

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOMER VELASCO Y PANGILINAN, ACCUSED-APPELLANT.

G.R. No. 125016. May 28, 1999

Ponente: BUENA, J.

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BUENA, J.:

Accused-appellant Nomer Velasco y Pangilinan together with Reynaldo Endrina y Roa and Ernesto Figueroa y Santos were charged with the crime of Murder in an Information filed on March 2, 1994 (and docketed as Crim. Case No. I.S. Nos. 94B-05391-93) before Branch 12 of the Regional Trial Court, National Capital Judicial Region at Manila. The Information reads as follows:

"That on or about February 20, 1994, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation and with the use of their superior strength, attack, assault and use personal violence upon the person of one DANILO VALENCIA y MANZANO by then and there stabbing him twice with a bladed weapon at the back and left side of his body thereby inflicting upon the latter serious mortal stab wounds, which were the direct and immediate cause of his death thereafter.

"Contrary to law."[1]

Upon arraignment on March 16, 1994, all three accused duly assisted by their counsel de parte pleaded not guilty to the offense charged in the Information.[2]

The testimony of prosecution witness SPO2 Jose Bagkus was dispensed with as the prosecution and defense agreed to stipulate on the following facts which said witness will be testifying on, to wit:

(1)

That SPO2 Jose Bagkus is an investigator assigned to the Crimes against Persons Division, WPDC since 1991;

(2)

That on February 21, 1994, he prepared an Advance Information Report regarding the reported stabbing of a victim who he later identified as one Danilo Valencia and who was allegedly stabbed on Capulong Extension, Tondo, Manila, on February 20, 1994 between 3:00 to 3:15 a.m.;

(3)

That in the course of his investigation, he also prepared an Additional Information Report dated February 22, 1994; and

(4)

That if SP02 Jose Bagkus will take the witness stand, he will testify and affirm the correctness of the contents of the Advance Information as well as the Additional Information Report.[3]

There being no other facts proposed for further stipulation between the parties, trial on the merits thereafter ensued.

Pieced together from the testimony of Leonardo Lucaban, the lone eyewitness to the incident, is the following set of facts:

It appears that at around 3:30 o'clock in the morning of February 20, 1994, Leonardo Lucaban, as he was walking along Capulong Highway, Tondo, Manila, saw a man whom he recognized as Danilo Valencia.[4] He saw Valencia grab a man.[5] This person was about 5'4" in height and of medium build[6] and was able to free himself from Valencia's hold.[7]

Danilo Valencia thereafter proceeded on his way. Two people approached him.[8] One of the two was short but with a big build while the other was tall but of a medium build.[9] The smaller of the two asked Valencia why he did not shoot the person he (Valencia) had earlier grabbed.[10] Valencia replied, among other things, that he did not have a gun.[11] He continued to walk away.

The lone eyewitness, Leonardo Lucaban afterwards saw the person who moments ago had been questioning Valencia follow the latter and stab him at the back.[12] Lucaban was about six (6) armslength away from the victim.[13] The companion of the assailant confronted Lucaban as he shouted "ilag" (duck).[14] Lucaban immediately ran towards a guardhouse.[15] It was there where he heard two gunshots.[16] He saw the assailant and his companion running towards Happy Land, Tondo, Manila[17] while the person whom Valencia grabbed was running towards Herbosa St., Tondo, Manila.[18]

The prosecution presented four (4) witnesses, to wit: Carmencita Valencia, Dr. Florante Baltazar, SPO2 Alejandro Yanquiling, Jr., and Leonardo Lucaban.

Carmencita Valencia, the wife of the victim, testified that: Leonardo Lucaban went to her house to inform her that he witnessed the incident; that he told her he will give a statement to the police;[19] that Lucaban did so on February 22, 1994;[20] that her statement was taken down in writing by the police;[21] that the reason why her husband was stabbed was because he gave sanctuary and helped a certain Jude who had snitched on the "akyat barko" gang;[22] that attempts on the lives of this Jude and his wife were made;[23] that Nomer Velasco and Reynaldo Endrina were some of the people who were trying to kill Jude and his wife;[24] that she knows that it was the accused who stabbed her husband because they have a grudge against him;[25] that she did not actually see that it was the accused who stabbed her husband;[26] that she was sleeping when she heard her husband calling out to her;[27] that he asked to be taken to the hospital because he had a wound;[28] that her husband was already dead when he reached the hospital.[29]

Dr. Florante Baltazar, Medico Legal Officer, conducted the autopsy examination on the cadaver of Danilo Valencia.[30] He confirmed the injuries sustained by the decedent,[31] the relative positions of the wounds,[32] the kind of instrument which could have caused the stab wounds,[33] and the cause of death of the victim.[34]

Leonardo Lucaban when he first testified on November 22, 1994 averred that "he cannot remember his (referring to the person who stabbed Danilo Valencia) face because it was dark"[35] contrary to the positive identification he made of the three accused which were given in his Supplemental Statement dated February 24, 1994.[36] He likewise testified that "because of financial difficulties he could not appear in court"[37] and was only able to go when he was apprehended by the police a day before the hearing.[38] At first he said that "he was not threatened

by anybody"[39] but later admitted that he was being threatened by the family of the accused but he was not bothered because he had not pointed to anyone yet.[40]

The fourth prosecution witness is SPO2 Alejandro Yanquiling, Jr. He was the follow-up investigator in the stabbing incident of Danilo Valencia. In the course of his investigation he took down the Supplemental Statement of Leonardo Lucaban;[41] that in a line-up of six persons three (3) persons were identified by Leonardo Lucaban as the assailants of the victim;[42] that the said persons were Nomer Velasco, Endrina, and Figueroa;[43] that Lucaban identified these persons in the line-up by touching their right shoulders;[44] that Lucaban was able to identify the accused without any wavering.[45]

Leonardo Lucaban was thereafter recalled to the witness stand. He testified that he pointed to only one suspect in the line-up not three as testified to by SP02 Alejandro Yanquiling, Jr.;[46] that the suspect he pointed to as the assailant of the victim Danilo Valencia is identified as Nomer Velasco;[47] that he saw the accused Nomer Velasco stab the victim by the light coming from a passing jeepney and after that he screamed "ilag" (duck) and he ran away;[48] that he could not see very well the other persons because of the darkness;[49] that the reason why he denied having pointed to the suspects in the last hearing was because of a threat he received and that a day before he was apprehended a person named Peter almost stabbed him because he was "nagpapakabayani" (pretending to be a hero);[50] that he personally knows Nomer Velasco because he recruited him before to be one of his workers[51] in the cutting of logs.[52]

The defense denied the accusation and raised the defense of alibi. Aside from accused-appellant Nomer Velasco three (3) other witnesses were presented. The witnesses and their testimonies consisted of the following:

(1) Reynaldo Endrina was one of the accused. He testified that he and the other two accused were neighbors at Happy Land;[53] that they have known each other for, more or less, two years;[54] that he knows the Spouses Danilo Valencia and Carmencita Valencia;[55] that Danilo Valencia is his "compadre" because the former is the godfather of his son;[56] that he was at home sleeping at 3:30 o'clock in the morning of February 20, 1994;[57] that he did not go out of his house on or before 3:30 a.m. of February 20, 1994.[58]

(2) Ernesto Figueroa, the third accused in the case, testified, among other things, that he does not know the Spouses Danilo and Carmencita Valencia;[59] that he was also at home sleeping on that morning of February 20, 1994.[60]

(3) Nomer Velasco, the accused-appellant, likewise denied knowing the Spouses Danilo and Carmencita Valencia[61] and Leonardo Lucaban.[62] He testified that he was also at home sleeping at 3:30 a.m. of February 20, 1994;[63] that he did not go out of his house prior to or at 3:30 o'clock in the morning;[64] that he and his co-accused were not friends but only acquaintances;[65] that he had last seen his co-accused in 1993;[66] that he came to know that Danilo Valencia was killed only after he and the other two accused were apprehended;[67] that it was a police officer who told them to admit that they killed Danilo Valencia.[68]

(4) Rosemarie Velasco, the wife of Nomer Velasco, corroborated her husband's testimony that he was sleeping at their house[69] on the morning of February 20, 1994. She testified, among others, that she had asked Leonardo Lucaban why he should point to her husband as the assailant in the killing of Danilo Valencia and he told her that he was being threatened by the police;[70] that the scene of the crime (Capulong Highway) and the residence of the accused at Happy Land are twenty (20) meters apart from each other.[71]

After the presentation of evidence, the trial court in its decision promulgated on February 19, 1996 found the accused-appellant to be guilty beyond reasonable doubt and ordered the acquittal of Reynaldo Endrina and Ernesto Figueroa. The dispositive portion thereof reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ACQUITTING accused Reynaldo Endrina y Roa, and accused Ernesto Figueroa y Santos for lack of sufficient evidence to sustain their conviction beyond reasonable doubt. Their immediate release from detention is hereby ordered, unless their continuous confinement is necessitated by other lawful orders.

"Accused Nomer Velasco y Pangilinan is hereby declared GUILTY beyond reasonable doubt of the crime of MURDER and is hereby sentenced to suffer the penalty of reclusion perpetua and the accessory penalties provided by law. He is also condemned to pay the heirs of victim Danilo Valencia the amount of P50,000.00 as actual damages and the sum of P50,000.00 as moral damages. With costs. His immediate transfer to the New Bilibid Prisons, Muntinlupa is hereby ordered.

"SO ORDERED." [72]

Accused Nomer Velasco comes to this Court on appeal praying that the decision of the trial court be reversed and set aside and that a new one be entered acquitting him of the charge.

The accused-appellant assigns the following errors in his brief:

- THE COURT A QUO SERIOUSLY ERRED IN NOT HOLDING THAT ACCUSED NOMER VELASCO WAS NOT POSITIVELY IDENTIFIED BY THE LONE EYEWITNESS, LEONARDO LUCABAN.
- THE COURT A QUO SERIOUSLY ERRED IN RELYING UPON THE TESTIMONY OF LEONARDO LUCABAN, CONSIDERING THAT THE SAME IS REplete WITH INCONSISTENCIES.
- THE COURT A QUO SERIOUSLY ERRED IN FAILING TO FAVORABLY CONSIDER THE DEFENSE OF HEREIN PETITIONER.
- THE COURT A QUO SERIOUSLY ERRED IN NOT HOLDING THAT THE GUILT OF THE ACCUSED WAS NOT PROVEN BEYOND REASONABLE DOUBT.

The contentions are without merit.

In assailing the questioned decision the accused-appellant attacks the credibility of the lone eyewitness by pointing out that when Leonardo Lucaban first testified on November 22, 1994 he failed to name the appellant as the assailant even though the latter was in the courtroom at that time. [73] But when he was recalled to the witness stand three (3) days thereafter or on November 25, 1994, he was able to do so. [74]

This change of heart by the said witness is attributed by the appellant Nomer Velasco to the former being thoroughly "prepared" by the police authorities when he was taken into custody for five (5) days. [75]

Accused-appellant likewise imputes that the "physical, emotional and psychological stress consequent to an apprehension of a prolonged and indefinite detention" [76] provoked the witness to testify "in the manner desired by the police or the prosecution if only to win back his life and freedom." [77]

The counsel for accused-appellant is trying to mislead us into thinking that the police authorities had a hand in the change of the eyewitness' earlier testimony just because he was placed under detention. Or that the arrest was made as a result of a whim.

We find that the deduction arrived at by the appellant is totally baseless. The police apprehended the eyewitness in compliance with two lawful orders of the trial court. And for the accused-appellant to impute otherwise is uncalled for, as is the implication that while under their custody the witness was coached into pointing an accusing finger at Nomer Velasco.

Quoted below in full are the orders of the court a quo dated October 12, 1994 and November 22, 1994 explicitly

stating why there was a need for the apprehension of the said witness, to wit:

"O R D E R

"Considering the importance of the prosecution's intended witness Leonardo Lucaban, an eyewitness to the incident who refused to obey the subpoena of this Court despite receipt thereof.

"Order is hereby given to the WPDC thru any police officer to arrest the person of said Leonardo Lucaban of 410 Radial 10 cor. Capulong St., Tondo, Manila, so that this court can secure his appearance on the next scheduled hearing, which is reset to November 22, 1994, at 8:30 o'clock in the morning.

"SO ORDERED.

"Given in open court this 12th day of October 1994, at Manila, Philippines."[78]

"O R D E R

"For disregarding the subpoena sent to him for several times despite receipt thereof, and if not for the warrant issued against him, his attendance for today's hearing cannot be secured.

"WHEREFORE, witness Leonardo Lucaban is declared guilty of indirect contempt of court and shall be held in custody of SP01 Pedro Justiniano and PO2 Ismael Velasco, for the continuation of his testimony which is set on Friday, November 25, 1994, at 8:30 a.m.

"SO ORDERED.

"Given in open court this 22nd day of November 1994, at Manila, Philippines."[79]

It is not totally unheard of for a person who has witnessed a crime and recognized its perpetrators to deny knowledge of the identity of these malefactors for fear of reprisals against his life or that of his family.

We have held in a number of cases that it is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case, as in fact the natural reticence of most people to get involved is of judicial notice.[80]

Considering that it was the trial court which gave the order to place Lucaban in the custody of the police for the continuation of the his testimony mayhap the accused-appellant also infers that the trial court likewise wanted Lucaban to point to the accused-appellant as the assailant?

Accused-appellant casts aspersion on (1) the ability of the witness to recognize him but failing to recognize his co-accused, namely Endrina and Figueroa, when all three of them were at the scene of the crime, (2) the failure of the witness to shout for help from vehicles passing by, (3) the action of the witness in going to a remote tricycle spot to summon a rescue.

The accused-appellant considers these instances to be lapses and deficiencies that do not lend credence to the prosecution's lone eyewitness.

In the case of *People vs. Dones*[81] it has been held that there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.

A person when faced with an out of the ordinary situation is not expected to act in a manner similar to another. The conduct therefore of Lucaban should not be deemed suspect if the only person he recognized at the scene of the crime was Nomer Velasco or if he fails to enlist the help of the drivers or passengers of passing vehicles or for going to a remote tricycle spot instead of, for example, knocking on the doors of the houses in the neighborhood.

We do not deem the deficiencies made by Lucaban in his testimonies so material as to put the trustworthiness of said witness open to serious doubt. Minor inconsistencies do not impair the essential integrity of the prosecution's evidence as a whole.[82] Moreover discrepancies between sworn statements or affidavits and testimonies made at the witness stand do not necessarily discredit the witnesses.[83]

The rule is well-settled that the trial court is in the best position to evaluate the credibility of the witnesses presented before it for it had occasion to observe the witnesses' deportment on the stand and the manner in which they gave their testimonies. In fact, it has become a consistent and immutable rule, since more often than not, the appeals relate to the credibility of witnesses, that we are bound by the prevailing doctrine, founded on a host of jurisprudential rulings, to the effect that the matter is best determined at the trial court level where testimonies are "first hand given, received, assessed and evaluated." [84] Thus in the absence of a showing that serious and substantial errors were committed by the lower court in the appraisal of the evidence before it, factual findings, particularly, the trial judge's assessment of the credibility of the testimony of the witnesses are accorded great weight and respect [85] and treats it with finality.

We have perused the records of this case and we find, as the lower court did, that the testimony of the lone eyewitness Leonardo Lucaban is clear, straightforward and worthy of belief.

It is well-settled rule that the defense of alibi, admittedly, the weakest defense, cannot prevail over the positive identification of the accused by prosecution witnesses.[86]

Leonardo Lucaban testified that he personally knows Nomer Velasco.

"Q Prior to that incident, you know personally this Nomer Velasco?

"A

Yes, sir.

"COURT

Why do you know him?

"A Because once I have recruited him as one of my workers.

"COURT

What is your work?

"A Cutting of log, Your Honor.

"Q

You are really sure that it was this Nomer Velasco whom you saw stab the victim?

"A It seems he was really the one. I saw his face."[87]

Accused-appellant contends that he was sleeping at his house at the time of the incident. His wife corroborates this. However, in this instance, we have to take the word of his wife with a grain of salt for witnesses who are either wives or mothers of the accused, in almost all instances, would freely perjure themselves for the sake of their loved ones.[88]

In the light of the positive identification made by an eyewitness who admittedly has no grudge against the accused-appellant the defense of alibi put up by the latter does not hold water.

It is the burden of the accused not only to prove that he was not at the scene of the crime when it happened but also that it was impossible for him to be there at the time of the commission of the offense.[89]

This test the accused-appellant failed. Rosemarie Velasco, the wife of the accused, testified that the distance of their house from the scene of the crime is a mere twenty meters. The distance between these two locations is not so great that it would have been impossible for the accused-appellant to be present at the scene of the crime.

Accused-appellant avers that the recall of the witness had no basis and was made with grave abuse of discretion.

We disagree. In the case of *Arce, et al. vs. Arce, et al.*,[90] it was held that if, after hearing all the evidence adduced by the parties, the trial Judge is not satisfied, he may, in the exercise of his sound discretion, on his own motion and in furtherance of justice, call additional witnesses or recall some of the same witnesses, for the purpose of questioning them himself, in order to satisfy his mind with reference to particular facts or issues involved in the case.

Treachery or alevosia qualified the killing of Danilo Valencia to murder committed by the accused. There is alevosia when a person is unexpectedly attacked from behind, depriving him of any opportunity to defend himself.[91]

The following circumstances show that the accused-appellant indeed committed the killing by treacherous means: He engaged the victim into a conversation, brief though it may be. From that conversation he gleaned that the victim was not carrying a weapon. Assured that the victim was unarmed the accused-appellant then followed the victim and stabbed him at the back.

The assailant was known to the victim for he used to be under the latter's employ.[92] Unsuspecting of the assailant's evil plans the latter continued to walk away. The attack was so sudden that it gave the victim no chance to defend himself or to retaliate. Moreover the safety of the assailant from defensive or retaliatory attacks coming from the victim was ensured because the latter was unarmed.

WHEREFORE, IN VIEW OF THE FOREGOING, the decision of the court a quo is hereby AFFIRMED.

SO ORDERED.

Bellosillo (Chairman), Puno, Mendoza, and Quisumbing, JJ., concur.

[1] Orig. Records, p. 1

- [2] Ibid., p. 24.
- [3] Ibid., p. 32.
- [4] T.S.N. dated November 22, 1994, p. 4
- [5] Ibid., p. 4.
- [6] Ibid., p. 7.
- [7] Ibid., p. 4
- [8] Exhibit "M"; Orig. Records, p. 107.
- [9] T.S.N. dated November 22, 1994, p. 7.
- [10] T.S.N. dated November 22, 1994, p. 5; Exhibit "M"; Orig. Records, p. 107.
- [11] T.S.N. dated November 22, 1994, p. 5;
- [12] Ibid., p. 5.
- [13] Exhibit "M"; Orig. Records, p. 107.
- [14] T.S.N. dated November 22, 1994, p. 5.
- [15] Ibid., p. 5.
- [16] Ibid., p. 6.
- [17] Ibid., p. 6.
- [18] Exhibit "M"; Orig. Records, p. 107.
- [19] T.S.N. dated June 21, 1994, p. 7.
- [20] Ibid., p. 7.
- [21] Ibid., p.7.
- [22] Ibid., pp. 9-10.
- [23] Ibid., p. 9.
- [24] Ibid., p. 10.
- [25] Ibid., p. 13.
- [26] Ibid., p. 13.
- [27] Ibid., p. 4.
- [28] Ibid., p. 5.
- [29] Ibid., p. 6.
- [30] T.S.N. dated August 20, 1994, p. 4.
- [31] Ibid., p. 6.
- [32] Ibid., p. 6 and 7.

- [33] Ibid., pp. 7 and 8.
- [34] Ibid., p. 11.
- [35] T.S.N. dated November 22, 1994, p. 10.
- [36] Exhibit "N"; Orig. Records, p. 108.
- [37] T.S.N. dated November 22, 1994, p. 11.
- [38] Ibid., p. 11.
- [39] Ibid., p. 12.
- [40] Ibid., p. 13.
- [41] T.S.N. dated November 25, 1994, p. 5.
- [42] Ibid., p. 7.
- [43] Ibid., p. 7.
- [44] Ibid., p. 7.
- [45] Ibid., p. 8.
- [46] T.S.N. dated November 25, 1994, p. 12.
- [47] Ibid., p. 12.
- [48] Ibid., p. 13.
- [49] Ibid., p. 13.
- [50] Ibid., p. 13.
- [51] Ibid., p. 15.
- [52] Ibid., p. 15.
- [53] T.S.N. dated February 8, 1995, p. 3.
- [54] Ibid., p. 4.
- [55] Ibid., p. 4.
- [56] Ibid., p. 4.
- [57] Ibid., p. 4.
- [58] Ibid., p. 4.
- [59] Ibid., p. 8.
- [60] Ibid., p. 8.
- [61] T.S.N. dated April 4, 1995, pp. 3-4.
- [62] Ibid., p. 4.
- [63] Ibid., p. 4.

- [64] Ibid., p. 4.
- [65] Ibid., p. 6.
- [66] Ibid., p. 6.
- [67] Ibid., p. 7.
- [68] Ibid., p. 8.
- [69] T.S.N. dated May 30, 1995, p. 4.
- [70] Ibid., p. 6.
- [71] Ibid., p. 10.
- [72] Orig. Records, p. 120.
- [73] T.S.N. dated November 22, 1994, p. 12.
- [74] T.S.N. dated November 25, 1994, p. 12.
- [75] Rollo, p. 47; Appellant's Brief, p. 8.
- [76] Rollo, pp. 118-119; Reply Brief, pp. 22-23.
- [77] Rollo, p. 119; Reply Brief, p. 23.
- [78] Orig. Records, p. 65.
- [79] Orig. Records, p. 70.
- [80] People vs. Rubio, 257 SCRA 528; People vs. Verano, 264 SCRA 546.

[81] 254 SCRA 696.

- [82] People vs. Conde, 252 SCRA 681.
- [83] People vs. Ferrer, 255 SCRA 19.
- [84] People vs. Bernal, 254 SCRA 659.
- [85] People vs. Jain, 254 SCRA 686.
- [86] Arceno vs. People, 256 SCRA 569.
- [87] T.S.N. dated November 25, 1994, p. 15.
- [88] People vs. Pano, 257 SCRA 274.
- [89] People vs. Castañeda, 252 SCRA 247.
- [90] 106 Phil. 630.
- [91] Ingles vs. Court of Appeals, 269 SCRA 122.
- [92] T.S.N. dated June 21, 1994, p. 10.

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