nene Aldamia, were charged with the crime of murder under Article 248 of the Revised Penal Code, as amended, allegedly committed as follows:

"That on or about April 16, 1988, in Hagonoy, Davao del Sur, Philippines and within the jurisdiction of this Honorable Court, the accused aforementioned, conspiring with and mutually helping one another, with intent to kill and with treachery by employing means to weaken the defense or to insure the execution of the crime or afford them impunity, and being then armed with guns, among which a short firearm, did then and there wilfully, feloniously and unlawfully attack and shoot one Venancio Fernandez with said short firearm, thereby hitting and inflicting gunshot wound on his head that directly caused his death." [1]

When arraigned, all the accused pleaded "not guilty", [2] after which, trial on the merits ensued wherein the prosecution and the defense adduced their respective evidence.

The trial court summarized the respective evidence for the prosecution and the defense, as follows:

"Witnesses for the prosecution are: Edwina Cortez, Indolecio Solis, Elpidio Monarca, Eutiquio Rojo and Dominador Taneza.

In a nutshell, they testified as follows:

Edwina Fernandez Cortez, daughter of the victim, testified that her house is about 10 fathoms away from the house of the victim; that in the evening of April 16, 1988, the victim was in her house; that she was also in her house, lying down, putting the children to sleep inside the house; that while tending to her two children, she heard a gunburst. When she heard the gunburst, she rose and reached (for) her flashlight. After taking that flashlight, she went to the wooden railing and looked at the direction of the house of her father. She put on the flashlight and through the wooden railing of her window, she focused the flashlight at accused and saw them. The accused fired their guns. She put off the flashlight.

On cross (examination), she admitted that she did not actually see who fired the gunburst (TSN 11-21-88, p. 12, cross E. Cortez).

Indolecio Solis testified that he has a firearm; that the firearm is a 'single shot armalite (homemade)'; that accused Eugenio Escalante borrowed his firearm on April 16, 1988 because Eugenio is going home to his

house; that he does not know where the house of Eugenio is; that the firearm was returned on the 17th.

Dr. Elpidio Monarca testified that he saw the body of Venancio Fernandez at the Tajo Funeral Parlor; that the body was already very stiff; that he noticed that there is a wound in the neck. He asked the relatives what happened and their answer was "binaril". He examined the cadaver. He found only a gunshot wound at the left portion of the neck. He noticed a spill of blood in the body that came from the nose, mouth and neck. He did not prepare a post mortem examination report.

Pfc. Eutiquio Rojo testified that he knows one Solis, Indolecio who on April 19, 1989 turned over one firearm to Police Sergeant Diomedes Barimbad at the Police Station. He saw the turn over because he was also at their office.

Dominador Taneza testified that accused Avelino Escalante offered to give him money to kill the victim. The offer was for P3,000.00. He did not tell the family of the victim about the plan to kill. He is an ex-convict. He did not see who killed the victim. So, he does not know who killed the victim (TSN 2--15-88, p. 20, Court-D. Taneza).

The defense presented the following witnesses: Virginia Cabigon, Melecio Abrea, Aurelio Genonsalao, Evaristo Barbadillo, Avelino Escalante, Eugenio Escalante, Ireneo Aldamia, Godofredo Sarabillo, Cirilo Malinao and Cirilo Devellerez.

In substance, the defense's witness Virginia Cabigon testified that: Sometime on April 16, 1988 at about 5:30 in the afternoon, while at the balcony of her house, she saw accused Avelino Escalante feeding his pigs. At 6:10 o'clock she was at the house of Avelino Escalante watching TV. Avelino was also inside the house lying in the sala. While they were viewing TV, Avelino Genonsalao and Melecio Abrea arrived. They requested Avelino to guard because Venancio Fernandez was killed. At the time Venancio Fernandez was killed, she was at the house of Avelino Escalante and his co-accused were in his house. The house of Avelino is about 1 1/2 kilometers from the house of the victim.

Melecio Abrea testified that on April 16, 1988, he reported for duty as NAKASAKA guard. He reported for duty at 6:00 o'clock in the evening. Before he reported for duty, he passed by the house of Aurelio Genonsalao. The house of Avelino Escalante is near the house of Genonsalao. He saw Virginia Cabigon, Damaso Genonsalao, Noel Cabigon and Loren inside the house of Avelino. Avelino Escalante was also inside lying down at the veranda. Eugenio Escalante, Rodolfo and Boy Alcaria were there. Avelino Escalante went along with them to the center post and guarded there up to the following morning. Even before Avelino Escalante joined them as guard, Avelino was in his house. Avelino could be clearly seen through the veranda of his house.

Aurelio Genonsalao testified that Avelino is his neighbor and that their houses are only about 2 meters away from each other. On April 16, 1988 at 6:00 o'clock, he saw Avelino sleeping in his house. Rodolfo and Eugenio Escalante were also in the house of Avelino at 6:00 o'clock in the morning up to late 6:00 o'clock in the afternoon. At 8:00 in the evening, Barangay Captain Cirilo Devellerez informed them that somebody was killed at Barangay New Quezon. At that time, Avelino was at his house and they woke him up and informed him of the incident. When they informed Avelino, both Eugenio and Rodolfo were also there in Avelino's store.

Evaristo Barbadillo testified that on April 16, 1988, he reported for duty as NAKASAKA guard at 6:00 o'clock in the afternoon. Avelino Escalante arrived in the guard post at about 8:30 in the evening after being awakened by Avelino Genonsalao and Melecio Abrea at Avelino's house, which is only 30 meters from the guard post. Devillerez informed them that somebody at New Quezon was killed. On April 16, 1988 at about 8:00 in the evening, he saw also Rodolfo and Eugenio Escalante at the house or store of Avelino. He saw them from 6:00 P.M. to 8:30 in the evening. They can (sic) be seen from the guard post where he was guarding and the place where they were drinking is not far and they did not leave the place.

Accused Avelino Escalante testified that on April 16, 1988, he was at his house and at 6:00 in the evening, he was lying down at the sala of his house.

Accused Rodolfo Escalante testified that on April 16, 1988, he was repairing the house of Avelino Escalante; and that he stopped repairing the same at 5:00 o'clock in the afternoon. After they stopped working, they drank tuba.

Accused Eugenio Escalante testified that on April 16, 1988, he was in the house of Avelino Escalante doing carpentry works in Avelino's house; that they started working at 7:00 o'clock; that his companions were Rodolfo, Avelino, Boy Datulayta, and Aser. They finished working at about 5:00 o'clock in the afternoon. They bought tuba at the store and drank up to 8:30 in the evening. Evaristo Barbadillo informed them that Venancio Fernandez was killed.

Accused Nene Aldamia testified that on April 16, 1988, he was in their house. After twelve noon, he went to the basketball court to play basketball. He played up to 5:00 o'clock P.M. and after playing basketball, he went home. He took his supper and reported for duty with the NAKASAKA. On duty with him were Guillermo Maco, Rudy Barbadillo, Mateo Temperatura, Ponsing Temperatura and Boy Papalid. They rendered duty from 6:00 P.M. to 1:00 o'clock early dawn."^[3]

After trial, the court a quo rendered on 30 October 1990 a decision^[4] convicting Avelino Escalante of the crime of murder but acquitting all the other accused for "lack of sufficient evidence." The decretal portion of the decision reads:

"WHEREFORE, PREMISES CONSIDERED AND IN VIEW OF THE FOREGOING, this Court hereby finds only the accused Avelino Escalante guilty of murder with the accessory penalties of the law and hereby acquits the rest of the accused for lack of sufficient evidence. The accused Avelino Escalante is hereby sentenced to suffer imprisonment for life or reclusion perpetua.

The accused Avelino Escalante only is hereby ordered to pay unto the heirs of the late Venancio Fernandez the following amounts:

- 1) P40,000.00 for indemnity to the victim's life;
- 2) P30,000.00 for corrective or exemplary damages to provide a lesson for others in the future and to serve the public good;
- 3) P10,000.00 for attorney's fees; and

Costs of the proceedings.

SO ORDERED."^[5]

In convicting the accused Avelino Escalante and in acquitting his co-accused, the trial court held, among others, as follows:

"No doubt there was a crime. Somebody was killed. Who killed the victim? Nobody was an eye witness to the actual killing. It is only circumstantial evidence.

Edwina Fernandez Cortez, victim's daughter, said she saw the accused when she brandished her flashlight through the window of her house but that was after the gunburst that killed the victim. When she heard the first gunburst, she was attending to her children so that they will be induced to sleep. After hearing the first gunburst, she had to rise and get her flashlight and go to the window. When she reached the window, she allegedly saw, by using her flashlight, the accused fired again a shot. But she admitted she did not see who fired the second shot. She did not see who fired the first gunburst (TSN 11-21-88, pp. 8-12, Direct-E. Cortez). There were only two gunbursts (TSN 11-21-88, p. 11, Direct?E. Cortez) and she did not see who fired both.

Indolecio Solis said Eugenio Escalante borrowed his single shot armalite because Eugenio was going home to his house (TSN 11-24-88, p. 6, Direct-E. Solis). He did not claim to have seen who killed the victim.

Dr. Elpedio Monarca believes that the bullet that killed the victim is a .38 caliber because the circumference of entry of the wound is 3 to 4 centimeters. He also believes that an armalite bullet wound has a circumference of 1 to 2 centimeters (TSN 12-12-88, p. 9, Cross-Dr. E. Monarca).

Pfc. Rojo testified that Indolecio Solis turned over a firearm to Police Sergeant Barimbad of the police station. That he was present when the firearm was turned over. He identified the firearm which looks like a caliber 45 with an armalite ammunition which was turned over by the police to the Fiscal (TSN 2-15-89, p. 21, direct-Pfc Rojo).

Dominador Taneza, an ex-convict (TSN 2-15-89, p. 17, cross-D. Taneza) alleged that accused Avelino Escalante requested him to kill the victim as early as August 11, 1987 for a reward of P3,000.00 but he did not accede to the request (TSN 2-15-89, p. 16, Cross-D. Taneza). The probable reason was the fact that Avelino Escalante previously pointed a gun at one of the players in a gambling place. The victim confiscated that gun. This was the cause of the quarrel.

Despite the lapse of time from 1987 to April 1988, however, Taneza did not tell the victim or his family of said request (TSN 2-15-89, p. 13, Cross-D. Taneza) in spite of the fact that he is close to one of the children of the victim. He, however, admitted that he did not know who killed the victim because he did not see the culprit (TSN 2-15-89, p. 20, Court-D. Taneza).

There being no eyewitness to the killing, the prosecution wanted to prove its case by circumstantial evidence.

"Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt (People vs. Utrela, 105 SCRA 497)."

Will the combination of all the circumstances presented by the prosecution convict the accused beyond reasonable doubt? This is the principal issue.

The testimony of the victim's daughter alleging the circumstance of presence of the accused near the house of the victim at the time of the killing is uncorroborated.

"An uncorroborated circumstantial evidence is not sufficient to sustain a conviction." (People vs. Orpilla, 110 SCRA 53).

The evidence presented by the prosecution is weak because of the absence of an eyewitness to the killing.

The alibi interposed by the accused is also regarded as a weak defense.

The rule, however, is that "the prosecution must prove the guilt of the accused upon the strength of its own evidence and not by the weakness of that of the accused." (People vs. Tabayoyong, 104 SCRA 724).

The alleged borrowing of a gun with armalite ammunition by one of the accused from one of the prosecution witnesses did not find support from the testimony of the prosecution witness Dr. Elpedio Monarca who believed that the gunshot wound which caused the death of the victim was that of a cal. 38 pistol and not of an armalite ammunition.

The allegation of conspiracy in the information was not proved beyond reasonable doubt by the evidence presented by the prosecution.

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Hence, conspiracy was not convincingly proved beyond reasonable doubt. However, this Court's thinking has

been disturbed by the failure of the accused Avelino Escalante to deny prosecution witness Taneza's positive declaration insisting that accused Avelino Escalante offered to hire him to kill Venancio Fernandez for P3,000.00 as consideration because Avelino Escalante's gun, at one time previously, was confiscated by the deceased (Venancio Fernandez) when Avelino pointed a gun at one of the players in a gambling place. This had caused a quarrel between accused Avelino and the deceased. Necessarily, Avelino Escalante had a motive. Motive is not an element of a crime. Therefore, it is immaterial, unless there is doubt as to the identity of the accused or evidence proving guilt is circumstantial. (People vs. Sales, 44 SCRA 489; People vs. Basuel, 44 SCRA 207; People vs. Custodio, 47 SCRA 289; People vs. Dorico, 54 SCRA 172; People vs. Alviar, 59 SCRA 136; US vs. McMann, 4 Phil. 161; People vs. Rogales, L-17531, Nov. 30, 1962; People vs. Madrigal Gonzales, April 30, 1963, G.R. No. L-16688-90; People vs. Elizaga, 47 O.G. No. 12 Supp. p. 59).

That this court must be satisfied by proof beyond reasonable doubt, however, does not mean such proof, as excluding possibility of error, for absolute certainty is not really a requirement. x x x .

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Considering all the foregoing evidence and jurisprudence, this Court is of the opinion and so holds that there is enough moral certainty that one of the accused, at least, fired the shot that killed the victim (Venancio Fernandez). Prosecution witness Edwina Fernandez-Cortez saw them firing. She cannot only say who among them. This Court, however, finds that of these accused persons, the one with a motive to kill, is Avelino Escalante. He offered P3,000.00 to kill the victim. It was because at one time, his gun was confiscated by the victim when in a gambling place, Avelino pointed his gun to one of the players. This had caused quarrel between the accused Avelino and the victim. This was the testimony of the prosecution witness Taneza. The mere fact that Taneza is ex-convict does not necessarily follow that all he declares is untrue. His testimony was straightforward. Avelino's alibi does not help, for he was allegedly only, at most 1-1/2 kilometers away from the place of the killing. He could easily slip and go to the victim to kill the latter while he and his companions were drinking tuba. Criminals usually drink preparatory to the commission of a crime. The chain of events and circumstances prior to the killing had given the Court moral certainty as to the guilt of the accused in the killing beyond any reasonable doubt which qualifies it to murder due to treachery with the aggravating circumstance of evident premeditation and superior strength."^[6]

Accused Avelino Escalante moved for reconsideration^[7] but his motion was denied by the trial court in its order^[8] dated 5 July 1991.

Hence, this appeal of accused Avelino Escalante.

In his brief, accused-appellant contends that the lower court erred: (1) In basing its decision of conviction solely on the uncorroborated circumstantial testimony of Dominador Taneza whose testimony is tainted with prejudice; (2) In not believing his testimony as corroborated by his witnesses; and (3) In convicting him inspite of real and well-founded reasonable doubts surrounding his guilt.

The appeal is meritorious.

In a criminal prosecution, the conviction or acquittal of the accused hinges on the testimony of the witnesses and the trial court's assessment of their credibility.

Ordinarily, this Court will not interfere with the trial court's findings and conclusions on the credibility of the witnesses, in deference to the rule that the trial court having had the opportunity to observe the demeanor and conduct of the witnesses while testifying, is in a better position to properly gauge their credibility. This rule of appreciation of evidence, however, does not apply where -- as in the present case^[9] -- one judge heard the testimony of the witnesses and another judge penned the decision, for, in such a case, the reason for the rule does not exist.^[10] Besides, the said rule of appreciation of evidence must yield to the superior and immutable rule that

the guilt of the accused must be proved beyond reasonable doubt, because the law presumes that an accused is innocent and this presumption must prevail unless overturned by competent and credible proof.[11]

It has been repeatedly held by this Court that "(e)vidence to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself -- such as the common experience of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance."[12]

The trial court in this case convicted accused-appellant mainly on the testimony of prosecution witnesses Edwina Fernandez Cortez and Dominador Taneza. Thus, it held:

"Considering all the foregoing evidence and jurisprudence, this Court is of the opinion and so holds that there is enough moral certainty that one of the accused, at least, fired the shot that killed the victim (Venancio Fernandez). Prosecution witness Edwina Fernandez-Cortez saw them firing. She cannot only say who among them. This Court, however, finds that of these accused persons, the one with a motive to kill, is Avelino Escalante. He offered P3,000.00 to kill the victim. It was because at one time, his gun was confiscated by the victim when in a gambling place, Avelino pointed his gun to one of the players. This had caused quarrel between the accused Avelino and the victim. This was the testimony of the prosecution witness Taneza. x x x x ."

After a careful and thorough review of the evidence, we find that the testimonies of prosecution witnesses Edwina Fernandez Cortez and Dominador Taneza are unworthy of weight or credence in the serious matter of convicting one of murder.

Prosecution witness Edwina Fernandez Cortez, daughter of the victim Venancio Fernandez, testified that in the evening of 16 April 1988, she was in her house at Barangay New Quezon, Hagonoy, Davao del Sur, which is about 10 "fathoms" away from her father's house. While she was then lying down, putting her two (2) children, Edlyn and Rowena, to sleep, she heard a gunburst coming from the direction of her father's house. Worried, she got up, reached for her flashlight, then went to the window of her house and looked through the wooden railings thereof at the direction of her father's house. After focusing the beam of her flashlight thereat, she saw appellant and his co-accused who were armed. After another shot was fired by appellant and his co-accused, she crawled to the place where her children were sleeping. Thereafter, she heard her mother Anastacia and sister Freddie shouting and telling her (Edwina) to come over to the house of her father. Arriving thereat, she saw her father lying on the floor already dead. Her mother, who was crying, told her (Edwina) that her father was shot while he and the other members of the household were sitting around the dining table. Her mother, however, could not tell her who shot her father because she did not see the culprits.[13]

However, on cross-examination, Edwina said that after the incident, the military and police authorities repaired to the scene of the crime to conduct an investigation. Although the said witness was present during the investigation, she did not denounce the accused-appellant and his co-accused as the malefactors she saw at the vicinity of the crime. She declared:

"ATTY. HERMOSISIMA:

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Q Mrs. Cortez, have you noticed the presence of military personnel right after the incident?

A Later on after the incident.

Q Have you also noticed the presence of P/Cpt. Francisco Alalong in the place where your father was shot?

A They were there, but when they arrived my father was already dead.

Q What were they doing when they visited the place?

A When they arrived they just checked the dead body of my father and they asked some questions from my mother as to the identity of the perpetrators, but my mother told them that she did not see the identity of the culprits.

Q You want to impress the Honorable Court that these military personnel including P/Cpt. Francisco Alalong conducted an investigation in the place where the crime was committed?

A The policemen inquired from my mother whether my mother saw the culprits and my mother told them that she was not able to see the culprits.

Q Is it not a fact that you were one among those who was investigated by Francisco Alalong?

A I was not asked, only my mother.

Q But you were then around when your mother was asked by P/Cpt. Francisco Alalong?

A I was there.

Q Did you not inform the military that you saw the accused when the incident took place?

A Right then and there I did not tell the military authorities, I only revealed to the police authorities after my father was buried.

Q You did not inform the military personnel right then and there because you were not able to identify the accused?

A I recognized.

Q Why is it that you did not tell the military men when you were asked together with your mother?

A Because I do not want to tell them regarding the identity of the accused because the dead body of my father was still lying in state. I do not want further trouble so I waited for time until my father will be buried."^[14]

The said witness failed to give a reasonable explanation why she did not denounce accused-appellant and identify him to the military and police investigators as among the persons she saw at the scene of the crime. Her claim that she did not identify the accused-appellant because the body of her father was still lying in state and that she did not want further trouble is, in our view, quite flimsy to be credible. On top of that, she did not even inform her mother and sister that she saw accused-appellant at the vicinity of the crime. Her behavior was not in accord with human nature and experience. The natural tendency of a person who has witnessed the commission of a crime is to report it, and describe the malefactors at the earliest possible opportunity.^[15] This is particularly true where the victim is so closely related to the witness who claims to have seen the commission of the crime. Edwina's failure to promptly come out with such information to the police, casts a serious doubt on the accuracy if not veracity of the identification of accused-appellant later made by the same witness.

Testifying further on cross-examination, the same witness (Edwina) declared that her father Venancio Fernandez, who was then the Brgy. Captain of New Quezon, Hagonoy, Davao del Sur, was ousted as barangay captain when the Escalante family reported to the authorities that he (Venancio Fernandez) was an active supporter of the NPA. She testified as follows:

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Q You said that your father was Venancio Fernandez, how is he related to Venancio Fernandez who was then

the barangay captain of New Quezon?

A He is the very same person.

Q How is he related to Venancio Fernandez who was then a very active supporter of the NPA?

A He was a suspect by the military before that my father was a subversive member.

Q Suspected by whom?

A After the election of my father as a barangay captain he was immediately reported to the municipal building that my father was an active supporter of the NPA and the report was made by these same people.

INTERPRETER:

The witness referring to the accused.

Q And because of this report your father was ousted as a barangay captain.

A He resigned as a barangay captain because of some intrigues.

Q Do you remember having executed an affidavit in relation to this case that you are now testifying?

A Yes, sir.

Q And that you executed the same before P/Cpl. Diomedies Barimbad, Chief Investigator of Hagonoy Police Station?

A Yes, sir.

Q And that you affixed your signature on said affidavit on the 2nd day of May, 1988?

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Q On the said affidavit Mrs. Cortez there appears a handwritten signature over the typewritten name Edwina Fernandez Cortez, whose signature is this?

A This is my signature, sir.

Q On Question No. 13 Mrs. Cortez which I will read:

Q By the way, what is the position of your father in the barangay?

A He was once elected as barangay captain of New Quezon, Hagonoy, Davao del Sur but was ousted due to pressures of being supporter of subversive elements and later elected as chairman of the NAKASAKA.

Q Do you remember having been asked this question and made such kind of answer?

A I remember this is my answer.

Q Will you affirm that as true and correct?

A True.

Q Therefore, your father did not resign but he was ousted as a barangay captain?

A Because of the charge that he was an active supporter of the NPA.

Q And he was ousted because of the report of these accused, referring to the Escalante family?

A Yes, sir.

Q And that you are harboring ill-will against the Escalante family?

A No, sir."[16]

The foregoing testimony of Edwina Fernandez Cortez engenders a serious doubt as to her own motive in pointing to the accused-appellant Avelino Escalante, his father Eugenio Escalante and brother Rodolfo Escalante as the malefactors she allegedly saw at the vicinity of the crime and renders her testimony highly suspicious.

On the other hand, prosecution witness Dominador Taneza, an ex-convict, testified on direct examination that on 15 August 1987, he met all the accused in the house of accused-appellant Avelino Escalante. He said that, in that meeting, Avelino offered to hire him to kill Venancio Fernandez and offered also to pay him P3,000.00 for the job. He further declared that the reason given by Avelino for trying to hire him to kill Venancio Fernandez was that the latter once confiscated his .22 caliber firearm when he (Avelino) pointed his gun at one of the players during a gambling session in the school building at Barangay New Quezon. He said that he did not accept Avelino's proposal.[17]

Testifying further on direct examination, the said witness declared that on 16 January 1988, he again met accused-appellant at the latter's house, at which time he (Avelino) renewed his proposal to hire him to kill Venancio Fernandez but, again, he did not accept the proposal. After their meeting, he said that he went to his house, but, later on, he said that he reported the matter to Police Captain Francisco Alalong, the Station Commander of the municipality of Hagonoy, Davao del Sur.[18]

However, when the trial court asked him some clarificatory questions, he declared that he did not go to the accused-appellant's house for the purpose of discussing the latter's proposal to hire him to kill Venancio Fernandez. He said that he was just called by Avelino while he was passing by his (Avelino's) house. He testified as follows:

"COURT: How did it happen that the proposal of Avelino Escalante to kill Venancio was always proposed to you in his house?

A Because I use to frequent New Quezon. He would call me, Your Honor, when I would pass by his house.

COURT: Do you want to impress the Court that it is not your going to New Quezon is not to visit Avelino Escalante but you are only called?

A Yes, Your Honor.

COURT: Why do you usually go to New Quezon?

A Whenever we conduct patrol at New Quezon.

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COURT: Now, again, when you refused at first the proposal of Avelino Escalante to be hired in killing Venancio Fernandez on August 15, 1987 by way of paying you P3,000.00 and you refused, why is it that you came back in the house of Avelino Escalante on January of 1988?

A I just pass by his house, Your Honor.

COURT: Is it not a fact that it is on your own volition to see Avelino Escalante for the purpose of renewing the offer?

A No, Your Honor."[19]

It would seem highly improbable that accused-appellant Avelino Escalante would just call Dominador Taneza

while the latter was passing by his house and right then and there propose to him the killing of Venancio Fernandez, as if the killing of a person were a matter of little or no consequence at all. Matters of this nature are usually done only after mature reflection and meditation, and only after the proponent has gained the confidence of the person to whom he makes the proposal. Besides, as pointed out by accused-appellant in his brief, "(a)ssuming, without admitting, that Dominador Taneza was really told as such, would it not be logical to deduce that Taneza may have been a distinguished killer-for-hire? Why, of all the notorious and publicly known criminals, did the accused have to select and hire Taneza to do such a risky enterprise? Is Taneza a well-known gun-for-hire? A celebrated mercenary?"[20] Moreover, his testimony becomes even more incredible when he declared on cross-examination[21] that he did not tell or inform the deceased or his family of the alleged plan of Avelino Escalante to hire him to kill Venancio Fernandez, despite the fact that he was close to one of the latter's children.[22]

Since the testimonies of prosecution witnesses Edwina Fernandez Cortez and Dominador Taneza are inherently improbable and inconsistent with human experience, they cannot be considered a sufficient basis upon which to rest a judgment of conviction for murder.

Aside from the foregoing, the trial court's conclusion that the incident whereby Venancio Fernandez confiscated the gun of Avelino Escalante when the latter pointed his gun at one of the players in a gambling place, had caused a quarrel between them, is not supported by the evidence on record and is purely a surmise or speculation. On the other hand, the evidence shows that prior to the death of Venancio Fernandez, the latter had a good relationship with accused-appellant. It was Venancio Fernandez who recruited accused-appellant into joining the Contra Force (Anti-Communist Group) under the command of a certain June Pala and accused-appellant had been a member of that Contra Force since 1987 under the leadership of Venancio Fernandez.[23] Besides, the said incident (confiscation of gun) took place on 11 August 1987 while Venancio Fernandez was shot to death on 16 April 1988. Considering the time that had elapsed from 11 August 1987 to 16 April 1988, the accused-appellant could have already recovered his equanimity. Otherwise stated, his anger or resentment, if any, was already at a low ebb when Venancio Fernandez was shot to death on 16 April 1988. Hence, it is improbable that because of the said incident the accused-appellant was impelled to commit so serious a crime as that charged against him.

Accused-appellant's defense is alibi. He testified that on 16 April 1988, he was making some repairs in his house together with carpenters Saen Datulayta and Boy Datulayta, his father, Eugenio Escalante and brother, Rodolfo Escalante and that they started repairing his house at 7 o'clock in the morning and stopped at 5 o'clock in the afternoon. Thereafter, he and his carpenters drank tuba at his store up to 6 o'clock in the evening. After drinking, tuba he went upstairs and lay down; at the same time, he viewed the television and while viewing television, he fell asleep. Sometime thereafter, he was awakened by two (2) guards of the NAKASAKA, Aurelio Genonsalao and Melecio Abrea, who informed him of the killing of Venancio Fernandez. Then, he and Aurelio Genonsalao and Melecio Abrea went to the sentry post. He sat at the sentry post while the others patrolled the area, and he stayed at the sentry post up to the following morning.[24]

It has been held "that courts should not at once look with disfavor at the defense of alibi" and that "(w)hen an accused puts up the defense of alibi, the court should not at once have a mental prejudice against him. For, taken in the light of all the evidence on record, it may be sufficient to acquit him."[25] In *People vs. Omega*,[26] this Court held:

"Although alibi is known to be the weakest of all defenses for it is easy to concoct and difficult to disprove, nevertheless, where the evidence for the prosecution is weak and betrays lack of concreteness on the question of whether or not the accused committed the crime charged, the defense of alibi assumes importance. Thus, in the case of *People vs. Fraga, et al.*, this Court held that:

'x x x an accused cannot be convicted on the basis of evidence which, independently of his alibi, is weak, uncorroborated, and inconclusive. The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than were it is strong.'

In other words, the prosecution has the burden of proof in establishing the guilty of the accused beyond reasonable doubt and the weakness of the defense does not relieve it of this responsibility. The accused does not have to prove his innocence because that is presumed. x x x x."

In the present case, as discussed above, the evidence of the prosecution falls short of that quantum of evidence which will justify the conviction of accused-appellant Avelino Escalante for murder. His guilt has not been proven beyond reasonable doubt. Hence, he is entitled to an acquittal.

ACCORDINGLY, the judgment of the trial court dated 30 October 1990 is REVERSED and appellant AVELINO ESCALANTE is hereby ACQUITTED based on reasonable doubt. Costs de officio.

SO ORDERED.

Davide, Jr., Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Original Record, p. 1

[2] Ibid, p. 37

[3] Original Record, pp. 215-218

[4] Ibid., p. 215, penned by Judge Dominador Carrillo

[5] Ibid., p. 223

[6] Original Record, pp. 218-223

[7] Ibid., p. 225

[8] Ibid., p. 255

[9] It was Judge Mariano C. Tupas who heard the testimony of Edwina Fernandez Cortez and Dominador Taneza but it was Judge Dominador Carrillo who penned the decision.

[10] People vs. Omega, G.R. No. L-29091, 14 April 1977, citing People vs. Salas, L-35946, 7 August 1975, 66 SCRA 126, 132

[11] People vs. Alto, G.R. Nos. L-18660-61, 29 November 1968; People vs. Perurelo, G.R. No. L-50631, 29 June 1981, SCRA 226, 235

[12] People vs. Alto, supra and cases therein cited; Borguilla vs. Court of Appeals, et. al., G.R. No. L-47286, 7 January 1987, 147 SCRA 9

[13] T.S.N., 21 November 1988, pp. 4-8, 8-10

[14] T.S.N., 21 November 1988, pp. 14-16

[15] People vs. Gallora, G.R. No. L-21740, 30 October 1969, 29 SCRA 780; People vs. Peruelo, G.R. No. L-50631, 29 June 1981, 105 SCRA 226

- [16] T.S.N., 21 November 1988, pp. 16-18
- [17] T.S.N., 15 February 1989, pp. 8-10
- [18] Ibid., pp. 10-12
- [19] T.S.N., 15 February 1989, pp. 18, 19
- [20] Rollo, p. 59
- [21] T.S.N., 15 February 1989, p. 65
- [22] Cf. *People vs. Ramirez*, G.R. Nos. 65345-47, 31 January 1989, 169 SCRA 711
- [23] T.S.N., 21 February 1990, pp. 7-9
- [24] Ibid., pp. 5-7
- [25] *People vs. Villacorte*, G.R. No. L-21860, 28 February 1974, 55 SCRA 640
- [26] G.R. No. L-29091, 14 April 1977, 76 SCRA 262

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