

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO BLANCO Y SEÑORA, ACCUSED-APPELLANT.

G.R. No. 124078. February 01, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

Appellant Alberto Blanco y Señora and the other accused, Arturo Punzalan, Ramil Pundan and Benito Gamis, were charged with Murder by the City Prosecutor of Lucena City in an Amended Information which alleged:

"That on or about the 9th day of August, 1993, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously stab one Arnel Leovido y Dasco with a bladed weapon, causing his instantaneous death. That the commission of the offense was aggravated by the use of a motor vehicle.

CONTRARY TO LAW."

Upon arraignment thereunder, the appellant, Alberto Blanco, and Arturo Punzalan pleaded "Not Guilty" to the accusation. From the records, it appears that Ramil Pundan and Benito Gamis are still at large.

On July 10, 1995, the lower court of origin came out with its decision finding appellant Alberto Blanco guilty of murder for the killing complained of, qualified by the use of a motor vehicle; acquitting Arturo Punzalan for failure of the prosecution witnesses to identify him, and disposing thus:

"WHEREFORE, the foregoing considered, the Court finds accused Alberto Blanco y Señora guilty as principal by direct participation of the crime of murder defined and penalized under Article 248 of the Revised Penal Code and, there being no aggravating or mitigating circumstance present, hereby sentences the said accused to reclusion perpetua and to pay the costs.

Alberto Blanco is ordered to pay the heirs of Arnel Leovido P50,000.00 as death indemnity, P12,000.00 as burial expenses and P10,000.00 as the unearned income of the deceased.

The preventive imprisonment undergone by Alberto Blanco shall be credited to him provided he had agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

Accused Arturo Punzalan is acquitted for insufficiency of evidence. His release from detention, unless he is detained for another cause, is ordered.

SO ORDERED."[1]

The trial court culled the testimonies of witnesses and the facts of the case as follows:

"In this trial against Blanco and Punzalan the prosecution presented four witnesses: Joey de Guzman, Edgardo Tolentino, PO3 Nolasco Merluza and SPO 4 Antonio Amante.

Edgardo Tolentino, the principal witness for the prosecution, testified that on the night of August 9, 1993 at ten

o'clock he and Arnel Leovido were in front of the Roman Catholic Cathedral waiting for a ride. They flagged down a passing tricycle. They agreed to pay the tricycle driver P8.00 for the distance to Red-V, Lucena City. They boarded the tricycle, Arnel Leovido entering first. When the tricycle reached the back of the Carlos Drug Store, the driver slackened the speed of the tricycle. Three men standing at the sidewalk boarded the tricycle. Two of the men sat behind the driver. The third one stood on the right side of the passengers. After the three men got on board, the driver accelerated the speed of the tricycle. The driver turned the vehicle towards the direction of the LC Big Mak. When Tolentino noticed they were running along Enverga Street, which is not the route going to Red-V, he held the hand of the driver. He told the driver to stop the tricycle. The driver ignored him and instead accelerated the speed of the tricycle going in the direction of Granja Street. Sensing something wrong, Tolentino told Arnel Leovido that they jump out of the tricycle. Tolentino jumped out first. Leovido followed him. After he and Leovido jumped out of the running tricycle he noticed that there was blood on the left side of Leovido. He asked Leovido what happened. Leovido said he was stabbed by the person at the back of the driver. Tolentino noticed that the mud guard of the tricycle had the following words: "Bunga ng Pagsisikap." An L-300 which happened to be passing by stopped. The passengers of the L-300 helped him bring Arnel Leovido to the Quezon Memorial Hospital. While Arnel Leovido was being treated, some policemen arrived in the hospital. They interviewed him. He told the policemen he could not identify the person who stabbed Arnel Leovido but he could identify the driver of the tricycle. Arnel Leovido expired that same night.

In court during his testimony, Tolentino pointed to Alberto Blanco as the driver of the tricycle. When asked to identify the men who sat behind Alberto Blanco, more particularly the one who stabbed Arnel Leovido, Tolentino did not identify Arturo Punzalan as one of the two backriders although Arturo Punzalan was then in the courtroom.

Joey de Guzman testified that on the night of August 9, 1993, at nine o'clock, he was inside the Big Mak, Lucena City. A person whom he knew as Arturo Punzalan with three others arrived. They approached him. The four asked him if he wanted to join them in an undertaking wherein they would make money ("lakad na pagkakakitaan ng pera"). He declined to go with the four. After that he went home. He did not know what Arturo Punzalan and his three companions did after that.

In court during his testimony, Joey de Guzman was asked by Assistant City Prosecutor Fe M. Garcia if the Arturo Punzalan who approached him inside the LC Big Mak on the night of August 9, 1993 was present in court. Joey de Guzman said he was not in court. This despite the fact that the accused Arturo Punzalan was present in court.

SPO4 Antonio Amante and PO2 Nolasco Merluza of the PNP Lucena station were assigned to investigate the death of Arnel Leovido. Their first lead in the identification of the killers came from the information given to them by Edgardo Tolentino that the tricycle he and Arnel Leovido rode in had the words "Bunga ng pagsisikap" on its mud guard. They made inquiries from the officers of the Tricycle Owners Association of Lucena City. They went to see Mrs. Aristoteles. They learned from her that Alberto Blanco was the driver of her tricycle on the night Arnel Leovido was killed. They sought Blanco in his house and invited him to the police station. The tricycle was brought to the police station. There at the police station, Edgardo Tolentino pointed to Alberto Blanco as the driver of the tricycle he and Arnel Leovido rode in that fateful night. x x x

Accused Arturo Punzalan denied the accusation against him.

He testified that he used to be a driver of the tricycle owned by Racquel Aristoteles. He ceased to be a driver on August 4, 1993 when he became an ambulant vendor. He plied his trade as a vendor in Pagbilao, Quezon.

On July 15, 1994, he went to the Philippine National Police Lucena station to cause the entry into the police blotter his elopement with his girlfriend, Perlita Reyes. He did this as a precautionary measure after he learned that the parents of Perlita Reyes were mad at him and there was the possibility they might file a case of kidnapping against him. While at the police station, he was told a warrant for his arrest had been issued. He

was subsequently detained.

Accused Alberto Blanco also denied the accusation against him.

He testified that he used to be the driver of several tricycle owners, namely, Carlos Nañadiego, Racquel Aristoteles and Gudoy Laraquel. He was supposed to drive the tricycle of Carlos Nañadiego in the evening of August 9, 1993 but he did not drive that night because he was not feeling well.

In the morning of August 26, 1993 at eleven o'clock he was at home when some policemen arrived. They invited him to the PNP Lucena station. The policemen questioned him on the death of Arnel Leovido. Subsequently the policemen incarcerated him. xxx"[2]

After trial, the trial court found no evidence to link accused Arturo Punzalan to the death of Arnel Leovido and acquitted Punzalan. Thus-

"x x x Edgardo Tolentino who was with Arnel Leovido when he was stabbed, did not identify Arturo Punzalan as one of the two backriders of Alberto Blanco, one of whom stabbed Leovido. Joey de Guzman also testified that Arturo Punzalan was not the man who talked to him at the LC Big Mak and who invited him to go with them if he wanted to make money on the night of August 9, 1993. x x x"[3]

The trial court, however, found sufficient evidence establishing that Alberto Blanco was in conspiracy with the three men he picked up or allowed to ride on his tricycle, even as he already had Tolentino and Leovido as passengers. Thus, in its decision dated July 10, 1995, the trial court found appellant Alberto Blanco liable as co-principal by direct participation in the fatal stabbing of Leovido; and decided, thus:

"WHEREFORE, the foregoing considered, the Court finds accused Albert Blanco y Señora guilty as principal by direct participation of the crime of murder defined and punished under Article 248 of the Revised Penal Code and, there being no aggravating or mitigating circumstance present, hereby sentences the said accused to reclusion perpetua and to pay the costs.

Alberto Blanco is ordered to pay the heirs of Arnel Leovido P50,000.00 as death indemnity, P12,000.00 as burial expenses and P10,000.00 as the unearned income of the deceased.

The preventive imprisonment undergone by Alberto Blanco shall be credited to him provided he had agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

Accused Arturo Punzalan is acquitted for insufficiency of evidence. His release from detention, unless he is detained for another cause, is ordered.

SO ORDERED."[4]

Appellant has come before this Court to seek relief; placing reliance on his defense of alibi and theorizing that:

- The trial court erred in finding him guilty beyond reasonable doubt of the crime of murder; and
- Failing to meet the exacting test of moral certainty and proof of appellant's guilt beyond reasonable doubt, the trial court erred in ordering the appellant to pay civil indemnity to the victim's heirs.

The appeal is barren of merit. The assailed decision accords with law and the evidence.

To begin with, appellant was positively identified by Edgardo Tolentino as the driver of the tricycle they were riding on that fateful night of August 9, 1993, when his companion, Arnel Leovido, was fatally stabbed. The trial court gave full faith and credit to the testimony of Tolentino and the latter's identification of appellant as the assailant. It is axiomatic that the evaluation by the trial court of the testimony of a witness is accorded with the highest respect because the trial court had the direct opportunity to observe the witnesses on the stand and to

determine whether they were telling the truth or not. Exceptions to this rule are when the evaluation below was done arbitrarily or when the lower court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have affected the result of the case. Here, none of these exceptions can be perceived.[5]

Furthermore, where there is no evidence to indicate that the witness against the appellant has been actuated by an improper motive, and absent any compelling reason to conclude otherwise, the testimony of the witness should be given full faith and credit[6] for it is inconceivable for such a witness to openly concoct a story that would send an innocent man to jail, let alone, to the gallows or lethal injection chambers.[7]

Appellant's defense of alibi cannot help. For the defense of alibi to prosper, appellant must prove not only that he was somewhere else when the crime was perpetuated but also that it was physically impossible for him to have been at the crime scene or its immediate vicinity at the approximate time of its commission. Appellant failed to demonstrate either scenario. He was even unable to specify how far he was from the crime scene or how long it would take to negotiate the distance.

Appellant merely declared that when the incident sued upon happened in the evening of August 9, 1993, he did not drive a tricycle because he was not feeling well.[8]

Well-settled is the rule that alibi is a weak defense not only because it is inherently unreliable but also because it is easy to fabricate. Where, as in this case, there is absence of strong and convincing evidence, alibi cannot prevail over the positive identification of appellant by an eyewitness to the stabbing incident, who has no improper motive to testify falsely. Consequently, such alibi must necessarily fail.[9]

Appellant insists there is no sufficient proof of conspiracy among him and the three other accused to kill the deceased Leovido.

To establish conspiracy proof of a concerted action on the part of the accused demonstrating a common design and objective is sufficient.[10] There is conspiracy where, at the time the malefactors were committing the crime, their actions showed a unity of purpose among them, a concerted effort to bring about the death of the victim.[11]

Thus, although it appears that it was one of appellant's co-accused who dealt Leovido the death blow, appellant performed acts to carry out the felonious killing complained of, for which he should be held answerable.

The trial court noted the following acts of appellant, viz:

"First, as established by the testimony of Edgardo Tolentino, Blanco slowed down the speed of his tricycle when he reached the place where the three men were without anyone of the three motioning to him to stop or to slow down.

Second, without any word between him and the three men, he allowed them to board his tricycle.

Third, again without any word between him and the three men, Blanco deviated his tricycle from the established or usual route to Red-V which was the destination of Tolentino and Leovido.

Fourth, when Edgardo Tolentino, sensing something wrong, asked him to stop the tricycle, Blanco instead of heeding Tolentino accelerated the speed of the tricycle.

Fifth, after Tolentino and Leovido who was already wounded jumped out of the tricycle, there was no subsequent reaction from the accused Blanco which could be expected from a man who was not a party to the crime committed, such as reporting the incident to the police when it was already safe for him to do so, assuming he was not in conspiracy with the three men and he was afraid while they were with him."[12]

and considered the same as sufficiently indicating beyond reasonable doubt the existence of a conspiracy among the appellant and the three other accused to commit the crime charged.

All things viewed in proper perspective, like the lower court, this Court is of the irresistible finding and conclusion that appellant is guilty as co-principal by direct participation. His cooperation in the execution of the crime of murder was real and effective, leaving his passengers, especially the victim, Leovido, at the complete mercy of the other felons.

WHEREFORE, the appealed Decision is hereby AFFIRMED. Proportionate costs against appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Decision, pp. 10-11.

[2] Decision, pp. 2-5.

[3] Rollo, p. 63.

[4] Decision, pp. 5-6.

[5] *People vs. Dela Cruz*, 229 SCRA 754, 762 [1992].

[6] *People vs. Simon*, 209 SCRA 148 [1992].

[7] *People vs. Solis*, G.R. No. 124127, June 29, 1998, 291 SCRA 529, 539.

[8] TSN p. 2, December 6, 1995.

[9] *People vs. Pallarco*, G.R. No. 119971, March 26, 1998, *People vs. Dinglasan*, 267 SCRA 26, [1997].

[10] *People vs. Asoy, et al.*, 251 SCRA 682, [1995].

[11] *Sison vs. People*, 250 SCRA 58 [1995].

[12] Decision, pp. 7-8.

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