

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOJO PEREZ Y PAMORCA, ALIAS “JOSEPH,” LUIS BERJA Y VERSOSA AND AVELINO BARASONA Y CUNDAT, ACCUSED. LUIS BERJA Y VERSOSA AND AV...

G.R. No. 119014. October 15, 1996

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellants Luis Berja y Versosa and Avelino Barasona y Cundat, together with accused Jojo Perez y Pamorca, alias "Joseph," were adjudged guilty by the Regional Trial Court, Branch 74, of Antipolo, Rizal as conspirators in the murder of Eduardo Jimena charged in Criminal Case No. 91-7094 thereof. The verdict was based primarily, if not solely, on the testimony of the lone eyewitness for the prosecution, one Conchita Zulueta, who had identified the trio as the malefactors. Appellants, on the other hand, insist that she is an unreliable witness whose judicial declaration and extrajudicial affidavit are valueless due to inherent incongruities and irreconcilable inconsistencies. Hence, the instant appellate entreaty for reversal, with errors assigned basically on that score.

The apprehension of the three accused was effected five days after the incident because it was only after that length of time that Zulueta came up with the belated divulgence that she was purportedly a witness to the crime. All of them, with the assistance of their respective counsel, registered negative pleas to the charge at their arraignment on November 28, 1991. They themselves appeared as defense witnesses and corroborated each other as to what transpired on the day and time in question, which completely rebutted the testimony of the alleged eyewitness.

The trial court nevertheless declared itself fully convinced of the collective guilt of all the indictees, with the fallo of its decision[1] dated March 8, 1994 disposing as follows:

WHEREFORE, the Court hereby finds the accused, Jojo Perez y Pamorca, alias "Joseph", Luis Berja y Versosa and Avelino Barasona y Cundat, guilty beyond reasonable doubt of the crime of murder as defined and penalized under Art. 248 of the Revised Penal Code and are hereby sentenced to reclusion perpetua.

Accused are hereby ordered to pay the heir or heirs of the victim the amount of P100,000.00 by way of indemnity and to pay the further sum of P9,000.00 to Teresita Janapin, the victim's sister, representing the actual expenses incurred by her for the wake and burial of the deceased.

Cost against the accused.[2]

In the trial of this case which was successively conducted by two trial judges,[3] Conchita Zulueta recounted that she was walking along Capri Street in San Francisco Village in Taytay, Rizal at around five o'clock in the afternoon of June 23, 1991 when she witnessed a gruesome incident. As she was about to cross paths with a group of four men walking alongside one another on the opposite side of the road, later identified as the three accused

and the victim, two of them, Luis Berja and Avelino Barasona, suddenly held the arms of Eduardo Jimena, who was then walking between them. Accused Jojo Perez thereupon assaulted Jimena with a weapon wrapped in a newspaper by delivering three hacking blows on the hapless victim. When the latter fell down, Berja and Barasona scampered away, with Avelino Barasona almost bumping the supposed eyewitness, Conchita Zulueta.[4]

Zulueta, who claims she was only four meters away from the men, went on to assert that she and Jojo Perez were left behind and that the latter then proceeded to deliberately slash the neck of Jimena with his bolo which was then no longer covered by its newspaper wrapper. This caused her to exclaim "Inay!", which reaction on her part solicited an angry retort of "May angal ka?" from Perez. At that instant, Zulueta recovered her wits and she then dashed for safety. She kept to herself for the next five days staying all the while in her house and, although she says she was a close friend of the family of Eduardo Jimena, she did not, allegedly on account of fear, bother to inform them until after that period that she had witnessed Jimena's gory demise.[5]

The version of the accused is different. According to Luis Berja and Avelino Barasona, they were invited in the late afternoon of that day by their neighbor, Eduardo Jimena, to swim in a pool located in Florence Street, Taytay, Rizal. However, they found out on their arrival at the swimming pool that it was closed, so the trio decided to head back home. They were walking along Capri Street when two strangers, one of them shouting, "Matagal ka na naming hinahanap!," all of a sudden attacked them. One of the attackers, who was the shorter of the two, hacked Barasona on the hand, causing the latter to run for safety together with Luis Berja. The taller assailant, armed with a bolo, vented his fury on Eduardo Jimena who failed to escape.[6]

Barasona, meanwhile, came upon a "majongan", or mah-jongg parlor, in Via Beneto Street about two hundred meters away from the crime scene. There, he excitedly asked for assistance, and one of the men present, Jojo Perez, responded. The duo proceeded to where Jimena had been left by his companions and they came upon the lifeless and mutilated body of the victim there. When police authorities arrived on the scene, they asked the onlookers regarding the persons with whom the deceased had been seen, and both Berja and Barasona readily presented themselves without hesitation. They were brought to the police station for questioning and Berja readily executed his sworn statement. Because Barasona's hand was wounded, he was told by the policemen to first have the same treated, and he voluntarily returned the following day to execute his sworn statement. Both of them were respectively discharged by the police authorities after their statements were taken.[7]

In the appellate review of the findings of trial courts respecting credibility of witnesses, the rule to which this Court adheres is to extend considerable, if not final and conclusive, respect to the conclusions reached by the court below, predicated as it is upon the unquestioned advantage of said trial court to observe closely in the first instance the demeanor of the witnesses presented before it.[8] By way of exception, however, errors bordering on gross misapprehension of facts, as when the trial court has overlooked significant contrarieties in the testimony of witnesses, or those that are unfounded and speculative, would and should call for corrective appellate action upon such erroneous findings.[9] The case at bar is illustrative of the exceptive aspect.

In her direct examination in court, Conchita Zulueta asserted that while she was about four meters away from Perez and his companions, Berja and Barasona suddenly grabbed the arms of the victim on opposite sides, after which Jojo Perez sprang in front of the deceased and delivered three hacking blows. Shortly thereafter, when the deceased had fallen to the ground, Berja and Barasona fled, leaving behind Perez who then proceeded to slash the victim's neck with his bolo. As hereinbefore mentioned, it was then that Zulueta exclaimed "Inay!" and Perez, his attention being thereby called to Zulueta's presence, shot back with "May angal ka ba?", to which Zulueta responded by fleeing.[10]

Now, this witness' testimony on cross-examination substantially deviated from and contradicted on material points her earlier representations in her direct examination. On questions of the defense counsel, Zulueta disclosed that Jojo Perez assaulted the victim from behind and not in front as she had earlier claimed. Moreover, her statement that shortly after the deceased fell to the ground Berja and Barasona scampered in different directions, is contradicted by her answer on cross-examination that only Barasona fled while Berja remained standing near Perez and Jimena. Again, she negated her narration on direct examination when she said on cross-examination that she only saw the slashing of the neck of the victim by Perez when she was already away from the scene in the act of fleeing, but she just happened to look back.[11]

In another turnaround, she claims that when she scampered right after Jimena fell, she and Barasona almost bumped each other as the latter was likewise fleeing in the same direction where she was running. This completely contravenes her previous assertion that she continued to walk toward the group at the height of the assault on Jimena and that she stopped in her tracks, after Berja and Barasona had already fled, only when Perez proceeded to slash the victim's neck. Parenthetically, the Court finds it difficult to understand or believe her confusing narration that she still proceeded on her way notwithstanding the violent events unfolding before her since, in her own words, she was "not minding what they are doing,"[12] and that the only fact which made her stop walking was the slashing by Perez of the victim's neck. To state that such conduct of the witness at that particular moment is contrary to human experience would be an understatement; such alleged reaction on her part is incredible under the circumstances.

Both local and American jurisprudence consistently reiterate that evidence, to be believed, must have been given not only by a witness who is credible but that his or her testimony must also hurdle the test of conformity with the knowledge and common experience of mankind. Zulueta's testimony falls far short of the essential requirement of veracity. What further gravely militate against the testimony of this supposed eyewitness are the admittedly contradictory contents of her sworn statement with the material facts she declared at the trial. The lower court had not, in derogation of the rules on evidence, even bothered to sift through Zulueta's affidavit. In that sworn statement, Zulueta stressed the following facts in response to the question therein, thus:

T: Maari mo bang liwanagin sa akin ang sinasabi mong pangyayari?

S: Noon ngahong (sic) humigit kumulang sa ika 5:00 ng Hapon, ika-23 ng Hunio 1991, habang ako ay naglalakad sa may Capre St. at papunta akong 1st Gate ng San Francisco Vill. Bo. Muzon, Taytay, Rizal nang sa aking pagsapit malapit sa may dating bahay ni Dr. Climaco, sa may Capre St., ay nakita sina Luis Berja, Eduardo Jimena, Joseph Perez at Avelino Barasona, na naglalakad papasalubong sa akin at sila ay magkakaakbay pa, at nang ang layo ko na lamang sa kanila ay humigit kumulang sa apat (4) na metro, ay nakita kong biglang pinaghahampas ni Joseph Perez si Eduardo Jimena, at noong ito ay hinahampas ni Joseph Perez, ay nakita kong si Avelino Barasona, ay nagtatakbo papunta sa may gawi ng basketball court sa may Via Benito at si Luis Berja, naman ay nakita kong nakamasid lang (sic) malayo kay Joseph Perez, at noong nakabulagta na si Eduardo Jimena, sa lupa ay aking nalaman na iyon palang ipinanghahampas ni Joseph Perez, kay Eduardo Jimena, ay itak dahil iyon ay tinanggal ni Joseph Perez, sa pagkabalot sa papel. At nakita ko rin na si Joseph Perez ay lumuhod sa may ulunan ni Eduardo Jimena, at hinawakan nito ang ulo ni Eduardo Jimena, habang ginigilitan niya ito ng leeg. At noong nakita kong ginigilitan ng leeg ni Joseph Perez si Eduardo Jimena, ay napasigaw ako ng "INAY" at nang iyon ay marinig ni Joseph Perez, ay sinabi niya sa akin na "MAY ANGAL KA", kaya ang ginawa ko ay tumakbo na ako pabalik sa aming bahay sa may Condola St. Brgy. Muzon, Taytay, Rizal.[13]

The foregoing narration by Zulueta in her affidavit is as detailed as her testimony in court. But, as can be gleaned by a comparison of its contents with what she stated in her testimonial declarations, glaring inconsistencies and contradictions on significant and substantial aspects characterize practically all that she stated in both instances.

Her version of the event is, therefore, unacceptable and thus unworthy of any weight in evidence. True, sworn statements executed before police authorities are usually incomplete and contain data which are inconsistent with the facts narrated by witnesses to said officers. For that reason, courts have generally brushed aside, as inconsequential, contradictions thereon so long as these are on minor and reconcilable matters.[14]

The rule is otherwise, and this obtains in this case, where the discrepancies touch on substantial and irreconcilable facts such as those omissions in the affidavit concerning important details which the affiant would not have failed to mention, and which omission could well affect the credibility of that affiant.[15] Moreover, the mantle of presumptive innocence with which every accused is veiled requires that every circumstance must be taken into consideration by the courts in the matter of passing upon the guilt or innocence of the accused.[16]

Thus, discrepancies between the affidavit of a witness and those concerning his statements in court become crucial for the eventual acquittal of the accused as a corollary to the principle that if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then such evidence cannot support a conviction for failure to comply with the test of moral certainty.[17]

For the same reasons, although no ill motive has been imputed to Conchita Zulueta as to why she should foist and lay the blame for the grievous crime upon the accused, her testimony must be totally disregarded. In fact, there is an indication that said witness had been moved to testify adversely against the accused for monetary considerations. Thus, at one point of her testimony, she was asked by the defense counsel the question "In fact you were paid a certain amount of money, is it not?", and she answered, "I am not yet being paid, sir,"[18] which answer she quickly squelched in subsequent queries after apparently realizing that her tongue had slipped. The trial court never passed upon this matter.

Her belated revelations further add to the dubiety of her asseverations as a putative eyewitness. Despite her claims of close ties with the family of the victim, she never made any effort to divulge at once what she witnessed. Her lame excuse was that she was terrified, but she could very well have complied with the elementary moral duty to a friend and a civic duty to the government by relaying the information to the victim's family or the authorities under the cloak of confidentiality or anonymity. She cannot, therefore, hide behind the doctrine that delay of witnesses in revealing what they know about a crime is attributable to their natural reticence against involvement therein.

Apropos to the foregoing considerations, the Court feels that it should extend due recognition to the stand and efforts taken by the Solicitor General who, in the interest of truth and fairness, recommended the acquittal of all the three accused, submitting for that purpose a 36-page Manifestation and Motion in Lieu of Consolidated Appellee's Brief.[19]

Supplementary to the points already discussed, we quote with approval hereunder some additional observations in said pleading which impelled him to recommend their acquittal on the ground that their guilt in the charge for murder has not been proven beyond reasonable doubt, to wit:

In the sworn statement executed by this witness (Zulueta) before police authorities on 28 June 1991, she described how appellant Perez attacked and killed Jimena with a bolo; she did not state therein that appellants Barasona and Berja held unto the hands of the victim during appellant Perez' attack. What she stated was that Barasona, Berja and Jimena had their arms on each others' shoulders (i.e., "magkaakbay pa") while walking along Capri St., when appellant Perez started hitting Jimena with an instrument wrapped in a newspaper. x x x.

x x x

Close examination of Conchita Zulueta's testimony during trial would show that evidence on conspiracy

joined-in by appellants Barasona and Berja is wanting. In her direct examination, she initially declared that appellants Barasona and Luis Berja held unto the shoulders of Jimena when the latter was being hacked by the appellant Perez; she only added the more incriminating statement that appellants Barasona and Luis Berja held unto the arms of the victim, so as to immobilize the latter during appellant Perez' attack upon suggestion of the private prosecution who fielded the appropriate leading question:

x x x

Presiding Judge Suiforoso S. Nano was sufficiently unimpressed with witness Zulueta's testimony as to immediately grant appellant Barasona's motion for bail during the same hearing date on 26 March 1992. After the prosecution had presented its second witness, x x x, Judge Nano, upon motion, even reduced the amount of this appellant's bail bond from fifty thousand pesos (P50,000.00) to twenty thousand pesos (P20,000.00), since "the evidence against accused Avelino Barasona y Cundat is not strong to warrant a finding (of) 'probable cause', not to say a 'prima facie case.'"

It must be stressed at this point that Judge Nano did not grant bail following a mere preliminary hearing and upon the testimony of an ordinary prosecution witness. He granted provisional liberty to appellant Barasona following a full blown hearing during actual trial proper of prosecution witness Conchita Zulueta. x x x.

x x x

One compelling indication that Judge Nano's evaluation of Conchita Zulueta's testimony is sound is that in an order dated 2 June 1992, Pairing Judge Mauricio M. Rivera of Branch 74 of the RTC of Rizal, upon motion, likewise granted bail for the provisional liberty of appellant Berja during trial, after reviewing the evidence thus far made of record, x x x.

x x x

The independent but consistent evaluation of the demeanor and testimony of record of witness Conchita Zulueta, by Judges Nano and Rivera, given for the limited purpose of determining whether appellants Barasona and Berja were entitled to bail during trial, must be taken judicial notice of by this Honorable Court as authoritative pronouncements, in no uncertain terms, that said witness failed to provide evidence that appellants' (Barasona and Berja) guilt of the offense charged is strong.

These pronouncements should be weighed in conjunction with the contrary finding of Judge Rojas, who penned the judgment of conviction in this case, based upon the same testimonial record of witness Zulueta, for the purpose of ascertaining the moral certainty of all the appellants' guilt of the offense charged.

On the part of the appellants, it is to be conceded that their defense of simple denial is weak, the same being easy to fabricate just like the defense of alibi. Considering, however, the undeniable weakness of the evidence adduced by the prosecution, such a defense gains commensurate strength. It is axiomatic that the prosecution should not rely on the weakness of the evidence for the defense, but upon the forceful weight of its own evidence on the matter. And, in the same manner that alibi should not always be frowned upon by the courts since there are occasions where the same could actually be the real and simple truth, so must it be with the defense of denial.

Also worthy of note was the behavior of the accused immediately after the incident, all of which jibe well with the ordinary reactions one would expect of innocent persons. They never concealed themselves, as would have been natural if they were guilty, when the authorities came to investigate the criminal incident. On the contrary, appellants voluntarily submitted themselves for questioning and they readily executed affidavits regarding the incident. They continued pursuing, in their own simple manner, their usual preoccupations as marginalized members of society, that is, as a pedicab driver (Perez), a construction worker (Barasona), and a carpenter (Berja), and that is why the police never had any problem in locating or calling for them. While non-flight by itself is not conclusive proof of innocence,[20] the concatenation of the circumstances in this case conduces to the inevitably logical and favorable consideration pointing to their innocence.

One final procedural matter has to be clarified and resolved. It will be observed that only Luis Berja and Avelino Barasona interposed the present appeal. Accused Jojo Perez, for reasons known only to him, did not seek to assail his conviction by appellate recourse. The Court holds, however, that the favorable verdict on appellants' appeal should likewise be extended to him, since under Section 11(a), Rule 122 of the present Rules on criminal procedure, an "(a)ppel taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter."

Thus, in the earlier similar case of *People vs. Fernandez, et al.*,^[21] only one of the two accused appealed from the judgment jointly convicting them. This Court reversed the conviction because "(w)ith the testimony of the lone eyewitness of the prosecution having been irreparably punctured by irreconcilable discordance and shredded by inexpiable doubts, x x x it is all too clear that the prosecution has failed to discharge the onus probandi for conviction." With respect to the accused who did not appeal, it was held that "we have to concede, however, that our disquisition in this case is applicable and favorable to him, hence he is affected by and shall benefit from the acquittal that we hand down in this case."

In the case at bar, the Court completely rejects the testimony of the lone supposed eyewitness of the prosecution upon which the judgment of conviction rendered by the lower court was made to rest. The veracity of the prosecution's version and the correctness of the judgment anchored thereon being thus repudiated, the alleged participation of herein appellants and of accused Jojo Perez in the offense charged is consequently disaffirmed and they must all be absolved therefrom. For, at bottom, is the inexorable tenet of criminal justice that it is not for the accused to demonstrate their innocence but for the prosecution to prove their guilt.

ACCORDINGLY, the appealed judgment of conviction rendered by the Regional Trial Court, Branch 74, of Antipolo, Rizal in Criminal Case No. 91-7094 is hereby REVERSED and accused-appellants Luis Berja y Versoza, Avelino Barasona y Cundat and accused Jojo Perez y Pamorca, alias "Joseph", are ACQUITTED of the crime charged. The immediate release from prison of any of them who may be so confined is hereby ordered, in the absence of any other lawful cause for their continued detention.

SO ORDERED.

Romero, Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Per Judge Pablito M. Rojas.

[2] Original Record, 317-318.

[3] Conchita Zulueta, the eyewitness, and Rodelio Garcia, the arresting police officer, testified before Judge Sinforoso S. Nano; while the other two prosecution witnesses Dario L. Gajardo, the medico-legal expert and Teresita Janapin, sister of the victim who furnished evidence on the civil liability, testified before Judge Pablito M. Rojas. All the three accused and SPO2 Marcelino Castillo, the police investigator who was presented by the defense, testified before Judge Pablito M. Rojas.

[4] TSN, March 26, 1992, 5-10, 25.

[5] *Ibid.*, id., 11-16.

[6] *Ibid.*, October 19, 1992, 2-4; September 29, 1993, 3-4.

[7] *Ibid.*, id., 4-6; id., 5-12.

[8] *People vs. Peralta, et al.*, G.R. No. 83812, December 7, 1995, 251 SCRA 6; *People vs. Sanchez*, G.R. No. 98402-04, November 16, 1995, 250 SCRA 14.

[9] People vs. Godoy, G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676; People vs. Jose, et al., G.R. No. 107106, November 24, 1995, 250 SCRA 319.

[10] TSN, March 26, 1992, 5-12.

[11] Ibid., id., 14-29.

[12] Ibid., id., 19.

[13] Original Record, 3.

[14] People vs. Lazaro, G.R. No. 99263, October 12, 1995, 249 SCRA 234.

[15] People vs. Maongco, et al., G.R. Nos. 108963-65, March 1, 1994, 230 SCRA 562; People vs. Ibarra, G.R. No. 107837, June 27, 1994, 233 SCRA 427.

[16] People vs. Sinatao, G.R. Nos. 110815-16, October 25, 1995, 249 SCRA 554.

[17] People vs. Maongco, et al., Ibid.; People vs. De Guzman, G.R. No. 116730, November 16, 1995, 250 SCRA 118.

[18] TSN, March 26, 1992, 30.

[19] Rollo, 121-156.

[20] People vs. Precioso, et al., G.R. No. 95890, May 12, 1993, 221 SCRA 748.

[21] G.R. No. 80481, June 27, 1990, 186 SCRA 830.

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