

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REX TURINGAN Y BABARAN AND EFREN TURINGAN Y MARAGGUN, ACCUSED. REX TURINGAN Y BABARAN, ACCUSED-APPELLANT.

G.R. No. 121628. December 04, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Rex Turingan and his co-accused, Efren Turingan, were charged with murder before the Regional Trial Court of Tuguegarao, Cagayan in an information dated January 12, 1988, the accusatory portion of which alleges:

“That on or about August 2, 1987, in the municipality of Enrile, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Rex Turingan y Babaran and Efren Turingan y Maraggun, armed with a gun, conspiring together and helping each other with intent to kill, with evident premeditation and with treachery did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Benjamin C. Cortez inflicting upon him several gunshot wounds on the different parts of his body which caused his death.

Contrary to law.” [1]

When respectively arraigned, both accused entered a plea of not guilty. Thereafter, the trial of the case proceeded on November 9, 1989 and on several trial dates thereafter, [2] with the prosecution presenting ten witnesses.

Considering the fact that the defense later interjected a demurrer to such prosecution evidence, the merits vel non of such procedural recourse and the action of the trial court thereon may be better appreciated by reproducing herein the gist of the testimonies of said witnesses as summarized by the court, to wit:

“1. TESTIMONY OF FRANCISCO ACCAD.

The story of this prosecution witness is that in the afternoon of August 2, 1987, he was at the Enrile Cockpit, drinking beer when he saw Rex Turingan shoot Auditor Benjamin Cortez with a handgun. Cortez ran towards a bamboo bench where Alfonso Gorospe, Bob Turingan, Marilou Cuarteros, Joseph Amistad, Orlando Cuntapay and Dionisio Constantino were also having a drinking spree. He left the cockpit at around 6:00 P.M. because he helped bring the body of Cortez to the hospital. Later on, in subsequent questions of the provincial prosecutor, he retracted and made a sudden turnabout claiming that he was maltreated by the PC soldiers at the RECOM where he and his companions were investigated; that the sworn statement executed by him was ready-made; that he signed his affidavit because of fear that he might be killed by the PC soldiers; that he was not present when victim Cortez was shot because he was at the cornfield.

2. TESTIMONY OF ALICIA LIBERATO.

Alicia Liberato, forensic chemist, NBI Office stationed at Ilagan, Isabela, declared that she is connected with the NBI as forensic chemist since 1983, first at the NBI Office in Manila, then at Ilagan, Isabela in 1984. On August 3, 1987, she was called upon to conduct a forensic chemistry examination of Efren Turingan. Her findings of the paraffin test on the left and right hands of Efren Turingan showed positive results.

3. TESTIMONY OF DR. EUGENIO DAYAG.

The Municipal Health Officer of Enrile, Cagayan, since April, 1980; that at about 5:00 P.M. in the afternoon of August 2, 1987, he was called upon by a policeman of Enrile, Cagayan to conduct a post-mortem examination on the body of one Benjamin Cortez who was killed that afternoon at the Enrile Cockpit. The cadaver of Cortez was brought to the Funeraria Ortiz. The government doctor found the body of the deceased Cortez still warm, no rigor mortis had yet set in. Upon physical examination of the body of the victim, the government doctor found a gunshot wound on the head, right side, with a point of exit at the parieto-occipital area left side; also a gunshot wound on the chest with a point of exit below the axilla, right side. The government doctor opined that both wounds are fatal and the victim would not survive even with medical assistance; that the victim would only survive for two (2) minutes.

4. TESTIMONY OF CPL. TRINIDAD CUARTEROS.

Corporal Trinidad Cuarteros, a police investigator, PNP Station, Enrile-Cagayan, said that he has been connected with the PC/INP since 1975. On August 2, 1987, he was called upon to investigate a certain killing of one Benjamin Cortez. He took down the statement of Leon Manaois, whose affidavit was sworn to before Municipal Judge Estela Lucas of Solana, Cagayan. Sgt. Palattao advised him to take down the statement of Manaois, and there was a delay in the administration of the statement because Manaois sought advice from a lawyer.

5. TESTIMONY OF M/SGT. EDUARDO LAUNGAYAN.

Eduardo Laungayan was connected with the CIS since 1986, as Chief Investigator, 2nd District. In September, 1987, his superior gave him a mission order to conduct an investigation about the killing of one Benjamin Cortez. His group coordinated with the PNP of Enrile, Cagayan. The testimonies of four witnesses were taken. One of them was Francisco Accad. Laungayan denied having maltreated said witnesses. After taking down the statements of the four witnesses, he brought them to the CVRH for medical examination, as this is the standing procedure of the organization. Dr. Orlando Cuntapay to whom the witnesses were brought certified that no sign of external injuries were found on the bodies of the witnesses. The statements were taken at 9:00 P.M. at the investigation room of their commanding officer, in the presence of Atty. Israel. The statements of said witnesses were signed and ratified before Judge Vilma Pauig. In the ocular inspection of the scene of the crime he made a sketch as requested by the surviving spouse of the deceased Cortez.

6. TESTIMONY OF P/LT. ELIPIO PALATTAO.**

P/Lt. Palattao, the OIC of the Enrile Police Station, said that at about 5:00 o'clock in the afternoon while sitting near the gate of the municipal building, a motorcycle driven by Rex Turingan arrived. Riding on that same motorcycle was Efren Turingan whom the accused Rex entrusted to the police for detention because he killed Benjamin Cortez. The surrenderee was turned over to Pat. Augusto Saludaes after which the accused proceeded to the Enrile cockpit where he found the lifeless body of Cortez lying on a bench with an injury on the head. Palattao immediately investigated Efren Turingan and confessed (sic) to him that he shot Cortez with the use of a

handgun. Efren Turingan admitted to the police officer that he used a gun but that he threw it and could no longer remember the place where he threw it. In the cockpit Palattao overtook Alfonso Gorospe. Gorospe told him that he was shot by Rex Turingan.

7. TESTIMONY OF LITO MABAZZA.

Lito Mabazza stated that on August 2, 1987, between 5:00 and 6:00 P.M. he was at the Enrile cockpit drinking a coca-cola soft drink inside the store of one Ninoy Camacam. While thus drinking coca-cola, he heard a gunreport (sic). He heard the sound of the gunreport (sic) as coming from the gun in the possession of Rex Turingan who had just shot Cortez. Cortez upon being shot by Turingan fell on a bamboo bench. Rex came nearer where Cortez' body was sprawled, held the head and fired another shot. After this, Rex placed his handgun in his waist, rode on a motorcycle and left. Mabazza heard three gunreports (sic). However, before he proceeded to the store of Ninoy Camacam he saw Rex Turingan, Benjamin Cortez, Bob Turingan, Alfonso Gorospe, Joseph Amistad, Orlando Cuntapay drinking beer in the store of Francisco Accad.

Mabazza confessed that he knows the family of Benjamin Cortez. In fact two children of Cortez - Roderick and Roveland - are his close friends. On February 9, 1992, he went to the Office of Fiscal Saquing on instruction of Mrs. Cortez. He did not inform any peace officer about the shooting but reported the incident to the children of Mrs. Cortez. He came to Enrile on July 31, 1987, to attend to its patronal town fiesta and went home on August 14, 1987.

8. TESTIMONY OF ALLAN MIRAMONTE.

Allan Miramonte, the star witness of the prosecution declared that he arrived in Enrile on August 1, 1987, at the house of his grandfather Daniel Luyun. In the early morning of August 2, 1987, he and his uncle Martin rode on the latter's jeep to buy (a) pig in Solana, Cagayan. After buying the pig they went back to Enrile, arriving thereat at 10:00 A.M. In the afternoon at around 2:30, he went to the Enrile cockpit. After betting for quite sometime he was about to go home when he saw (that) Rex Turingan stopped his motorcycle near the gate of the cockpit, alighted therefrom and proceeded to the place where Cortez and his companions were having a drinking spree, and shot Benjamin Cortez. Cortez raised his hands as a sign of surrender but just the same the accused shot him again. The deceased fell on a bamboo bench in front of the store. Rex Turingan fired another shot on the head this time, after which the accused rode on a motorcycle. People scampered. Some people gathered around the dead body of Cortez. He left the cockpit after the shooting. Later he went home to Ipil, Gonzaga, Cagayan.

After many years he received a letter from his lola Anita telling him to come. His grandmother confronted him about the incident. He told his lola all about the incident, reason for which, he is now in court testifying.

9. TESTIMONY OF ALFONSO GOROSPE.

Alfonso Gorospe, a government employee, declared that on August 2, 1987, he went to the Enrile cockpit. In the cockpit, he proceeded to a store and drank beer. While drinking beer, he heard a slight commotion and the cocking of a gun. He turned his sight to the place where he heard the cocking of guns and he saw Rex Turingan and one Felix Cuntapay who was earlier introduced to him. Rex Turingan pointed his gun at his chest. In the vicinity there were persons, like Nonong Babaran, Felix Cuntapay and his companions. Cortez was at his back. His first instinct was to push away the hand of Rex Turingan after which he dove, and thereafter he heard two gunreports (sic). Felix Cuntapay and another man were also holding guns before he dove. After the gunreports (sic) he stood up and noticed the persons holding guns were no longer in a drawn manner. Gorospe was not sure whether the gun of Rex Turingan was fired.

Gorospe declared further that the gunreports (sic) were fired at an interval of two seconds; that when he pushed the gun of Rex Turingan, the other two guns were not pointed at him; that when he stood up he left a stingy pain on the right side of his abdomen. After the two gunreports (sic) he looked back and saw Cortez f(a)ll down, blood oozing from his head. He did not file a complaint against Rex Turingan because he did not see the person who shot him.

10. TESTIMONY OF ANA CORTEZ.

Ana Cortez is the surviving spouse of the deceased Benjamin Cortez. At about 4:00 o'clock in the afternoon on August 2, 1987, her husband left for the cockpit of Enrile, Cagayan.

Before her husband left, she prepared and gave him his underwear and shorts and money.

At around 5:30 P.M. she was informed by her nephew Rey Luyun who was riding on a motorbike that her husband was shot to death by Rex Turingan. Immediately, she rode in that motorbike driven by her nephew and proceeded to the cockpit. Upon arriving at the cockpit she saw the body of her husband being carried by Alfonso Gorospe, Rustia Babon and Felix Luyun and Francisco Accad to the car. She kn(ew) then that her husband was dead because the body was loose (sic). Alfonso Gorospe, Rustia Babon and Florencio Luyun informed her that it was Rex Turingan who shot her husband.

The body of Cortez was brought to the Funeraria Ortiz at Balzain, Tuguegarao, Cagayan.

Ana Cortez went on to declare further that on the night of August 1, 1987, while she and her husband (were) watching the Betamax he confided to her of a problem regarding the non-payment of the contract work of Rex Turingan. Rex Turingan insisted to her husband to approve the contract work, but her husband told the accused that he lacked some requirements. She told her husband to help Rex because he is her nephew.

Before the trial of the case, she approached Oscar Castro, Sofronio Butacan and Francisco Accad for them to help her by testifying in court but said witnesses told her that they are afraid because the relatives of Rex Turingan approached them.

The deceased Benjamin Cortez according to Ana Cortez at the time of his death was the Provincial Auditor of Cagayan receiving a salary of P4,000.00 a month, died at the age of 52 years; that she incurred P50,000.00 for the funeral and burial expenses, and for her mental sufferings for the care and attention he gave his family, a million is not enough." [3]

On November 4, 1992, the prosecution rested its case and formally offered its evidence. [4] On November 23, 1992, counsel for both accused filed a joint motion for leave to file a demurrer to evidence. [5] On the same day, the trial court granted them a non-extendible period of twenty days therefrom to file their demurrer to evidence. [6] However, instead of filing such pleading, counsel for Rex Turingan filed on December 10, 1992 a motion for extension of time. [7] Expectedly, the said motion was denied by the trial court in its order of December 11, 1992.[8]

Further proceedings and incidents subsequently took place. On December 14, 1992, counsel for Efren Turingan filed a demurrer to evidence. [9] On December 16, 1992, the prosecution presented its opposition. [10] On December 18, 1992, counsel for Rex Turingan filed a motion for reconsideration of the lower court's denial of his motion for extension of time to file demurrer to evidence. [11] On January 5, 1993, the court denied said motion for reconsideration and set the hearing of the case on January 18 and 19, 1993. [12]

However, on January 25, 1993, the trial court granted Efren Turingan's demurrer to evidence and acquitted him of the crime charged. In a well-reasoned extended resolution, the court below declared that the "(p)rosecution's

position vis-a-vis Efren Turingan is at best ambivalent and at worst, confusing.” [13]

Thus, on March 14, 1994, the new counsel for the present appellant Rex Turingan filed a motion for leave to file a demurrer to evidence. [14] This motion was denied by the court below. A motion for reconsideration was likewise denied. [15] Nonetheless, by reason of the manifestation of the counsel for herein appellant that he would file a demurrer to evidence even without leave of court, the trial court issued an order on April 5, 1994 giving him ten days to file such demurrer to evidence without express leave of court. [16] On April 24, 1994, counsel for appellant filed that demurrer which was subsequently opposed by the prosecution. [17]

Without acting on the aforesaid demurrer, the trial court rendered its decision on August 22, 1994 [18] convicting herein appellant, with the following dispositive portion therein:

“WHEREFORE, finding the accused Rex Turingan guilty beyond reasonable doubt of the crime of MURDER as defined and penalized under Art. 248 of the Revised Penal Code, as amended, he is hereby sentenced to RECLUSION PERPETUA with all the accessories provided for by law and to indemnify Ana Cortez, the surviving spouse of the deceased Benjamin Cortez, the following amounts:

1. P50,000.00 for the death of Benjamin Cortez;
2. P50,000.00 as consequential damages;
3. P100,000.00 as moral damages;
4. P816,000.00 (as) lost earnings of Auditor Benjamin Cortez;
5. The costs of suit.

SO ORDERED.”

Appellant’s motion for reconsideration was denied by the trial court in its order dated March 10, 1995, [19] and he is now before us arguing for his acquittal allegedly because the court a quo erred in: (1) overlooking, misunderstanding or misapplying facts and circumstances of weight and substance that would have affected the result of the case; (2) relying upon baseless conjectures and suppositions on material matters; (3) relying upon the testimonies of Francisco Accad, Alfonso Gorospe and Lito Mabazza in convicting the accused-appellant; (4) giving credence to the testimony of Allan Miramonte in spite of manifest badges of perjury, and despite inherent flaws in said testimony; (5) not granting accused’s demurrer to evidence, and in not forthwith acquitting the accused on the ground of reasonable doubt; and (6) ordering accused-appellant to pay damages. Appellant also prays, in the alternative, that he be allowed to present evidence in his defense. [20]

In the main, it is the contention of appellant that the evidence of the prosecution is not sufficient to establish his identity and guilt as the perpetrator of the crime charged. In support of that exculpatory proposition, he raises several arguments which we shall discuss seriatim.

Under the first assignment of error, it is argued that the admission of Efren Turingan that it was he who shot and killed the victim, made before the police immediately after the incident, negates appellant’s culpability. We disagree.

As clarified by P/Lt. Palattao, the police investigator, Efren Turingan did not admit shooting the victim.[21] It was appellant Rex Turingan who told the policemen, after turning Efren over to them, that it was the latter who shot Benjamin Cortez. [22] Furthermore, even if there was such an admission, the said admission was not made in the presence of a counsel. Thus, the trial court in its resolution of January 25, 1993, granting Efren Turingan’s demurrer to evidence and acquitting him of the crime charged, expressly noted that:

“The following testimony of Sgt. Emilio Palattao totally debunks (sic) Efren Turingan’s criminal culpability:

‘Atty. Bulan:

Q: -Lt. Palattao, you said you investigated Efren Turingan, when he was brought to you, is it not?

A: -Yes, sir.

Q: -Did you reduce your investigation into writing?

A: -No that is informal to us, whenever we conduct investigation (of) any individual I used to appr(ise) them of their constitutional right.

Q: -You asked that from Efren Turingan, are you positive of that?

A: -Yes, sir.

Q: -You asked that question when Rex Turingan was still present?

A: -No your honor, when he was about to be jailed in the Municipal Jail that I asked him I appr(i)sed him first and asked him that if he wish(ed) to be assisted by counsel.

Q: -So he informed you that he (would) get a lawyer before he give(s) his statement, am I right?

A: -Yes, in fact, I was the one who informed him.

Q: -And he said he need(ed) a lawyer?

A: -Yes, sir.

Q: -And when he gave his statement which you said, was he assisted by counsel?

COURT:

-Already answered... There was no lawyer.

Q: -Did Efren Turingan admit that he shot Ben Cortez to you?

A: -No your honor he did not admit.’ (pp. 11-12, tsn/12-18-90)

It is very clear that Efren Turingan did not admit before Police Investigator Emilio Palattao that he shot said victim. But even if he did make such admission, the same would be inadmissible in evidence for being an uncounselled confessional statement made while under custodial investigation.” [23]

In the same resolution, the trial court made this further observation:

“In the light of the foregoing authorities, it cannot really be honestly asserted that when Rex Turingan allegedly told the policemen in the Enrile police Station that it was Efren Turingan who shot the victim, he did it without consideration of self-interest. Rex Turingan was then the principal suspect and it was so natural for him to deflect suspicion away from his person.” [24]

Except for herein appellant, there is no other person who pointed to or identified Efren Turingan as the one who shot the victim. In fact, Alfonso Gorospe declared during his cross-examination as follows:

Q: You stated in the direct examination that you saw Efren Turingan?

A: Yes.

Q: From the time you saw Efren Turingan up to the commotion, you never saw Efren Turingan holding a gun, am I right?

A: I did not see him holding the gun but immediately within the vicinity of the incident I saw Efren Turingan.

Q: And you never saw him holding a gun?

A: I did not see him.” [25]

On the contrary, the witnesses for the prosecution identified appellant as the perpetrator of the crime. In light of such overwhelming evidence, the supposed admission of Efren Turingan, which in itself is inadmissible against him, can neither be given weight nor serve as a basis for appellant's acquittal.

Appellant also insists that the testimonies of prosecution witnesses Francisco Accad, Alfonso Gorospe, Lito Mabazza and Allan Miramonte cannot be relied upon as evidence to sustain his conviction. We are not persuaded.

Francisco Accad executed a sworn statement before the Regional Command of Tuguegarao, Cagayan, narrating in detail how the incident happened and identifying Rex Turingan as the one who shot Benjamin Cortez. In said affidavit, he categorically affirms these facts:

Q- Where were you in the afternoon of August 2, 1987?

A- I was at the Enrile Sunday Club Cockpit.

Q- What were you doing at the Enrile Sunday Cockpit?

A- I was there as a bettor of the cockfight on that day.

Q- What time did you arrive at the cockpit on that day?

A- At about 3:00 o'clock in the afternoon of the same day.

Q- What time did you leave the cockpit, if you still remember?

A- At about 6:00 o'clock, the time when we evacuated the dead body of the late Auditor Benjamin Cortez.

Q- What was the cause of the death of Auditor Benjamin Cortez, if you know?

A- Due to gun shot wounds inflicted by Rex Turingan.

Q- How this incident happened (sic)?

A- I was then standing in front of my store drinking a bottle of beer when all of a sudden at my left side I saw Rex Turingan shot Auditor Benjamin Cortez with the use of a hand gun (investigator showing a Cal. .45 Pistol to the affiant which he recognize[d] to be the same hand gun use[d] by the culprit) presumably a .45 Caliber and once hit said Auditor Benjamin Cortez ran towards the bamboo bench where Alfonso Gorospe, Bob Turingan, Marlou Ventura, Joseph Amistad, Orlando Cuntapay and Dionisio Constantino were having their drinking session.

Q- What transpired next, if any?

A- Upon reaching the bamboo bench, said Auditor Benjamin Cortez stumble(d) and fell on the bench and at that instance, Rex Turingan got near him and held Mr. Cortez by the hair and again sh(o)t him point blank on the head.

Q- How many times did Rex Turingan shoot his victim Auditor Benjamin Cortez?

A- Three (3) times, that is while Benjamin Cortez was standing facing the counter of my store, second was before Auditor Benjamin Cortez fell on the bamboo bench and third, when the victim's body rest(ed) on the bamboo bench.

Q- How far were you in relation to the place where Rex Turingan shot his victim Auditor Benjamin Cortez?

A- About three (3) meters.

Q- How about the distance in relation to Auditor Benjamin Cortez when first shot?

A- About two (2) meters.

Q- Are you sure that it was Rex Turingan who shot Auditor Benjamin Cortez?

A- Yes.

Q- How long have you been acquainted with Rex Turingan?

A- Since his childhood, although he grew up in Manila but often he visit(ed) our place in Enrile, Cagayan."

[26]

Francisco Accad reiterated the abovementioned facts in his sworn statement executed during the preliminary investigation conducted by Judge Estela B. Lucas of the Municipal Circuit Trial Court. [27] However, during his testimony in the trial court, although he identified the sworn statement and admitted that he executed and signed the same, he alleged that he was forced and tortured to do so. He repudiated what were stated in his sworn statement and claimed that he did not actually witness the killing of Benjamin Cortez because he was then in the cornfields, about 100 meters away, harvesting young corn.[28]

Considering that there are two sets of diametrically contradictory statements made by Francisco Accad, it is the stand of appellant that all the statements made by this witness cannot have any evidentiary or probative value. Withal, although as a rule testimonial evidence carries more weight than affidavits [29] and substantial contradictions between the affidavit and the testimony on the witness stand discredit the witness, [30] the peculiar but obvious circumstances on this particular aspect in the case compel us to rule otherwise.

The sworn statement of Francisco Accad must be given credit on the following considerations: In open court, he identified his signature thereon and admitted his due execution of that document. His belated claim that he was forced to execute the same was clearly contrived and is belied by the medical certificate, issued shortly after the taking down of that statement, that he did not sustain any physical injuries. Further, he was an eyewitness, and not the suspect, in the killing hence there was no reason to torture him in order to extract that statement. Significantly, it contains facts known only to him; while the other details were corroborated by some of the prosecution witnesses. Lastly, he admitted that in the execution thereof he was merely required to tell the truth [31] and nowhere is there any showing that he was intimidated into implicating appellant as the malefactor.

Mere retraction by a prosecution witness does not necessarily vitiate his original testimony if credible.[32] A retraction does not necessarily negate an earlier declaration.[33] For this reason, courts look with disfavor upon retractions because they can easily be obtained from witnesses usually through intimidation or for monetary considerations.[34] Hence, when confronted with a situation where a witness recants his testimony, courts must not automatically exclude the original testimony solely on the basis of the recantation. They should determine which testimony should be given credence through a comparison of the original testimony and the new testimony, applying the general rules of evidence.[35]

Incidentally, even if we were to exclude the sworn statement of Francisco Accad, the testimonies of the other prosecution witnesses are sufficient in law and convincing in substance to sustain appellant's conviction. The testimony of Alfonso Gorospe is not without probative value. Although it failed to specifically identify the person who actually shot the victim, the same proved these important facts, viz.: the presence of appellant at the scene of the crime holding a gun pointed towards the direction of said witness and the victim Benjamin Cortez who was at the back of the said witness.[36] Such fact essentially corroborates the testimonies of the other prosecution witnesses pointing to appellant as the perpetrator of the crime, especially because of his presence at the scene and demonstrated opportunity to commit the same.

On the part of witness Lito Mabazza, during the direct examination he categorically declared that he saw Rex Turingan shoot the victim. [37] However, during the cross-examination which was postponed to the following day upon motion of counsel for the accused, [38] the said witness appeared hesitant, if not timorous, in pointing to appellant as the culprit. Nevertheless, taken in conjunction with the testimonies of the other government witness, the same can also serve as the basis for appellant's conviction. It is a matter of judicial experience and cognizance that witnesses are not impervious to physical or moral pressure and coercion which result in behavioral changes and weakened resolve.

It is perfectly within the discretion of the trial court to accept such 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 a positive 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 willfully falsified the truth on one or more points. But even so - when he is found to have willfully falsified - this does not make his entire testimony totally incredible. The court may still, in 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. [39]

Appellant likewise assails the trial court for giving full faith and credence to the testimony of Allan Miramonte who he claims is a biased witness because of his relationship to the widow of the victim. It is a familiar rule that the clear and positive testimony of witnesses is not devalued or impaired by the mere fact of relationship to the victim, when there is no showing of improper motive on the part of said witnesses. Indeed, their natural interest in obtaining justice and redress by securing the conviction of the parties responsible for the crime would deter these relatives from implicating persons other than the real culprits. [40] No improper motive to testify falsely against appellant was imputed against the said witness, hence there is no reason not to accord his testimony full faith and credit. For that matter, it is also worthy of note that herein appellant is also a relative of the victim's wife. [41]

The fact that it took this witness four years before he appeared and gave his testimony in court should not be counted against or detract from his credibility. Eyewitnesses are commonly reluctant to get involved in criminal investigations. If witnesses do not come forward immediately, the fact of delay should not, by itself, be considered as seriously affecting their credibility. Credibility should be assessed independently on the basis of the substance of the testimony offered and the surrounding circumstances. [42] The natural reluctance of a witness to volunteer information to the police authorities in criminal cases is a matter of judicial notice. [43] He might have deemed it the better part of valor not to give the name of the accused who was still at large and who probably recognized him. Such reluctance should not affect his testimony. The decisive factor is that he in fact identified the accused. [44]

The imputed inconsistencies and contradictions in the testimonies of the prosecution witnesses are minuscule matters which will not affect their credibility. It bears reiteration and emphasis that inconsistencies in the testimony of witnesses with respect to minor details and collateral matters do not affect the substance of their declaration, their veracity or the weight of their testimonies. Minor inconsistencies strengthen rather than weaken the credibility of the witness for they indicate that they were not coached. [45]

The eyewitnesses for the prosecution could not be expected to narrate the incident in flawless detail or perfect concordance. For one thing, they could not have viewed the same incident from the same perspective and with the same composure, or lack of it. They also did not have the same degree of intelligence or power of recollection, let alone articulation or vividness of language. In these circumstances, the eyewitnesses would naturally differ on some of the details of the killings without being deliberately untruthful. What is important is that there was basic agreement on the attack as a whole among all those who narrated how the killing was committed. [46] The witnesses testifying on the same event do not have to be consistent in every detail as differences in recollections or viewpoints or impressions are inevitable. Total recall or perfect harmony is not required. As long as the witnesses concur on material points, slight differences in their remembrance of the details do not reflect on the essential veracity of their testimony. [47]

Further, the prosecution, through the testimony of the victim's wife, was able to establish the motive of appellant to commit the crime. As explained earlier, the victim had incurred the ire of appellant since the former refused to approve the contract work of the latter, which was a cause of apprehension for the victim and which he confided to his wife. This strengthened the finding of the trial court that appellant is guilty of the crime charged. [48]

It is also propitious to recall at this point the well-entrenched tenet that this Court will not interfere with the judgment of the trial court in passing on the credibility of the witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misapprehended or misinterpreted. [49] In the instant case, we find nothing on record to justify our taking a different view.

Contrary to appellant's submission, treachery is indubitably an attendant circumstance in this case. In line with its statutory definition in our penal law, interpretative jurisprudence declares that there is alevosia when the attack is so sudden and unexpected as to render the victim unable to defend himself. [50] Here, the victim was deliberately shot suddenly, at least twice in succession, without any warning. That appellant thereby adopted a means of attack without risk to himself from any defense or retaliatory act on the part of the victim is beyond cavil. However, evident premeditation was not duly proved hence, absent any modifying circumstance, the medium period of the penalty provided in Article 248 of the Revised Penal Code at the time of the commission of the crime shall be imposed, that is, reclusion perpetua.

Appellant's alternative plea that he be allowed to present evidence must also be rejected. He cannot claim denial of due process since he was given full opportunity to be heard. It was appellant's own counsel who insisted on filing a demurrer to evidence even without leave of court. Said counsel even argued that the filing of such demurrer to evidence without leave of court would shorten the proceedings and, in case of denial thereof, appellant expressly waived his right to present evidence. Hence, it was made very clear in the order of the trial court dated April 5, 1994 that the filing of the demurrer to evidence under such circumstances precludes appellant from presenting his evidence. [51]

The filing of a demurrer to evidence without leave of court is an unqualified waiver of the right to present evidence for the accused. There is no need for the court to act on said demurrer separately and distinctly from the judgment in the main case. Appellant, by insisting on the filing of the demurrer to evidence without leave of court, waives his right to present evidence to substantiate his defense and, in effect, submits the case for judgment on the basis of the evidence for the prosecution. He cannot now claim denial of his right to adduce his own evidence. [52]

The rationale for the rule is that when the accused moves for dismissal on the ground of insufficiency of the prosecution evidence, he does so in the belief that said evidence is insufficient to convict and, therefore, any need for him to present any evidence is negated. It is said that an accused cannot be allowed to wager on the outcome of judicial proceedings by espousing inconsistent viewpoints whenever dictated by convenience. The purpose behind the rule is also to avoid the dilatory practice of filing motions for dismissal as a demurrer to the evidence of the prosecution and, after denial thereof, the defense would then claim the right to present its evidence. [53]

WHEREFORE, the instant appeal is DISMISSED and the challenged decision of the court a quo is hereby AFFIRMED in toto, with costs against accused-appellant Rex Turingan y Babalan.

SO ORDERED.

Puno, and Martinez, JJ., concur.

Mendoza, J., on leave.

[1] Original Record, Vol. 1, 69.

[2] Ibid., id., 98, 102, 129, 130.

** Also referred to as P/Lt. Alipio S. Palattao or P/Sgt. Emilio Palattao in some parts of the record.

- [3] Rollo, 28-32.
- [4] Original Record, Vol. 2, 40-45.
- [5] Ibid., id., 53.
- [6] Ibid., id., 55.
- [7] Ibid., id., 56.
- [8] Ibid., id., 57.
- [9] Ibid., id., 58-61.
- [10] Ibid., id., 62-64.
- [11] Ibid., id., 65.
- [12] Ibid., id., 66.
- [13] Ibid., id., 82-85.
- [14] Ibid., id., 132-135.
- [15] Ibid., id., 141.
- [16] Ibid., id., 142-143.
- [17] Ibid., id., 149-177.
- [18] Original Record, Vol. 1, 276-299; Rollo, 26-45; penned by Judge Abraham Y. Principe.
- [19] Original Record, Vol. 2, 416-420.
- [20] Brief for the Accused-Appellant, 2-3; Rollo, 85-86.
- [21] TSN, December 18, 1990, 12.
- [22] Affidavit of P/Lt. Palattao, Original Record, 24-25.
- [23] Original Record, Vol. 2, 82-85.
- [24] Ibid, id, 83-84.
- [25] TSN, February 24, 1992, 24.
- [26] Original Record, Vol. I, 6-8.
- [27] Ibid., id., 33-35.
- [28] TSN, February 26, 1990, 4-35; February 27, 1990, 2-33.
- [29] People vs. Matildo, G.R. No. 107643, March 2, 1994, 230 SCRA 635.
- [30] People vs. Calegan, et al., G.R. No. 93846, June 30, 1994, 233 SCRA 537.
- [31] TSN, February 26, 1990, 7, 9.
- [32] People vs. Dulay, G.R. No. 92600, January 18, 1993, 217 SCRA 103.
- [33] People vs. Davatos, et al., G.R. No. 93322, February 4, 1994, 229 SCRA 647.

- [34] *People vs. Clamor*, G.R. No. 82708, July 1, 1991, 198 SCRA 642.
- [35] *Reano, et al. vs. Court of Appeals, et al.*, G.R. No. 80992, September 21, 1988, 165 SCRA 525 as cited in the case of *People vs. Ballabare, et al.*, G.R. No. 108871, November 19, 1996.
- [36] See TSN February 24, 1992, 4-6; 8-9.
- [37] TSN, February 12, 1991, 4.
- [38] *Ibid.*, *id.*, 7-9.
- [39] *People vs. Lagunsad vs. Court of Appeals, et al.*, G.R. No. 104939, February 2, 1994, 229 SCRA 596; *People vs. Cañeja*, G.R. No. 109998, August 15, 1994, 235 SCRA 328; *People vs. Paredes, et al.*, G.R. No. 115217, November 21, 1996, 264 SCRA 578.
- [40] *People vs. Pasiliao, et al.*, G.R. Nos. 98152-53, October 26, 1992, 215 SCRA 163.
- [41] See *People vs. Simon*, G.R. No. 56925, May 21, 1992, 209 SCRA 148; *People vs. Lase*, G.R. No. 97957, March 5, 1993, 219 SCRA 584.
- [42] *People vs. Gasper, et al.*, G.R. No. 103303, August 5, 1993, 225 SCRA 189.
- [43] *People vs. Pascua*, G.R. No. 100990, February 27, 1992, 206 SCRA 628; *People vs. Jaralba, et al.*, G.R. No. 96766, September 20, 1993, 226 SCRA 602.
- [44] *People vs. Viente*, G.R. No. 103299, August 17, 1993, 225 SCRA 361.
- [45] *People vs. Dinglasan*, G.R. No. 101312, January 28, 1997.
- [46] *People vs. Dela Cruz, et al.*, G.R. Nos. 101000-01, October 18, 1993, 227 SCRA 278.
- [47] *People vs. Colcol, Jr.*, G.R. No. 94554, February 19, 1993, 219 SCRA 107; *People vs. Gonzales*, G.R. No. 106098, December 7, 1993, 228 SCRA 293.
- [48] See *People vs. Monda, Jr., et al.*, G.R. No. 105001, November 22, 1993, 228 SCRA 115; *People vs. Yip Wai Ming*, G.R. No. 120959, November 14, 1996, 264 SCRA 224.
- [49] *People vs. Arce*, G.R. Nos. 101833-34, October 26, 1993, 227 SCRA 406.
- [50] *People vs. Isleta*, G.R. No. 114971, November 19, 1996, 264 SCRA 374.
- [51] Original Record, Vol. 2, 142-143.
- [52] *Ocampo vs. Court of Appeals, et al.*, G.R. No. 79060, December 8, 1989, 180 SCRA 27.
- [53] *Godoy vs. Court of Appeals*, G.R. No. 80814, August 30, 1988, 165 SCRA 148.

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