

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME VALENZUELA Y PANGILINAN, AND VIRGILIO PALMA (AT LARGE), ACCUSED, JAIME VALENZUELA Y PANGILINAN, ACCUSED-APPELLANT.**

*G.R. No. 126776. September 05, 2002*

Ponente: QUISUMBING, J.

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**QUISUMBING, J.:**

On February 29, 1996, the Regional Trial Court of Manila, Branch 5, in Criminal Case No. 90-82203, found appellant Jaime Valenzuela y Pangilinan guilty of murder, and sentenced him to reclusion perpetua and to pay the heirs of the victim, Dante Bartolome, P50,000 as civil indemnity.

His conviction stems from the information filed on February 8, 1990, by Manila Assistant Prosecutor Celedonio Balasbas, which reads:

The undersigned accuses JAIME VALENZUELA Y PANGILINAN and VIRGILIO PALMA Y INDUCTIVO of the crime of MURDER, committed as follows:

That on or about May 16, 1989, in the City of Manila, Philippines, the said accused, conspiring and confederating with one Pfc. ANTONIO ROXAS who had already been charged for the same crime before the Judge Advocate General's Office, Quezon City, and helping one another, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one DANTE BARTOLOME Y FLORES, by then and there shooting him with a gun hitting him on the different parts of his body, thereby inflicting upon the said Dante F. Bartolome mortal gunshot wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.[1]

Only appellant was apprehended by the police. Virgilio Palma remains at large. Upon arraignment appellant, assisted by counsel, pleaded not guilty to the charge. Thereafter, trial on the merits ensued. Subsequently, the trial court rendered its verdict finding appellant guilty, thus:

WHEREFORE, premises considered, the accused Jaime Valenzuela is hereby found guilty beyond reasonable doubt of the crime of murder and is therefore sentenced to serve the penalty of reclusion perpetua and to pay the heirs of the deceased the sum of P50,000.00 for the death of the deceased.

Considering that the penalty imposed is reclusion perpetua and pursuant to Section 7 Rule 114 of the Rules of Court as amended by Ad. Cir. 12-94, the bailbond of accused Jaime Valenzuela is hereby cancelled and he is directed to be committed immediately to the National Penitentiary.

It appearing that despite the issuance of an order of arrest against Virgilio Palma on March 15, 1990, up to the present time said accused remains at large and no return of the service has been made to this Court, let an alias warrant for the arrest of accused Virgilio Palma be issued.

SO ORDERED.[2]

The decision is now on appeal before us in view of the penalty imposed. Appellant alleges that the trial court erred:

## I

...IN NOT APPRECIATING THE POSITIVE DECLARATION OF WITNESS NELSON MARTINEZ THAT ACCUSED IS NOT THE PERPETRATOR OF ALLEGED CRIME IMPUTED TO HIM;

## II

...IN NOT UTTERLY DISREGARDING THE CONFUSING, CONFLICTING AND CONTRADICTORY VERSION AND/OR ASSERTIONS OF PROSECUTION WITNESSES; (WHICH SUPPORT THE POSITIVE DECLARATION OF WITNESS MARTINEZ THAT ACCUSED IS NOT THE CULPRIT);

## III

### **...IN NOT ACQUITTING THE ACCUSED.[3]**

The issue before us is whether the trial court erred in convicting the appellant, despite the retraction of one eyewitness, Nelson Martinez. To resolve this issue we have to carefully review the testimonies of both prosecution and defense witnesses, particularly as to their credibility.

Prosecution witness Jesus Lopez testified that in the evening of May 16, 1989, appellant Jaime Valenzuela with two companions approached him and his friend along G. Tuazon, Sampaloc, Manila, and pointed a gun at him. His friend pushed him down and he was able to slip and run to where Dante Bartolome was drinking with others. Lopez told Dante to run because Valenzuela was firing his gun. Lopez ran to hide beside a house about 12 meters away. Dante stood up to also run, but was blocked by a table. Peeping through a hole, Lopez said he saw appellant approach and suddenly shoot Dante several times with a .45 caliber pistol hitting the latter's left shoulder, lower stomach and right shoulder blade.

Even after Dante fell, according to Lopez, appellant continued shooting Dante on the legs and finally on the head. Accused then fled. Lopez approached Dante who was by then already dead. Though Lopez brought the victim to the hospital, it was already too late.

The second witness for the prosecution, Nelson Martinez, testified that he was walking at the looban at G. Tuazon cor. Dela Fuente Street, Sampaloc, Manila, when he saw appellant carrying a gun and walking towards the place where Dante and companions were drinking. Appellant pointed the gun at Dante and fired 6 or 7 times. Nelson said he stood still and approached the victim only after appellant walked away. He was only passing by and did not know how the shooting came about.[4]

Dr. Florante Baltazar,[5] Medico Legal Officer, PNP Crime Laboratory, testified that he autopsied the victim, Dante Bartolome. He found six gunshot wounds on the body of Dante as follows: wound 1 at the dorsum of the right hand; wound 2 at the left elbow; wound 3 at the posterior middle third left forearm; wound 4 at the posterior left lumbar region; wound 5 at the left temporoparietal region, and wound 6 at the upper left shoulder. He testified that wounds 5 and 6 both at the victim's back were fatal. He stated that while wounds 2, 3 and 4 could have been inflicted at the back, it is also possible that wounds 1, 2, 3 and 4 are frontal wounds but not fatal. Aside from these six wounds, he also found two (2) grazing wounds.[6] He issued the victim's death certificate marked as Exhibit "A". His autopsy report with a sketch was marked as Exhibit "B," for the prosecution.[7] The envelope of the

bullet slugs was marked as Exhibit “C,”[8] while the slugs were marked as “C-1” and “C-2”. The report on the cause of death, i.e. multiple gunshot wounds, was marked as Exhibit “D”.[9]

For the defense, witnesses Nelson Martinez and Edgardo Manolos were presented. Nelson previously testified for the prosecution, but he retracted his earlier testimony. He instead testified that he saw appellant standing at the crime scene, but he was not sure if appellant fired the shots that killed Dante Bartolome.

Edgardo Manolos,[10] the appellant’s neighbor, said he saw the shooting incident, and that just before the shooting he was talking with appellant Jaime Valenzuela inside the latter’s house. Suddenly, they heard a gunshot and so both of them scampered out. Outside, from a distance of six meters, he saw a person holding a gun.[11] However, he did not identify this gunman at all, except to say it was not appellant.

The trial court found the prosecution evidence credible and sufficient to hold appellant Jaime Valenzuela guilty as charged.

In his appeal, appellant now contends that prosecution witness Jesus Lopez did not actually see the perpetrator of the crime. He argues that Jesus merely fabricated his testimony. To support his claim, appellant relies upon the retraction of Nelson Martinez, who said that appellant was not the perpetrator of the crime.[12] Appellant also asserts that he should be acquitted because the evidence adduced by the prosecution merely shows the “possibility of his guilt,” which is short of the test of moral certainty needed to support a conviction.[13]

For the appellee, the Office of the Solicitor General maintains that the trial court did not err in giving credence to the testimonies of the prosecution witnesses as against the self-serving denials of appellant. According to the OSG, the evaluation by the trial court of the testimony of a witness is received on appeal with the highest respect, having had the direct opportunity to observe the witness on the stand and detect if he were telling the truth. The OSG also says that the prosecution witnesses are unequivocal in positively identifying the appellant as the one who killed the victim. Finally, the OSG contends that the presence of treachery or alevosia qualifying the killing to murder was properly appreciated by the trial court. An unexpected attack under circumstances which render the victim unprepared and unable to defend himself, by reason of the suddenness and severity of the attack, constitutes alevosia, the OSG says. The manner by which appellant commenced and consummated the killing of the victim showed that the latter was totally surprised and defenseless during the attack.

Considering the evidence on record including the testimonies of the witnesses for the prosecution and the defense, we cannot agree with appellant’s assertion that the offender was not adequately identified. Two witnesses, Jesus Lopez and Nelson Martinez, testified that appellant approached the victim and shot the latter to death. Eyewitness Jesus Lopez testified that while paying for a bet in an “ending game,” he was standing together with companions at the “looban” of G. Tuazon corner Dela Fuente Street, Sampaloc, Manila. “All of a sudden,” he said, “somebody approached me and pointed a gun at me.” Asked who was “this somebody who did that to you?” he pointed to a man who, when asked, identified himself as appellant Jaime Valenzuela.[14] Luckily, the witness said he was able to escape from the gunman and hide in a neighbor’s (Ricky Bartolome’s) house.

The pertinent portion of his testimony follows:

Q: And after that, what happened next?

A: I saw from a hole that Jaime Valenzuela was approaching Dante Bartolome.

Q: And exactly tell the court what did you see?

A: All of a sudden he shot Dante.

Q: Who shot Dante?

A: Jimmy Valenzuela.

Q: When you saw Jimmy Valenzuela shot Dante, in what part of the body was he hit first?

INTERPRETER:

Witness referring to his left shoulder blade.

Q: What did Dante do if any?

A: He went nearer to the accused and was trying to grab the gun.

Q: And then what did Jimmy Valenzuela do when Dante was about to approach him?

A: He shot him again.

Q: Where was Dante hit on the second time?

INTERPRETER:

Witness referring to the lower left part of his stomach.

Q: And then what happened next?

A: He shot him again.

INTERPRETER:

Witness referring to the right shoulder blade.

Q: And then what happened?

A: And then he fell down.

Q: Could you tell the court the condition of light at the spot where Dante was shot?

A: I saw that it happened in front of the house of Mr. Basilio, where there was a light bulb lighting at the place and there was a shade located in front of the house.

x x x

FISCAL CABANGON (to witness):

Q: So after seeing all these shooting that the accused committed against the person of the victim, what did you do next?

A: He continued to shoot the victim until finally he shot him on the head and after that he walked away passing thru G. Tuazon towards our house.

Q: When accused shot the victim for the first time on his left shoulder, what happened to the victim?

A: He approached the accused and wanted to wrest the gun from his possession.

Q: Was he able to wrest the gun from the accused?

A: No, sir.

Q: And what did the accused do when the victim was trying to wrest the gun from the accused?

A: He continued on shooting the victim.

Q: How many times did the accused shot the victim after he shot the victim for the first time on his left shoulder?

A: About seven times.

Q: Did the accused shot him seven times in succession?

A: No, sir, after the first shot in the left shoulder, he shot him again on the lower left part of the stomach and when he fell down, that was the time he pumped in more bullets.

Q: So you are saying that when the accused shot the victim for the second time on his stomach, the victim fell down?

A: Yes, sir.

Q: What was the position of the victim when he fell down after the second shot?

A: He went down with his face on the ground.

Q: And when the victim was lying faced down on the ground, what did the accused do again to the victim?

A: He shot him on the head.

Q: After the accused shot him on the head, what else did he do?

A: He continued to shot him on the legs because he really wanted to kill the person.

After the accused shot the victim on the head for the third time, he continued firing his gun aiming it on the legs of the victim.

INTERPRETER:

Witness referring to his both legs.

Q: What was the position of the victim when he was shot by the accused on his legs?

A: He was lying down faced down.

Q: How many times did the accused shot the victim on his legs?

A: Two (2) times, sir.

Q: After shooting the legs of the victim twice, what else happened, do you know?

A: The victim was already dead due to loss of blood from the head and when we brought him to the hospital, it was already too late.

x x x

COURT (to witness):

Q: When you approached the victim, was he still alive?

A: He was already dead.[15]

Clearly, by this testimony, Jesus Lopez demonstrated he was witness to the events as these unfolded. Nothing in the records indicates that Lopez had improper motives to implicate appellant. His declarations on the witness stand under solemn oath, in our view, deserve full faith and credence.

Nelson Martinez corroborated the testimony of Jesus Lopez. During trial, Martinez positively identified appellant

as the person who shot the victim. He testified that he was walking along an alley in M. De La Fuente Street in Sampaloc, Manila, when he heard a gunshot. He said he was just ten arms-length away from the spot where the shot emanated. There he saw appellant shoot the victim who was Martinez's uncle, and so he shouted for help. He heard about six to seven shots. After the last shot was fired, he saw appellant hurriedly leave the place. Nelson Martinez approached the victim and brought him to the hospital, although he believed by then he was already dead. [16]

The description at the trial by the eyewitness Nelson Martinez of the shooting of the victim is quite graphic. We quote from his testimony on direct:

Q: Did you see how he was shot?

A: Yes, sir.

Q: Will you please explain (sic) to the court what you saw – the manner by which the victim was shot by the accused?

A: When the first shot was fired, I saw that my uncle was hit at the left shoulder blade, and after that because their distance was about two arm's length from each other, when Uncle Dante [Bartolome] was approaching Mang Jimmy, Mang Jimmy [Valenzuela] shot him again and this time he was shot at the right shoulder blade.

Q: What was the condition of the light at the place when victim Dante Bartolome was shot?

A: The place was lighted because there was this bulb attached to the half roof/shade.[17]

According to the defense, Martinez had retracted his earlier testimony when he was called to testify by the prosecution. But all that he significantly said when examined by the defense was that he was not sure if the shot came from appellant.[18] In our view, the trial court did not err in not giving credence to the second testimony of Martinez. Moreover, the rule is that retraction by a prosecution witness does not necessarily vitiate the original testimony[19] because retractions are disfavored in law. Besides, it will be noted that the alleged retraction of Martinez was done more than one and a half years later, casting serious doubt thereon.

Manolos' testimony does not help appellant either. Manolos would have us believe that somebody else was the culprit because appellant was home during the shooting incident. Manolos' testimony that appears to support appellant's alibi, however, cannot prevail over the positive identification by Jesus and Nelson of the appellant as the gunman. Furthermore, appellant offered no other evidence to substantiate his alleged alibi.

In convicting appellant for murder, the trial court appreciated the qualifying circumstance of treachery. We find the trial court did not err on this point. In order that treachery would qualify a killing to murder, there must be proof that the attacker consciously adopted a mode of attack to facilitate the perpetration of the killing without risk to himself.[20] Even a frontal attack can be treacherous when it is sudden and unexpected and the victim was unarmed.[21] In this case, the victim was drinking with his friends and had no inkling that he would be attacked by appellant, who was accompanied by one Virgilio Palma, the co-accused who remained at large, and one PFC Antonio Roxas, who faced investigation by the JAGO.[22]

The attack though frontal was so sudden, leaving the victim, Dante Bartolome, with no opportunity to put up a defense. As the trial court observed, the victim attempted to get away but couldn't because he was blocked by a table. Appellant, who was fast approaching, suddenly shot the victim. When the unarmed victim tried to grapple for possession of the gun, he was fired at several times, causing him to fall face down. Already defenseless in that position, he was again shot by appellant, this time hitting his head and legs. As the autopsy report and the testimony of the medico legal officer showed, the victim sustained six gunshot wounds, two of which were at the

back, aside from grazing wounds. The number of gunshot wounds not only ensured the victim's death but also revealed that the killing was carried out with little or no risk to the assailant. The testimonies with the medical findings wove a tight web of evidence against appellant. All these clearly established appellant's guilt beyond reasonable doubt.

WHEREFORE, the assailed DECISION of the Regional Trial Court of Manila, Branch 5, in Criminal Case No. 90-82203, is AFFIRMED. Appellant JAIME VALENZUELA Y PANGILINAN is declared GUILTY of murder and sentenced to reclusion perpetua. He is also ordered to pay the victim's heirs P50,000 as civil indemnity, together with the costs.

**SO ORDERED.**

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

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[\*] Also referred to as Jimmy Valenzuela in some parts of the records.

[1] Rollo, p. 5.

[2] Id. at 14.

[3] Rollo, pp. 34-35.

[4] Id. at 12.

[5] Florencio Baltazar in the RTC Decision.

[6] TSN, June 27, 1994, pp. 2-11.

[7] TSN, June 27, 1994, p. 5.

[8] Id. at 6-7.

[9] Id. at 7.

[10] Edgardo Morales in the RTC Decision.

[11] TSN, December 11, 1995, pp. 2-4.

[12] Id. at 41- 43.

[13] Id. at 45-46.

[14] TSN, April 25, 1994, p. 3.

[15] TSN, April 25, 1994, pp. 3-8.

[16] Id. at 19-21.

[17] TSN, April 25, 1994, p. 21.

[18] TSN, October 10, 1995, pp. 3-4.

[19] *People vs. Mendoza*, 301 SCRA 66, 80 (1999); *People vs. Panida*, 310 SCRA 66, 93 (1999).

[20] *People vs. Quitlong*, 292 SCRA 360, 382 (1998).

[21] People vs. Reyes, 287 SCRA 229, 240 (1998).

[22] Judge Advocate General's Office.

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