

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELEUTERIO DE LEON AND REYNALDO MANAYAO, ACCUSED. ELEUTERIO DE LEON, ACCUSED-APPELLANT.

G.R. No. 115367. September 28, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused-appellant Eleuterio de Leon seeks the reversal of the decision^[1] of the Regional Trial Court (RTC) of Bulacan, Branch 15, in Criminal Case No. 2320-M-92 finding him and his co-accused, Reynaldo Manayao, guilty beyond reasonable doubt of the crime of murder and sentencing each of them to suffer the penalty of reclusion perpetua; to indemnify the heirs of the victim jointly in the amount of P50,000.00; and to pay the victim's wife the amounts of P180,000.00 as actual damages and P100,000.00 as moral damages. Accused Reynaldo Manayao chose not to appeal from the decision.

In an information filed with the trial court on 10 November 1992, the accused were charged with the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

That at or about 10:00 o'clock in the morning of August 23, 1992, in the Municipality of Angat, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with Armalite rifles and Caliber .45 pistols, conspiring, confederating together and helping one another, with common design, with treachery, taking advantage of superior strength, with the aid of armed men, employing means to the [sic] weaken the defense or of means or persons to insure or afford impunity, and with evident premeditation, and with intent to kill, did then and there wilfully, unlawfully and feloniously ambush, attack and shoot from behind Marcelino Santiago who was hit at the head while he was driving his owner-type jeep, and as a result he died instantaneously to the prejudice and damage of his legal heirs.

Contrary to law.^[2]

Accused Eleuterio de Leon was arrested on 13 April 1993,^[3] and afterwards, he filed a motion to fix bail.^[4] Accused Reynaldo Manayao, on the other hand, was arrested on 24 May 1993.^[5]

Upon their separate arraignments,^[6] the accused entered a plea of not guilty. Thereafter, the court conducted hearings on the motion to fix bail with the express agreement between the parties that the evidence to be presented at such hearings would be considered as evidence on the merits of the case.^[7]

The prosecution presented three witnesses: the two eyewitnesses, namely, Simon Mariano, a farmer from Angat, Bulacan, and Ramon Chavez, an employee of Robal Transit; and SPO2 Alfredo Bartolome. The substance of their testimony was that at approximately 9:30 a.m. of 23 August 1992 in the vicinity of the Robal Transit Terminal in Angat, Bulacan, they saw the accused gun down Marcelino Santiago, one of the managers of Robal Transit, while the latter was driving his jeep. Mariano was walking in the opposite direction that the jeep was headed,^[8] while Chavez was following the vehicle of the victim as the former wanted to tell the latter something.^[9]

The victim's jeep had already passed Mariano when the shots were fired. Turning around, Mariano saw the accused shooting the victim, with de Leon holding an Armalite at waist level and Manayao, a .45 caliber pistol at shoulder height.[10] Mariano heard six shots in all. As he was only about ten meters away from the accused, he could still see the gun barrels emitting smoke. After shooting the victim, both accused, joined by a third male whom Mariano could not identify, left the area by leisurely walking towards an alley, which was right in front of Mariano. Mariano immediately recognized the two accused because they were his townmates. Mariano went home at once. It was only after the funeral that he told the wife of the victim that he knew her husband's killers. He then gave his statement to the police.[11]

Chavez was on the street in front of the bus terminal and about six meters from the accused when the latter fired at the victim. Because of fear, Chavez went inside the bus terminal, only to return to the scene of the crime later to assist in carrying into the funeral parlor's vehicle the body of the victim, which was then slumped sideways in his jeep. The jeep had swerved to the sidewalk after the victim was hit. Later that day, Chavez informed the victim's wife that he had witnessed the commission of the crime.[12]

SPO2 Alfredo Bartolome, a police investigator, took down the statement of Simon Mariano on 24 August 1992.[13]

Immediately after the termination of the testimony of Bartolome, the trial court orally denied the application for bail because the evidence of guilt of the accused is strong.[14] It then required the prosecution to present its other witnesses.[15]

The prosecution forthwith presented Dr. Rosauro Villarama, the Municipal Health Officer of Angat, Bulacan, who performed an autopsy on the cadaver of the victim, Marcelino Santiago, at 11:00 a.m. of 23 August 1992.[16] He found one gunshot wound on the victim's head, the entry point being above the right ear and the point of exit, "slightly above 3 in. front of left ear," causing a fracture and laceration. He concluded that the cause of the victim's death was "cerebral hemorrhage, gunshot wound, head." [17] This gunshot wound was caused by an Armalite.[18]

After Dr. Villarama completed his testimony, the trial court dictated an order[19] formally denying the petition for bail because "[s]ufficient evidence has been established to prove that the evidence of guilt of the accused is strong."

Three additional witnesses were presented by the prosecution, namely, Eduardo Valencia, Chief of the Intelligence and Investigation Division of the Angat Police Station; Senior Inspector Carlito Feliciano, Chief of the Angat Police Station; and Mrs. Mercedes Villarama-Santiago, widow of the victim.

Valencia declared that upon receiving a report from P03 Enriquez about a shooting incident at the bus terminal of Sta. Maria Liner, he, together with two other companions, went to the terminal and found the jeep of Marcelino Santiago on the right side of the road going to Bustos with the corpse of Santiago bathed in blood. They tried to run after the assassins. Failing to catch the latter, they returned to the scene of the crime where they found empty cartridges from an Armalite. Thereafter, they called their district office, which sent investigators to whom Valencia turned over the empty cartridges. During the investigation, Simon Mariano told him that the assassins were the accused herein. Valencia then prepared a spot report. At the trial, he submitted a case folder of accused Reynaldo Manayao showing that the latter had pending cases for illegal possession of firearms, robbery in band, extortion, and destruction of property.[20]

Senior Inspector Feliciano testified on the arrest by his team of accused Reynaldo Manayao, who was included in their order of battle, being a leader of an "organized syndicated crime group." [21]

Mrs. Santiago declared that she and the victim were married in 1966 and were blessed with five children. She believed that her husband was killed because of his having testified on the Tuesday preceding his death in a civil case involving the lot rented by Robal Transit or because of business competition between Robal Transit and Sta. Maria Linder. Her husband earned from P25,000.00 to P30,000.00 a month as operations manager of Robal Transit and as a farmer. For his burial, she spent P50,000.00 for the casket; P60,000.00 for the burial lot; and P70,000.00 as miscellaneous expenses. She left to the discretion of the court the determination of the monetary value of the moral shock and anxiety she suffered as a consequence of the death of her husband.[22]

The appellant interposed alibi as his defense. He presented three witnesses to corroborate his story, namely, Elmer Tosoc, Manuel Santos, and Cesar Santos. He declared that in the morning of 23 August 1992, he was waiting for his salary to be paid at the house of Architect Elmer Tosoc in Tibagan, Bustos, Bulacan. The latter employed him as a custodian of construction materials at job sites. He did not leave the Tosoc residence at any time on the date in question. He further claimed that prosecution witness Simon Mariano bore a grudge against him, as he (appellant) fathered a child with Mariano's niece seven years prior and did not marry the woman.[23]

On cross-examination, the appellant admitted that Tibagan, Bustos, Bulacan, was only about eight kilometers away from Angat, Bulacan, and that it would take approximately half an hour to traverse the distance by bus or passenger jeep.[24] He also admitted that he had known Simon Mariano for about seven years and that if Mariano saw him during the day, Mariano could easily recognize him.[25]

On 23 March 1994, the trial court promulgated the challenged decision wherein it gave full faith and credence to the prosecution's evidence and declared the alibi offered by the defense to be feeble. Thus:

Alibi is not a proper defense where it is not impossible for the accused to be at the scene of the crime and no improper motive was shown against the witnesses who identified the accused.

Again, the defense of alibi cannot prevail over positive identification of the accused by the prosecution witnesses and because it was not physically impossible for said accused to be at the scene of the crime at the time of commission considering the proximity of the place where the accused were, hence, the defense of alibi is rejected. The testimony of the eyewitnesses are sufficient for conviction. Mariano's and Chavez' testimonies were sufficient to convict both accused because it was given unhesitatingly in a straight forward manner and it was full of details which by their nature could not have been merely invented. The Court again considered the fact that alibi is one of the weakest defense[s] an accused can invoke, easily lending itself to concoction and embroidery. It must invariably be viewed with suspicion and may be considered only when established by positive, clear and satisfactory evidence to be given credence. It must not only appear that the accused interposing the same was at some other place but only that it was physically impossible for them to be at the scene of the crime at the time of its commission. In the case at bar, both accused testified that they are only about 5 minutes away from the scene of the incident and has all the time and opportunity to perpetuate the crime.

In addition thereto, there maybe some few discrepancies and inconsistencies in the testimonies of the witnesses for the prosecution but they refer to minor details and do not in actuality touch upon the basic aspects of the why's and where of the crime committed, thus, credibility is not impaired.[26]

As earlier adverted to, only appellant Eleuterio de Leon appealed from the decision. In his Brief, he assigns the following errors:

I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE EVIDENCE FOR THE PROSECUTION AND IN THE PROCESS DISREGARDING THE DEFENSE OF ALIBI OF THE

ACCUSED-APPELLANT.

II

ASSUMING ARGUENDO THAT THE ACCUSED IS GUILTY THE TRIAL COURT ERRED IN NOT FINDING HIM GUILTY ONLY OF HOMICIDE.

We find no merit in the appeal.

In his first assigned error, the appellant invites our attention to alleged material inconsistencies in the testimonies of the eyewitnesses.

First, he alleges that Mariano's testimony regarding the relative positions of the victim and the appellant is contradictory. He cites Mariano's initial testimony that the two accused were behind the victim when they shot him. Then, he proceeds to point out that under questions from the court, Mariano said that the two accused were facing the jeep when they shot the victim; yet, the medico legal officer testified that the bullet entered the victim's right ear, clearly showing that the assailants were on the right side of the victim.[27]

This alleged inconsistency is more apparent than real for the appellant is merely confused as to the juxtaposition of the accused and the victim. The Appellee, however, has put things and people in their proper place and explains:

"Facing the victim's jeepney" does not mean that the gunwielders were right in front of the victim's jeep and they shot the victim frontally. It only means that the gunwielders were facing towards the jeep (not necessarily the front portion thereof) when they shot the victim. But as the physical evidence indicates the gunwielders must [have] be[en] facing towards the rear side of the jeep when they shot the victim as the latter was actually hit from behind.[28]

Second, the appellant calls this Court's attention to the portion of Mariano's testimony that the appellant was more or less six to seven meters away from the victim, while Chavez testified that the appellant was approximately twelve meters away from the victim. These estimations, the appellant concludes, are "incredible" in light of the medico-legal officer's testimony that the gunman must have been about one meter away when he fired the shots.[29] Such a conclusion is baseless and can only stem from a misreading of the transcript of the stenographic notes to mislead this Court. It is based on a single clarificatory question propounded by the lower court to the medico-legal officer, viz.,

Q One (1) meter?

A Yes, sir."[30]

The appellant clearly overlooked the immediately preceding question and the corresponding answer of the medico-legal officer which indubitably showed that the distance was more than one meter. Thus:

Q Can you determine the distance of the gunman?

A It is possible that the gunman is more than 1 meter [away].[31] (*Italics supplied*)

Third, the appellant points out that at first Mariano testified that he had heard six shots, but later he said that he had heard only three shots.[32] This inconsistency was never shown to be of crucial importance as to affect the credibility of the witness. It is to us a minor, if not trivial one.

Inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration, their veracity, or the weight of their testimony. In fact, these

inconsistencies, if only in minor details, reinforce rather than weaken their credibility, for it is usual that witnesses to a stirring event would see differently some details of a startling occurrence. Rather than discredit the testimony of the witnesses, such discrepancies serve to add credence and veracity to their categorical, straightforward, and spontaneous testimony.[33]

The appellant next contends that Mariano could not have clearly seen the incident, as Mariano "was already several meters away not to mention the fact that it was a busy street then being a Sunday and at a time when people were on the street attending to their Sunday obligations." [34] The contention lacks any semblance of substantiation. There is un rebutted evidence that the street was not bustling with activity that fateful morning when the crime was committed. Thus:

Q Do I understand Mr. witness, that... the street there [sic] was a busy street meaning that there were so many vehicles that were parked along the highway?

x x x x x x x x

A At that time there was [sic] none, sir.

Q Not even a Sta. Maria Liner parked along the highway?

A None, sir.[35]

The appellant admitted during cross-examination that Mariano could have easily recognized him, since Mariano and the appellant had known each other for at least seven years.[36] The veracity of the positive identification is strengthened by the trial court's efforts to satisfy itself with the certainty of the eyewitnesses' identification of the perpetrators of the crime as shown by the following questions it asked them and their answers thereto:

Court: [addressing eyewitness Mariano]

x x x

Q Now, the 2 accused both are charged with a grave offense and you are pointing your finger at them as the culprit[s]. Since the penalty here is very grave, you must be sure of your statement? Now, I will ask you, are you sure that these 2 accused were the ones who shot Santiago?

A Yes, sir.[37]

Court: [addressing eyewitness Chavez]

x x x x x x x x

Q Do you know that if you are testifying falsely, these two (2) persons might go to jail and taste a life sentence?

A Yes, sir.

Q You still claim that they were the killers?

A Yes, sir.

Court:

Q Walang kargo de konsiyensiya, hindi ka nagkakamali?

A Hindi po.[38]

Fast realizing that his cause lacks the proverbial "leg to stand on," the appellant capitalizes on Mariano's

admission that he was charged with homicide or murder before another court. He then submits that no credence could be given to Mariano because the latter was himself accused of having killed somebody.[39] Such a submission fails to impress us. Section 20, Rule 130 of the Rules of Court provides that except as provided for in the succeeding sections [Sections 21, 22, 23, 20, and 25], all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be a ground for disqualification. Clearly, the mere pendency of a criminal case against a person does not disqualify him from becoming a witness. As a matter of fact, conviction of a crime does not disqualify such person from being presented as a witness unless otherwise provided by law.[40]

The appellant's claim that Mariano bore a grudge against him because he (appellant) impregnated Mariano's niece was not established by credible proof.

In an attempt to discredit the other eyewitness, Chavez, the appellant contends that the former "is only an afterthought witness to shore up the sinking ship of Simon Mariano" as evidenced by the fact that he "informed the authorities... only nine (9) months after the killing and was an employee of the company owned by the victim." [41]

We are not persuaded. We agree with the following counter-arguments of the Appellee, thus:

As regards Ramon Chavez, he substantially corroborated the testimony of Simon Mariano on all significant points. The fact that he stepped forward as [an] eyewitness only after nine months following the incident, does not per se destroy his credibility. People's natural hesitation to get involved in cases, whether civil or criminal, is a matter of public knowledge. Also, the fact that Ramon Chavez was a subordinate employee of the victim... does not diminish his truthfulness as a witness. On the contrary, being an employee of Robal Transit, Ramon Chavez would only be interested to punish the real wrongdoer in the murder of his boss... [42]

The natural reticence of most people to get involved as a witness in a criminal case is of judicial notice. Their failure to submit to an investigation by any public authority or to execute a sworn statement does not by itself diminish or impair their credibility.[43] We need only to reiterate here what we stated in *People vs. Kyamko*: [44]

Not every witness to a crime can be expected to act reasonably and conformably to the expectation of mankind. Human nature teaches us that people may react differently to the same situation. One person's spontaneous or unthinking, or even instinctive, response to a horrid and repulsive stimulus may be aggression while other's may be cold indifference. We have taken judicial notice of the fact that witnesses in our country are reluctant to volunteer information to the authorities. In any event, [the witness] did in fact immediately inform the victim's mother of the stabbing incident. This was sufficient to remove any doubt that he had witnessed the commission of the crime.

Chavez testified that he did not go to the police because he was afraid.[45] It was only on 31 May 1993, or a week after the arrest of accused Manayao but a day before the court started hearing the case, that he went to see Prosecutor Alberto Vizcocho and volunteered to testify in this case.[46] Anyhow, the fact remains that he told the victim's wife on the day the shooting incident took place that he had witnessed the killing.[47]

With respect to the presence or absence of an ulterior motive, this Court has had occasion to rule that the relation of superior and subordinate, by itself, does not constitute such ulterior motive:

[A] witness' relationship to a victim, far from rendering his testimony biased, would even render it more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit. Nor is the testimony of a witness discredited by the mere fact that he is an employee of the

complainant.[48]

Having now come full circle, this Court is left with no recourse but to reject the defense of alibi invoked by the appellant.

We have time and again ruled that alibi is the weakest of all defenses, for it is easy to fabricate and difficult to prove; it cannot prevail over the positive identification of the accused by the witnesses.[49] Moreover, for the defense of alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed, but he must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime at the time the same was committed.[50]

In the instant case, such physical impossibility was not shown to have existed. By the appellant's own admission, the place where he claimed to be was only about eight kilometers away from the scene of the crime and that it would have taken only half an hour to traverse the distance by bus or passenger jeep.[51] Such distance was not so great as to preclude his having been at the scene of the crime when the shooting occurred.

The appellant's second assigned error must also fail. The trial court appreciated against the appellant the qualifying circumstances of treachery and use of superior force and armed men, which are alleged in the information. We agree in its appreciation of treachery. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defenses which the offended party might make.[52] As correctly contended by the Appellee:

The factual milieu of the case undeniably shows that the qualifying circumstance of treachery attended the killing of the victim. The attack was synchronal, sudden and unexpected, with the assailants each armed with high-powered weapons. In fine, the attack was carried out in such a manner that the victim was totally helpless and in no position to either fight back or escape. Moreover, in view of the fact that the assailants fired at the victim as the latter was driving his jeep, the inescapable conclusion is that the attack was coolly and deliberately adopted... to ensure its accomplishment without risk to themselves arising from the defense which the victim might put up.[53]

We are in full accord with the said contention. Given the attendant circumstances, it cannot be disputed that the appellant employed means and methods in the execution of the crime which directly and especially insured such execution without the slightest risk to themselves, since the victim did not have the slightest chance to defend himself.

The trial court, however, should not have appreciated the other qualifying aggravating circumstance of "use of superior force and armed men." In using this phrase, the trial court must have had in mind the qualifying aggravating circumstances of (a) with the aid of armed men and (b) taking advantage of superior strength, which are distinct from each other.[54] Taking advantage of superior strength is absorbed in treachery, i.e., it cannot be estimated as an independent aggravating circumstance when treachery is present.[55] There is, as well, no factual basis for the other aggravating circumstance which, of course, presupposes the presence of armed men other than the accused themselves.

WHEREFORE, the instant appeal is DISMISSED, and the challenged decision of Branch 15 of the Regional Trial Court of Bulacan in Criminal Case No. 2320-M-92 is AFFIRMED in toto, with costs against the appellant.

SO ORDERED.

Padilla, (Chairman), Bellosillo, and Kapunan, JJ., concur.

Hermosisima, Jr., J., on official leave.

[1] Original Records (OR), 89-99; Rollo, 24-34. Per Judge Carlos C. Ofilada.

[2] OR, 1-2; Rollo, 4-5.

[3] OR, 14.

[4] Id., 18.

[5] Id., 30.

[6] Id., 22, 37.

[7] TSN, 1 June 1993, 9-10.

[8] TSN, 1 June 1993, 51.

[9] TSN, 7 June 1993, 17.

[10] Chavez described these firearms as long and short, respectively, because he did not know how to identify firearms (Id., 14).

[11] TSN, 1 June 1993, 39, 48-49, 51-54, 60-62.

[12] TSN, 7 June 1993, 12-19, 30.

[13] Exhibit "A"; OR, 101-102.

[14] TSN, 14 June 1993, 31.

[15] Id., 32.

[16] Id., 39-41.

[17] Id., 42-45; Exhibit "D"; OR, 104.

[18] TSN, 14 June 1993, 57-58.

[19] TSN, 14 June 1993, 61-62; OR, 45. In both oral and written orders, the trial court did not make a summary of the evidence upon which he based his conclusion. This was an error. In *People vs. San Diego* (26 SCRA 522, 524 [1968]), this Court ruled that the court's order granting or refusing bail must contain a summary of the evidence for the prosecution followed by its conclusion whether or not the evidence of guilt is strong.

[20] TSN, 28 June 1993, 6-22.

[21] TSN, 28 June 1993, 27-33.

[22] TSN, 5 August 1993, 6-28.

[23] TSN, 23 September 1993, 5-15, 21-22.

[24] TSN, 8 October 1993, 3-4.

[25] *Id.*, 6-7.

[26] OR, 98; Rollo, 33.

[27] Appellant's Brief, 20-21; Rollo, 74-75.

[28] Appellee's Brief, 9; *Id.*, 123.

[29] Appellant's Brief, 21-22; *Id.*, 75-76, citing TSN, 13 August 1993, 14; 7 June 1993, 19-20; and 14 June 1993, 57.

[30] TSN, 14 June 1993, 57.

[31] *Id.*

[32] Appellant's Brief, 21; Rollo, 75.

[33] *People vs. Buka*, 205 SCRA 567, 583 [1992].

[34] Appellant's Brief, 24; Rollo, 78.

[35] TSN, 1 June 1993, 28-29.

[36] TSN, 8 October 1993, 6-7.

[37] TSN, 1 June 1993, 29-30.

[38] TSN, 7 June 1993, 25-26.

[39] Appellant's Brief, 25; Rollo, 79.

[40] *People vs. Taneo*, 218 SCRA 494, 508-509 [1993].

[41] Appellant's Brief, 25; Rollo, 79; TSN, 7 June 1993, 33.

[42] Appellee's Brief, 12-13; Rollo, 126-127.

[43] *People vs. Pama*, 216 SCRA 385, 399 [1992]; *People vs. Viente*, 225 SCRA 361, 370 [1993]; *People vs. Lase*, 219 SCRA 584, 595 [1993].

[44] 222 SCRA 183, 192 [1993].

[45] TSN, 7 June 1993, 20.

[46] *Id.*, 20-23, 33.

[47] *Id.*, 30.

[48] *People vs. Viente*, *supra* note 43, at 368-369, citing *People vs. Almario*, 171 SCRA 291 [1989], and *Santos vs. Concepcion*, 103 Phil. 596 [1958].

[49] *People vs. Florida*, 214 SCRA 227, 239 [1992].

[50] *People vs. Dela Cruz*, 229 SCRA 754, 765 [1994].

[51] TSN, 8 October 1993, 3-4.

[52] Article 14(16), Revised Penal Code. See *People vs. dela Cruz*, 207 SCRA 632, 649-650 [1992]; *People vs. Garcia*, 209 SCRA 164, 178 [1992]; *People vs. Ybeas*, 213 SCRA 793, 805 [1992]; *People vs. Boniao*, 217 SCRA

653, 671 [1993].

[53] Appellee's Brief, 15-16; Rollo, 129-130.

[54] Paragraphs 8 and 15, Article 14, Revised Penal Code.

[55] RAMON C. AQUINO, The Revised Penal Code, vol. 1 [1987], 376.

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