

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VLADIMIR CANUZO Y LANDICHO, DEFENDANT-APPELLANT.

G.R. No. 112718. March 29, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

VLADIMIR CANUZO y LANDICHO was found guilty of murder and sentenced to reclusion perpetua and to pay the heirs of Oscar Ulitin P50,000.00 for moral damages and another P50,000.00 as reimbursement for funeral expenses.[1]

The accused now alleges that the trial court erred in giving credence to the version of the prosecution considering that only one (1) out of its nine (9) witnesses actually saw the perpetration of the crime.

But the testimony of Ignacio Manalo, the only eyewitness to the murder, was found credible by the court a quo. It needed no corroboration. It stood strong and firm against the penetrating and incisive cross-examination by the defense. Unless expressly required by law, the testimony of a single witness is enough. If credible and positive it is sufficient to convict.[2] Absent any showing of abuse of discretion there can be no basis to disturb the finding of the trial court since the assessment of a witness' credibility rests within its domain.

Reliance by the accused on *People v. Torre*[3] is misplaced. In that case, the accused was acquitted because the prosecution failed to establish an unbroken chain of circumstances pointing to the culpability of the accused. There was no eyewitness to the commission of the crime; neither was the accused positively identified.

In contrast, the conviction of the accused by the trial court in the case before us did not hinge on circumstantial events; instead, it depended primarily on the positive identification of the accused as the perpetrator of the crime.

Ignacio Manalo clearly recounted that on 12 August 1991 at around one o'clock in the afternoon he was at the store owned by Virgilio Palo in Berinayan, Laurel, Batangas, together with Oscar Ulitin and Vicente Palo. Oscar Ulitin was sitting with crossed legs in front of the store when suddenly accused Vladimir Canuzo appeared from nowhere and shot Oscar Ulitin. While the victim was lying prostrate on the ground Vicente Palo tried to wrest possession of the gun from Vladimir Canuzo but the latter successfully defended his possession and fled towards home.

The defense would have us discard the above testimony of Manalo as it claimed that the medico-legal report did not support it. But we are not persuaded. Ignacio Manalo testified that he heard six (6) gunshots and not four (4) as posited by the defense. The redirect examination is enlightening -

Q.

You said a while ago that the accused was at the back, little back (sic) of the deceased when he fired his gun, how many shots did you hear coming from the gun of the accused?

A.

I heard four shots, sir.

Q.

In that (sic) four shots that you heard, where were you then, were you still at the store or you have already hid (sic) yourself at (sic) the wall?

A.

Not yet, sir.

Q.

When you were already hiding yourself near the store, did you still hear shots?

xxx xxx xxx

A.

I still heard shots because Vicente Palo and the accused were grappling for the possession of the gun, the reason why I hid, I was afraid.

Q.

How many shots did you hear when you were hiding?

x x x xxx xxx

A.

I heard two shots, sir.[4]

Apparently, the lower court gave full credence to the testimony of Ignacio Manalo as it ruled -

The witness is an old man of seventy-seven years who was not shown to have any reason whatsoever to falsely implicate the accused. The attempt to discredit his testimony through Virgilio Palo, the owner of the store, cannot prosper in the face of the latter's admission of total lack of knowledge of what transpired during the shooting, as he said that before and during the shooting he was not in the store but inside his house attending to his children. His declaration, therefore, that Ignacio Manalo was not in his store at the time of the shooting does not carry any weight.[5]

The defense would further capitalize on the testimony of Dr. Eden Niguidula to the effect that the two (2) fatal wounds were frontal. It claimed that this belied the testimony of Ignacio Manalo that Oscar Ulitin was shot "sa tabing likod." That Manalo as a witness could not be believed.

Whether or not the attack was frontal, the fact remains that Vladimir Canuzo was positively identified as the perpetrator of the crime. Granting that the attack was indeed frontal, it was still sudden and unexpected, and without giving the victim any opportunity to defend himself.

The defense attempted to disprove the presence of Ignacio Manalo at the crime scene by presenting Virgilio Palo who testified that Ignacio was nowhere in the vicinity of his store in the afternoon of 12 August 1991. This is highly incredible. The shooting happened just in front of the store of Virgilio. The victim was related to Virgilio yet the latter never - bothered to inquire as to who shot his relative. Until the case was tried, Virgilio never showed any degree of curiosity or interest in the killing of Oscar Ulitin. The testimony of Virgilio, a fortiori, does not carry any weight. Certainly, he was not in a position to assert categorically whether Ignacio Manalo was present or not. By his own admission, Virgilio was not at his store when the shooting took place but at the kitchen

tending to his children. Indeed, if there was any testimony that was "clouded with uncertainty and improbability or unworthy of belief" it was that of Virgilio.

The failure of Ignacio Manalo to surface during the police investigation may not be taken against the prosecution. We have time and again taken judicial notice of the reluctance of witnesses to get involved in criminal cases. Besides, it must be reiterated that Ignacio Manalo was already seventy-seven (77) years old. Understandably, he would not wish as much as possible to spend his remaining years going to court to testify.

The version of the accused is that on 12 August 1991, between ten o'clock in the morning and one o'clock in the afternoon, he was at the store of Willy Canuzo, a cousin, drinking. After he (accused) got drunk an uncle advised him to go home. Just when he was about three (3) meters away from the store of Virgilio Palo he heard several gunshots. He looked back and saw several of his barriomates running in his direction. He got scared so he ran home. Then they started shooting at him until he reached his house.

This pretension of the accused is as lame as it is preposterous. It is a frail and futile attempt to evade his responsibility for the death of Oscar Ulitin. The accused has admitted that he passed by the store of Virgilio Palo at around one o'clock in the afternoon of 12 August 1991. This only buttresses the testimony of Ignacio Manalo that Vladimir Canuzo appeared from nowhere and shot Oscar Ulitin who was sitting in front of the store of Virgilio Palo. If indeed the accused is innocent as he would have us believe then why should he run home after Oscar Ulitin was shot? Why should he be pursued by his barriomates? His explanation that he became fearful for his life is unpersuasive and at most speculative. Why should his barriomates pick on him and chase him? Why should they fire at him, if in fact they did, when they did not have any reason at all?

Interestingly, the accused could not present any witness to corroborate his testimony. We can only conclude that the flight of the accused evinced his guilt, not fear for his life. The presence of gunpowder in his two (2) hands must clinch the case for the prosecution. His explanation that he went fishing together with his cousin in the morning of 12 August 1991 using an armalite rifle is highly implausible, dubious, to say the least.

All told, the trial court correctly found accused Vladimir Canuzo guilty of murder. Treachery as a qualifying circumstance was properly appreciated. Whether Canuzo shot the victim from behind or frontally is immaterial. The shooting was unexpected and sudden thus giving the victim no whimper of a chance to defend himself.[6] The victim was unarmed, sitting with crossed legs, without any inkling whatsoever of the danger lurking from behind. He was shot dead by Vladimir Canuzo in a manner that entailed no risk to himself.

The affidavits of Vicente Palo and Alberto Marasigan are inadmissible. Both affiants were not presented in court and the accused was not afforded any opportunity to test the veracity of their testimonies. He was not accorded his right to confront and cross-examine the witnesses against him, pursuant to Sec. 1, par. (f), Rule 115, of the Rules of Criminal Procedure. That was a blatant breach of the hearsay rule. Moreover, the trial court did not have any occasion to observe the demeanor of the two (2) affiants on the witness stand

WHEREFORE, the judgment of the Regional Trial Court of Batangas finding accused-appellant VLADIMIR CANUZO Y LANDICHO guilty of MURDER, imposing upon him the penalty of reclusion perpetua therefor and ordering him to INDEMNIFY the heirs of Oscar Ulitin in the amount of P50,000.00 and to reimburse them another P50,000.00 for funeral expenses, is AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Padilla, Vitug, Kapunan, and Hermosisima, JJ., concur.

[1] Decision dated 16 September 1993 was penned by Judge Flordelis Ozaeta Navarro, RTC-Br. VI, Tanauan,

Batangas; Rollo, 24-33.

[2] *People v. Amaguin*, G.R. Nos. 54344-45, 10 January 1994, 229 SCRA 166.

[3] No. L-44905, 25 April 1990, 184 SCRA 525.

[4] TSN, 19 October 1993, pp. 23-25.

[5] Decision, p. 7; Rollo, p. 234.

[6] *People v. Halili*, G.R. No. 108662, 27 June 1995, 245 SCRA 353.

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