

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANNY PAREDES AND SANTOS PAREDES, JR. ALIAS “TITING,” ACCUSED, SANTOS PAREDES JR. ALIAS “TITING,” ACCUSED-APPELLANT.

G.R. No. 115217. November 21, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

At five o'clock in the afternoon of 12 April 1989, or thereabouts, while Amelito Banug was on his way home together with Evangelio Asis Jr. at Kauswagan, Cabacungan, Barobo, Surigao del Sur, they saw the brothers Danny Paredes and Santos Paredes Jr. alias Titing approaching. Danny was carrying a long firearm while Santos Jr. was holding a knife. As they sensed trouble, Evangelio and Amelito ran away. But before they could go far, they heard a burst of gunfire. As he looked back, Amelito saw Danny shooting Evangelio. Wounded, Evangelio fell with face downward to the ground. Then Santos Jr. stabbed the fallen Evangelio.

Amelito then rushed to Evangelio's parents and informed them what happened, after which, Amelito returned to the crime scene accompanied by Evangelio's father. They saw Evangelio already lifeless with four (4) gunshot and two (2) stab wounds.

On 9 January 1991 the brothers Danny Paredes and Santos Paredes Jr. were charged with murder before the Regional Trial Court of Lianga, Surigao del Sur. Both raised the defense of alibi.

According to Danny, on 8 April 1989 he was shot at the right ear by the father of Evangelio for refusing to give wine on credit to the latter. As a result, Danny was brought to the Provincial Hospital at Patin-ay, Prosperidad, Agusan del Sur, where he was confined until 20 April 1989. His younger brother Santos attended to him (Danny) during his entire period of confinement.

The trial court sustained the alibi of Danny as it was substantiated by a medical certificate and the testimony of a certain Legaspi Marayno who attended to a sick nephew in the same room occupied by Danny. But the trial court brushed aside the explanation of Santos Jr. on the basis of his positive identification by Amelito and its finding that Santos Jr. had the physical capability and motive to commit the crime.

On 7 February 1994 the trial court acquitted Danny Paredes but adjudged his brother Santos Paredes Jr. guilty as charged and sentenced him to reclusion perpetua, to indemnify the heirs of Evangelio in the amount of P50,000.00, and to pay the costs. [1]

Santos Paredes Jr. assails his conviction. He claims that there is clear and convincing evidence that he was not at the scene of the crime when it was perpetrated, and that granting he is guilty there is clear and convincing evidence that he is entitled to the privileged mitigating circumstance of minority.

Accused-appellant argues that the testimony of Amelito is not credible because the trial court acquitted his brother on the basis of the same testimony. But assuming that his guilt has been established beyond reasonable doubt, he was only fifteen (15) years old at the time of the commission of the crime and therefore entitled to the privileged

mitigating circumstance of minority.

Outright, we find the first argument of appellant without merit. Although Danny's acquittal is now beyond judicial review, we say by way of obiter, even if briefly, that his positive identification by Amelito as one of the perpetrators of the crime could have remained unshaken had it not been eclipsed by the undue reliance of the trial court on the medical certificate which after careful scrutiny reveals the ambiguity of the duration of Danny's examination and confinement at the Agusan del Sur Provincial Hospital. We observe that the attending physician indicated in his handwriting that Danny was confined/examined at the hospital from 11:20 p.m. of 8 April 1989 to 20 April 1989. However, it appears that "20" April was originally "10" April and that the number "2" appearing thereon was merely superimposed. We examined carefully the writing style of the physician regarding the figure "2" and it appears that he wrote the number "2" five (5) other times but they seem to be different from the number "2" in "20" April. It is very probable that "10" April was altered to make it "20" April to strengthen the alibi of Danny that he could not have been at the scene of the crime on 12 April. But that is now water under the bridge, and the defense did not even call the physician to explain the apparent alteration, if not ambiguity, nor did it present the clinical records of Danny regarding his treatment at the hospital if it is true that he was treated and confined thereat at the time Evangelio was killed. In this regard, we agree with the observation of the Solicitor General -

Significantly, the lower court, in acquitting Danny, made no mention of any flaw, either in the substance of Amelito's testimony or in his deportment as a witness, that could possibly justify its decision to uphold Danny's alibi over Amelito's positive identification of both Danny and appellant as the culprits responsible for Evangelio's death. Apparently, the lower court concluded that Danny could not have committed the crime charged on the strength of the Medical Certificate (Exhibit "1") issued by Dr. Norberto S. Reyes, Danny's attending physician, which allegedly shows, among others, that from April 8, 1989 to April 20, 1989, Danny was hospitalized at the Patin-ay Provincial Hospital.[2]

It is urged upon us that Amelito's testimony regarding the culpability of Danny having been apparently overthrown and disregarded, his (Amelito's) testimony against him (appellant) must also be similarly considered; hence, he must also be acquitted.

We cannot agree. The testimony of Amelito against appellant may still be considered credible. It is perfectly within the discretion of the trial court to accept portions of the testimony of a witness as it may deem credible and reject those which it believes to be false. The maxim *falsus in uno falsus in omnibus* is not an absolute rule of law and is in fact rarely applied in modern jurisprudence. For this maxim to be invoked, the witness must first be shown to have wilfully falsified the truth on one or more material points. But even so - when he is found to have wilfully falsified - this does not make his entire testimony totally incredible. The court may still, upon its discretion, admit and credit those portions worthy of belief depending upon the corroborative evidence and the probabilities as well as improbabilities of the case.[3]

Moreover, the present case hinges on the credibility of witnesses and, as we have invariably held, the opinion of the trial court as to who of them should be believed is entitled to great respect, this on the oft-repeated rationale born of judicial experience that the trial judge who heard the witnesses testify and had the occasion to observe their demeanor on the stand was in a vantage position to determine who of the witnesses deserve credence. We have examined the records with great care but found nothing which might justify our taking a different view.[4]

For alibi to offset the evidence of the prosecution demonstrating his guilt, the accused must establish not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[5] Such physical impossibility on the part of accused-appellant was not availing to him inasmuch as he as well as Danny testified that Patin-ay could be

reached by jeep from Cabacungan in approximately three (3) hours.[6] Besides, alibi is an inherently weak defense and, unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration pointing to the accused as the culprit[7] by an eyewitness who had no improper motive to falsely testify.[8]

But we find the second argument of appellant meritorious. Article 13, par. (2), of the Revised Penal Code provides that the circumstance that the offender is under eighteen years of age is mitigating and shall be proceeded against in accordance with Art. 80 of the same Code. However, Art. 80 has been expressly repealed by Chapter III of P.D. 603 otherwise known as The Child and Youth Welfare Code. Article 189 of P.D. 603 defines "youthful offender" as a child, minor, or youth, including one who is emancipated in accordance with law, who is over nine years but under eighteen years of age at the time of the commission of the offense. Obviously, the trial court erred in considering the age of accused-appellant at the time of trial because the law is explicit in this regard. The testimony of appellant that he was only fifteen (15) years old at the time of the commission of the offense is material because under Art. 68, par. (2), of the Revised Penal Code, upon a person over fifteen (15) and under eighteen (18) years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

Article 248 of the Revised Penal Code punishes murder with reclusion temporal maximum to death.[9] In view of the privileged mitigating circumstance of minority, the penalty next lower in degree shall be imposed in its proper period pursuant to Art. 68, par. (2), of the Code, which is prision mayor maximum to reclusion temporal medium. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed upon accused-appellant shall be taken from the medium period of the imposable penalty, which is reclusion temporal minimum or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, while the minimum shall be taken from the penalty next lower in degree, which is prision correccional maximum to prision mayor medium or four (4) years and two (2) months to ten (10) years. Consequently, the Court considers fair and just to impose upon accused-appellant an indeterminate prison term of four (4) years, ten (10) months and twenty (20) days of prision correccional maximum as minimum, to twelve (12) years, four (4) months and ten (10) days of reclusion temporal minimum as maximum.

WHEREFORE, the judgment appealed from finding accused-appellant Santos Paredes Jr. alias "Titing" guilty of murder is AFFIRMED subject to the MODIFICATION that he is sentenced to an indeterminate prison term of four (4) years, ten (10) months and twenty (20) days of prision correccional maximum as minimum, to twelve (12) years, four (4) months and ten (10) days of reclusion temporal minimum as maximum, and to pay the costs.

SO ORDERED.

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

[1] Decision penned by Judge Bernardo V. Saldares, RTC-Br. 28, Lianga, Surigao del Sur.

[2] Rollo, p. 68.

[3] *Lagunsad v. Court of Appeals*, G.R. No. 104939, 2 February 1994, 229 SCRA 596; *People v. Cañeja*, G.R. No. 109998, 15 August 1994, 235 SCRA 328.

[4] *People v. Silong*, G.R. No. 110830, 23 May 1994, 232 SCRA 487.

[5] TSN, 24 November 1993, pp. 9, 26.

[6] TSN, 24 November 1993, pp. 9, 26.

[7] People v. Tayco, G.R. No. 100283, 25 August 1994, 235 SCRA 610.

[8] People v. Javier, G.R. No. 104729, 3 February 1994, 229 SCRA 638.

[9] As Amended by R.A. 7659, which took effect 31 December 1993, murder is now punishable with reclusion perpetua to death.

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