

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDGARDO VARGAS Y LUCERO, APPELLANT.

G.R. No. 122765. October 13, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court, Branch 38, Iloilo City, finding appellant Edgardo Vargas y Lucero guilty of murder, sentencing him to suffer the penalty of reclusion perpetua, and to pay the heirs of SPO1 Alfredo Dan Cocjin y Magnaye the sum of P22,785.00 as actual damages, and P50,000.00 as civil indemnity ex delicto, and the costs of the suit.

Job Bieren, a laborer and a resident of Sto. Domingo, Barotac, Iloilo, had been dishonorably discharged from the Philippine Constabulary for being absent without going on official leave. At around 1:00 p.m. on January 4, 1992, he went to the basketball court located in the town plaza of Banate, Iloilo. He had earlier agreed to meet his friend Clark Batzar, for a game of basketball. Job waited for an hour or so, but Clark did not show up. Job decided to leave the place and proceeded to the house of Jose Vargas located at Zona Sur, Banate, Iloilo, to watch the "daily double," an illegal local gambling game. He passed through the fence at the back door of the house, and arrived thereat at around 2:30 p.m.[2] Among the people in the house were Edgardo "Dodoy" Vargas, who had been appointed as Commander of the Civilian Volunteers Organization by his cousin Mayor Jonathan Sanico, and SPO1 Alfredo Dan Cocjin, who had just been transferred from the Banate to the Barotac Viejo Police Station.

Job gravitated to the balcony while waiting for the games to start. Suddenly, there was a commotion and pandemonium ensued. People fled from the house. Job saw Edgardo[3] as the latter collared SPO1 Cocjin with his left arm and with his right hand pointed a pistol at the policeman's right temple. Job was about five meters away. Edgardo dragged SPO1 Cocjin away from the house, through a narrow passageway leading to the national highway. Edgardo then shot SPO1 Cocjin in the head. Edgardo stepped away from the fallen victim, and fired another shot, hitting SPO1 Cocjin at the back. Warlito "Buloy" Bagcal, who was outside the fence asked Edgardo, "Doy, nga-a gin tira mo gid si Dan?" (Doy, why did you shoot Dan?).[4] Edgardo saw Job, and the latter was petrified. Job hurriedly left the place, passing through the back way.

Dr. Rustum Larawan, a resident of Barangay Poblacion, Banate, Iloilo, reported the shooting incident to the Banate Police Station. Police investigators arrived at the scene of the incident and conducted an on-the-spot investigation. SPO3 Dominador Badinas, Jr. made a sketch of the crime scene, showing the victim lying on the edge of the national highway, face up, about 93 feet away from the bamboo fence fronting the house of Jose Vargas. SPO3 Badinas, Jr. saw a trail of bloodstains, from the bamboo fence leading to the narrow passageway at the edge of the highway.[5] Pictures of the crime scene were also taken.[6] Despite proddings from the police investigators, no one came forward to give any details about the identity of the perpetrator or the circumstances surrounding the shooting. The shooting incident was thereafter entered in the police blotter.[7]

Municipal Health Officer Dr. Ricardo H. Jaboneta performed an autopsy of the cadaver and submitted a necropsy

report of his findings, thus:

POSTMORTEM FINDINGS

Pallor, integuments and nailbeds.

Abrasion: (1) 1.5 x 1.0 cms., forearm, left side, posterior aspect, 2.0 cms. below elbow; (2) 0.6 x 0.7 cms. dorsum of right hand, over 2nd metacarpo-phalangeal joint.

Contusion, 4.0 x 4.0 cms., arm, left side, lateral aspect, middle third, 12.5 cms. above left elbow.

Wound, gunshot: (1) ENTRANCE, ovaloid, 0.7 x 0.5 cm., oriented upwards and backwards, edges, sutured, surrounded by abrasion collar, 0.5 cm. on its widest portion at infero-anterior border and powder burn with an area of 25.0 x 21.0 cms., temporal region, right side, 7.0 cms. from anterior midline, 155.0 cms. from right heel, directed from right to left, upwards and backwards, penetrating skull, causing punch-in fracture, right temporal bone with linear extension backwards to posterior portion of right temporal bone and lesser wing of vomer, upwards and backwards to left parietal bone via right parietal bone into cranial cavity, lacerating right temporal lobe, medulla, and left temporal of the brain causing punch-out fracture, left temporal bone with linear extension upwards to left parietal bone and finally make an EXIT, stellate in shape, 0.7 x 0.8 cm., temporal region, left side, 14.5 cms. from anterior midline, 156.0 cms. from left heel; (2) ENTRANCE, ovaloid, 0.5 x 0.6 cm., oriented upwards and medially, edges, sutured, inverted, back, left side, 7.0 cms. from posterior midline, 115.0 cms. from left heel, directed upwards medially forwards, penetrating abdominal wall, causing punch-in fracture, 6th rib, left side, along paravertebral line into abdominal cavity, penetrating left ileopsoas muscle at the level of 6th thoracic (sic) vertebra where a copper fragment lodged and recovered, penetrating thru and thru, abdominal aorta, mesentery, anterior edge of left lobe, liver into rectus abdominal muscle where a copper fragment lodged and recovered at left epigastric region.

Subarachnoidal hemorrhage, massive, extensive.

Hemothorax, left side, 1200 cc., clotted blood.

Lungs, voluminous, congested, crepitous.

Heart, covered with minimal amount of fatty tissues. Ventricular chambers, empty.

Coronary arteries, patent.

Other visceral organs, pale. Stomach, $\frac{3}{4}$ full, rice and beans, partly digested.

CAUSE OF DEATH: Massive brain laceration secondary to gunshot wound on the head.

R E M A R K S: Body, previously embalmed.

Date report submitted: 10 January 1992.[8]

Job opted not to report the shooting incident to the police authorities or to the NBI because he did not want to be involved. Job also felt that Edgardo knew very influential people, including Mayor Sanico. However, in August of 1992, Job had a change of heart and decided to reveal what he knew about the shooting incident to the police authorities of Sta. Barbara, Iloilo.

On August 2, 1992, Job arrived at the Office of the Investigation Section of 324th PNP Mobile Field Force Company, District II, Brgy. San Sebastian, Sta. Barbara, Iloilo, and disclosed what he knew about the killing of SPO1 Cocjin on January 4, 1992.[9] He gave a sworn statement to SPO3 Dwight Maluda, identifying Edgardo as the assailant.

An Information for murder was filed against Edgardo, which reads:

The Provincial Prosecutor of Iloilo, through the undersigned, accuses EDGARDO VARGAS Alias "Dodoy" of

the crime of MURDER, committed as follows:

That on or about January 4, 1992, in the Municipality of Banate, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and decided purpose to kill, armed with a short firearm, with treachery and without any justifiable cause or motive, did then and there willfully, unlawfully and feloniously assault, attack and shoot SPO1 DAN COCJIN with the weapon accused was then provided, hitting the victim on the head, which caused his instantaneous death.

CONTRARY TO LAW.[10]

During the arraignment, Edgardo, assisted by counsel, pleaded not guilty to the charge.

Edgardo denied the charge against him. He testified that he had been appointed by his cousin, then Municipal Mayor Jonathan Sanico as Chief of the Civilian Volunteers Organization, through an Office Order dated February 5, 1991.[11] His duties as such included giving assistance in monitoring sea vessels plying within the municipality's area of responsibility, and enforcing the law when necessary.[12] The volunteers used a patrol boat in their sea patrols.

The appellant averred that he and the victim were good friends. They had drinking sessions,[13] and even dined together during then Vice-Mayor Nemesio Babes' birthday party held on December 29, 1989. In fact, they even had a picture taken together during the said occasion. On January 4, 1992, he was on duty patrolling as a civilian volunteer of the Department of Agriculture's Bantay Dagat program. He was with three other companions: Jonas Vargas, Arnel Deduyo and Rico Deduyo. They patrolled the seas of Banate, about two kilometers from the shoreline.[14] Their patrol duty lasted until about 5:00 p.m.[15] Edgardo was unarmed at the time.

Edgardo learned of the shooting incident at around 5:00 p.m. of January 4, 1992. He was so incensed at the brutal slaying of his friend, that he wanted to avenge the latter's death. He immediately proceeded to find their team leader Ciriaco Botero, to request that a gun be issued to him, to enable him to hunt down whoever shot the victim. However, he failed to locate Ciriaco Botero.[16]

Edgardo further testified that Job only wanted to get back at him because he, as civilian volunteer of the Bantay Dagat, had caught Job while engaged in dynamite fishing near the artificial reefs of Banate. They exchanged heated words. Edgardo lost control of himself and slapped Job when the latter called him bolay-og.[17] However, Job did not retaliate.

In November 1991, Edgardo again caught Job engaged in dynamite fishing. Edgardo berated Job, but did not file any charges against him.

On May 1, 1992, Edgardo lost his job and left for Sapi-an, Capiz, leaving his family in Banate. When he learned in November 1992 that the RTC of Iloilo City issued a warrant for his arrest, he surrendered to the court and posted a bail bond for his provisional liberty.

Jose Vargas testified that there was no "daily double" being held in his house on January 4, 1992. He was not related to Edgardo. He had not seen Job in his house when the shooting incident occurred.[18] When he asked a person about the shooting, he was told that a car had just passed by. He saw Edgardo in the latter's house at 5:00 p.m. that day. Policemen arrived to investigate the shooting incident, and when he was asked who shot the victim, he replied that he did not know. Moreover, Job was employed by Mayor Bacus, the official who took over for Mayor Sanico.

Warlito Bagcal testified that on January 4, 1992, he was at Barangay dela Paz and arrived at the Poblacion of Banate, Iloilo at around 2:00 to 2:30 p.m. He heard an explosion.[19] He learned from a tricycle driver that SPO1

Cocjin had been shot.[20] He then started his motorcycle and proceeded to the place of the shooting, where he found SPO1 Cocjin lying prostrate on the ground. He saw Juan Vargas within the vicinity,[21] but Job was nowhere near the place.[22]

On February 10, 1995, the trial court rendered judgment, finding the appellant guilty beyond reasonable doubt of the crime charged. The decretal portion of the decision reads:

WHEREFORE, the accused, Edgardo Vargas y Lucero, whose true name he claims to be "Edgar" is hereby found guilty beyond reasonable doubt for the crime of Murder penalized under Article 248 of the Revised Penal Code and is hereby sentenced to suffer a penalty of Reclusion Perpetua and to pay the heirs of SPO1 Alfredo Dan Cocjin y Magnaye the sum of P22,785.00 as actual damages and P50,000.00 as civil indemnity arising from such death.

The accused being out on bail, his property bail bond is hereby cancelled. He shall remain in detention and shall not be subject to any bail pending finality of herein judgment.

Cost against the accused.

SO ORDERED.[23]

The appellant now comes before this Court, ascribing to the court a quo the following errors:

- THE HON. TRIAL COURT ERRED TO APPRECIATE THE TESTIMONY OF THE POLICE INVESTIGATOR AND BELIEVE THE TESTIMONY OF A PLANTED WITNESS OF THE PROSECUTION.
- THAT GRAVE MISAPPREHENSION OF FACTS WERE [sic] COMMITTED BY THE HON. TRIAL COURT WHEN THE CONVICTION OF THE ACCUSED WAS BASED ON CONJECTURES AND NOT BY THE PROOFS AS PROVEN.
- THAT CONSEQUENTLY, THE HON. TRIAL COURT SERIOUSLY ERRED IN SENTENCING THE ACCUSED OF RECLUSION PERPETUA BECAUSE THE ALLEGED POSITIVE IDENTIFICATION BY THE SOLE PROSECUTION WITNESS DEMOLISHES THE DEFENSE OF ALIBI OF THE ACCUSED.[24]

The appellant argues that the trial court ignored the fact that when the police investigated the shooting incident, nobody came forward to identify him as the culprit. He asserts that the prosecution's eyewitness, Job Bieren, was a planted witness. Job's testimony is too incredible to be believed because it took him all of seven months after the shooting incident to give his statement and to identify the appellant as the assailant. The appellant also argues that the prosecution failed to formally offer Job's testimony in evidence; thus, the trial court likewise erred when the said testimony was considered and given credence and probative weight. The appellant insists that the trial court erred when it rejected his defense of alibi.

The appeal is without merit.

The appellant's contention that the public prosecutor failed to offer Job's testimony as mandated by Section 35, Rule 132 of the Revised Rules of Court is belied by the records. The rule adverted to reads:

SEC. 35. When to make offer. - As regards the testimony of a witness, the offer must be made at the time the witness is called to testify. . . .

The party calling a witness must give a gist of the proposed testimony to enable the court and the adverse party to determine its relevancy to the issues at hand.[25]

The transcript of the stenographic notes taken when Job testified show that the public prosecutor indeed offered Job's testimony, thus:

Interpreter:

Please state your name, age civil status, residence and occupation.

Witness:

Job Bieren, thirty-four (34) years old, married a laborer, resident of Sto. Domingo, Barotac Viejo, Iloilo.

Fiscal Cabalum:

I would like to present the testimony of this witness being an eyewitness to the killing of the victim SPO1 Alfredo DAn Cocjin by the accused sometime on January 4, 1992, at Brgy. Zona Sur, Banate, Iloilo.[26]

The appellant did not object to Job's testimony when the public prosecutor offered it. Instead, the appellant cross-examined the witness. The appellant did not protest when the prosecutor faultily offered its documentary and physical evidence and rested its case. The appellant even offered testimonial evidence to controvert Job's testimony. It is now too late in the day for the appellant to assail, for the first time in this Court, the public prosecutor's failure to offer the testimony of a witness before direct examination.[27]

Job cannot be blamed for leaving the situs criminis rather than helping out the victim. It bears stressing that the appellant was armed with a gun, while Job was not. Job feared for his life. Moreover, although Job knew the victim, they were not even friends. This Court has held that not every witness to a crime can be expected to act reasonably and conformably to the expectation of mankind. In some instances, witnesses to a crime do not give succor to the victim due to fear for their personal safety. Self-preservation is still recognized as the most fundamental human instinct.[28]

While it may be true that Job did not report the killing for some months, this does not necessarily affect his credibility. It is not unusual for a witness to show some reluctance about getting involved in a criminal case and such reticence of most people is of judicial notice.[29] The length of delay is not as significant and pivotal as the reason of explanation of the delay, which must be sufficient and convincing.[30]

Job cannot be faulted for keeping silent and opting not to report to the police authorities the fact that he saw the appellant shoot the victim, and that he did so only seven months thereafter. Municipal Mayor Jonathan Sanico, the appellant's cousin, appointed the latter as head of the Civilian Volunteers Organization under the Office of the Mayor. Fearing retaliation from the appellant, the mayor and his henchmen, Job hesitated, not wanting to be involved in the incident. He was afraid to divulge to the police authorities that he witnessed the commission of the crime. It was only after Mayor Sanico lost in the election and was replaced that Job divulged what he knew about the shooting incident. Moreover, the appellant had left Banate. The peril to his life having diminished considerably, Job found it safe to come out and report what he knew about the killing. We agree with the ruminations of the trial court, to wit:

With respect to the delay of Job Bieren to report to concerned authority on what he saw and identify the accused as the assailant for more than seven months after its commission, the court finds such delay to have been sufficiently explained by said witness. He testified that he was afraid to come out to the open because they are in power and they might run after him. Obviously, he was referring to Mayor Jonathan Sanico, then the incumbent mayor of Banate, who is the first cousin of the accused. Besides, the accused was the head of the Bantay Dagat project of the local government, and a member of the CVO as he profess, with an issued firearm. In fact, the case was investigated by the Provincial Command of the Philippine National Police stationed at Sta. Barbara, Iloilo, and the criminal complaint was filed by SPO2 Hari Decena and not the local

police of the Municipality of Banate. The reluctance of people out in the rural areas to report the occurrence of crime or other unusual events to the public authorities is well known. More so in this case since the accused is working with the local government under a Municipal Mayor who is his relative, the possibility of vengeance is great.[31]

Job can hardly, if at all, be classified as a "planted witness." The fact is that his testimony is corroborated by the physical evidence on record. Dr. Ricardo H. Jaboneta's necropsy report shows that the victim sustained two gunshot wounds. He found powder burns on the body of the victim. Job testified that he heard a gunshot and saw the appellant pointing a pistol on the victim's right temple with his right hand. He saw the appellant shoot the victim anew at the back, after the victim was dragged from the bamboo fence of Jose Vargas' house to the edge of the highway. Indeed, the victim was found sprawled on the edge of the national highway. The policemen found a trail of bloodstains along the narrow passageway, to the edge of the road. This corroborates the testimony of Job, that the gunshot he heard coming from the highway was a second shot. The appellant must have already shot the victim before Job saw the appellant with his gun pointed at the victim's head. Job even quoted Warlito Bagcal asking the appellant: "Doy, why did you shoot Dan?" There is no evidence on record that Job nurtured any ill motive to prevaricate and falsely testify that Warlito Bagcal was at the situs criminis. The presumption is that Job was not so actuated; hence, his testimony must be given credence and full probative weight.[32]

The trial court gave credence and full probative weight to the testimony of Job and disbelieved those of Vargas and Bagcal, thus:

The cause of the prosecution draws its strength on the positive identification of Job Bieren, pinpointing to the accused as the one who shot the victim, Dan Cocjin. The principal prosecution witness remained steadfast in his testimony that he saw how the accused collared the victim, brought him out of the fence of Jose Vargas and shot him at the back. Job Bieren could not have been mistaken as to the identity of the accused as the assailant because he knew him even before the incident and he saw the accused at a distance of five (5) meters from him in broad daylight. In fact, the distance of six (6) arms-length was held sufficient to exclude any doubt in the identification of the accused. At the witness stand, he positively identified the accused as Dan Cocjin's assailant.

The court finds the testimony of Job Bieren worthy of credit. His testimony is clear and positive. It satisfies the court beyond reasonable doubt. Such positive identification demolish the alibi of the accused that he was at the sea on team patrol when the crime was committed. ...[33]

The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonies of witnesses and its assessment of the probative weight thereof are accorded high respect if not conclusive effect. This is precisely because of the trial court's unique advantage of observing and monitoring at close range the demeanor, deportment and misconduct of the said witnesses, unless it overlooked, ignored or misappreciated cogent facts and circumstances of substance, which, if considered, will change the outcome of the case.[34]

In this case, we find no reason to deviate from the findings of the trial court, including its finding that appellant's alibi is barren of factual basis:

The alibi of the accused is unconvincing. The accused alleged he was out on routine sea patrol about two (2) kilometers from the Municipal Hall which usually take them about fifteen to thirty minutes to travel. The distance of the Municipal Hall to the scene of the crime is only about half a kilometer according to the accused. With such a distance, it is not impossible for him to be at the scene of the crime and go out on sea patrol after the commission thereof.

Al[i]bi is the weakest defense an accused can concoct, "In order to prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its

vicinity at the time of its commission. In the face of positive identification of the accused by prosecution witness, Job Bieren, an alibi crumbles like a sand fortress.[35]

Other than his sole testimony, the appellant failed to adduce clear and convincing evidence to prove his alibi. He could have presented official records that he was on sea patrol on January 4, 1992, but failed to do so. He even failed to present any of his companions while on patrol to corroborate his testimony.

The appellant's contention that Job testified against him because he had confronted Job twice for dynamite fishing, in violation of Presidential Decree No. 704, as amended, is hard to believe. The appellant admitted that he did not even file any criminal complaint against Job for such crimes. If indeed, Job was caught fishing with the use of dynamite, the appellant should have charged Job for violation of P.D. No. 704, as amended. The appellant did not do so, and even failed to explain such failure. We likewise do not believe that Job would testify and implicate the appellant in the killing of the victim simply because the appellant slapped him.

In fine, we affirm the decision of the trial court, finding the appellant guilty beyond reasonable doubt of murder, and sentencing him to reclusion perpetua.

With regard to the civil liability of the appellant, the trial court awarded the heirs of the victim the amount of P22,785.00 in actual damages, as supported by receipts,[36] and P50,000.00 as civil indemnity arising from SPO1 Alfredo Dan Cocjin's death. However, the trial court failed to award moral damages. The Court finds that the decision of the trial court should be modified, since the heirs of SPO1 Alfredo Dan Cocjin are also entitled to moral damages in the amount of P50,000.00.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Iloilo City, Branch 38, finding appellant Edgardo Vargas y Lucero guilty of murder, and sentencing him to suffer the penalty of reclusion perpetua with the accessory penalties prescribed by law is **AFFIRMED** with **MODIFICATION**. The appellant is ordered to pay the heirs of the victim SPO1 Alfredo Dan Cocjin P22,785.00 as actual damages; P50,000.00 as civil indemnity; and P50,000.00 as moral damages.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge David A. Alfeche, Jr.

[2] TSN, 23 July 1993, p. 5.

[3] Also known as Edgar Vargas.

[4] TSN, July 23, 1993, pp. 8-9

[5] Exhibit "C."

[6] Exhibits "D" to "D-3."

[7] Exhibit "E."

[8] Exhibit "A."

[9] Records, pp. 6-8

[10] Id. at 1-2.

[11] Id. at 342.

[12] Id.

[13] TSN, 1 September 1994, p. 17.

[14] Id. at 19.

[15] Id. at 20.

[16] Id. at 20-21.

[17] Id. at 12-13.

[18] Id. at 11-12.

[19] TSN, 30 June 1994, p. 5.

[20] Id. at 6.

[21] Id. at 14.

[22] Id. at 9.

[23] Records, p. 390

[24] Rollo, p. 53.

[25] FRANCISCO, THE RULES OF COURT OF THE PHILIPPINES, Vol. VIII, Part. II, 1991 ed.

[26] TSN, July 23, 1993, pp. 2-3

[27] People v. Bisda, G.R. No. 140895, July 17, 2003.

[28] People v. Cajara, 341 SCRA 192 (2000).

[29] People v. Giganto, Sr., 336 SCRA 294 (2000).

[30] People v. Natividad, 352 SCRA 651 (2001).

[31] Records, p. 388.

[32] People v. Dela Cruz, 349 SCRA 124 (2001); People v. Alimon, 257 SCRA 658 (1996).

[33] Records, pp. 386-387.

[34] People v. Burlat, 352 SCRA 566 (2001).

[35] Records, p. 388.

[36] Records, p. 390.

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