

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1 BERNIE JAMON FAUSTINO, ACCUSED-APPELLANT.

G.R. No. 129220. September 06, 2000

Ponente: VITUG, J.

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VITUG, J.:

If a human must be taken to pay a debt to society, let not a wrong man, ever, be made to account for it. The trek to Justice is not a game of chance or skill but a quest for truth, the only path by which the righteous end can be reached.

The Regional Trial Court of Parañaque, Branch 260, convicted accused-appellant SPO1 Bernie Jamon Faustino of the crime of robbery with homicide and sentenced him to suffer the extreme penalty of death. The case was forwarded to this Court for automatic review.

On 10 April 1996, accused-appellant entered a plea of "not guilty" to the charge of Robbery with Homicide under an Information that read:

"That on or about the 11[th] day of March 1996, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with alias Romeo Bueno, alias Manolito Villanueva and alias Boy Marquez, who are still at large and eight (8) John Does, whose true names and present whereabouts are still unknown and all of them mutually helping and aiding one another, with intent to gain and without the knowledge and consent of the complainant BPI Family Bank, BF Homes, Parañaque Branch, and by means of force, violence and intimidation employed upon the persons of SPO1 Zaldy Cres and CVO Clarito Laurente, did then and there willfully, unlawfully and feloniously take, rob, and divest cash money amounting to the total sum of P1,150,248.00, belonging to said BPI Family Bank, to the damage and prejudice of the owner thereof in the aforementioned amount of P1,150,248.00; that on the occasion of the said Robbery, the above-named accused, with intent to kill and without justifiable reason, did then and there willfully, unlawfully, and feloniously attack, assault, and shoot with a gun one P/Ins. Florendo Escobar, thereby causing him serious gunshot wounds which caused his death."

"CONTRARY TO LAW."[1]

Following the arraignment, the trial ensued with both the prosecution and the defense, respectively, presenting their evidence.

Rowena Solon, assistant manager of BPI Family Bank, Parañaque Branch, testified that on 11 March 1996 at around 1:30 in the afternoon, while attending to a withdrawal transaction, two armed men suddenly barged in. With their guns aimed at the people inside the bank, one shouted, "Holdup ito;" the other yelled, "Relax lang, dapa, dapa lahat!" Out of fear, the bank employees and bank clients laid prostrate on the floor. One of the malefactors, in maong pants and t-shirt, walked towards the cash vault. A loud explosion, shortly followed by gunshots, was heard. Soon, the robbers dashed to their cars with their loot and sped away. In minutes, it was over. After verification, it was determined that the robbers got away with a cash sum of P1,277,956.68.

SPO1 Zaldy Cres was assigned at Block 5, Parañaque, Metro Manila, covering Barangay BF Homes, El Grande Avenue and Aguirre Street, in Sucat. Responding to the report that men with high-powered guns were seen near BPI Family, he, together with Police Inspector Florendo Escobar and civilian agent Michael Laurenti, rushed to the vicinity. Just as they were closing in, SPO1 Cres spotted a man standing beside a coconut tree with his M-203 firearm pointed at them. Barely seconds passed when the man started to fire his firearm successively. SPO1 Cres was instantly hit at his upper arm and stomach, and the mobile car crashed onto the A&C Minimart.[2] He crept out of the mobile car and took refuge in the neighboring bakeshop where he called for reinforcement. There was a brief exchange of gunshots and, when it subsided, he saw the lifeless body of Insp. Escobar.

SPO3 Pedro Buccat, Chief Officer-In-Charge of the Investigation at the Parañaque Police Headquarters, testified that he promptly repaired to the BPI Family bank with SPO3 Wilfredo Cornelio, SPO1 Alberto Parena, and SPO1 Mario Interia upon being advised about the robbery by the Tactical Operations Center. At the crime scene, the police officers were able to recover empty shells of calibers M-14, M-16, M-203, a grenade launcher, and deformed shrapnel. The items were subsequently turned over to PNP Crime Laboratory for examination. A cartographic sketch of the accused was made from the description furnished by Mrs. Tina Ocampo, an eyewitness to the bank robbery. One of the "operatives" commented that the sketch resembled a police officer, named SPO1 Bernie Faustino, stationed in Manila. SPO3 Buccat, when asked, could not recall the name of the person who made that comment.

Dante K. Inting, the deputy chairman of the security unit of BF Homeowners Association, declared that he was at the A&C Minimart, located across BPI Family, at the time of the robbery. He was at the store around 11:30 a.m. until about 1:30 p.m. when, abruptly, he heard a loud explosion coming from the direction of BPI Family Bank. Curious, he left the store and saw accused-appellant standing along Aguirre Street sporting a M-203 grenade launcher. He spotted a mobile patrol car trudging from the other end of the street until it smashed into the border of A&C Minimart building. A bullet shattered the windshield of the car. When accused-appellant poked his gun at him, he moved aside and concealed himself behind a pile of rice sacks. From where he sought cover, he witnessed a policeman crawling out of the mobile car. While the policeman was close to the rear of the vehicle, accused-appellant shot him. The wounded policeman was still able to ran towards the direction of Far East Bank, but accused-appellant continued to fire at him until the victim finally fell to the ground. He also saw accused-appellant fire successive shots at another policeman who was fleeing towards a nearby bakeshop. Not long after that, he saw the gunwielder hastily board a red Mazda pick-up, with five to six armed men, for a quick getaway. The witness later crossed the street and approached some responding policemen. He did not breathe a word to anyone on the identity of accused-appellant but instead went to Tagaytay right after the incident to attend to some projects. It was only several days later, or on 25 March 2000, when he disclosed to Col. Florencio Regis the identity of the gunman. His act of finally laying bare, he said, was triggered by the threat made by a certain Ritchie Ylaya (Ylaya), whom he came across days after the incident, who was said to have remarked, "Pare, lie-low ka muna dahil nabangga mo ang grupo. Kukunin ka raw sa pamilya mo."

Inting stated that he knew accused-appellant personally, since he himself, like his brother Bienvenido Inting, was a policeman, formerly connected with the Special Operation Division of Southern Police District Command. Before he was discharged from the service back in 1987 or 1988, he frequented Manila to get some information and survey "intelligence" matters. On several occasions during his surveillance, he already caught glimpses of accused-appellant and his group within his area of responsibility. He saw accused-appellant on 05 March 1996 and the days that followed at 54 Canton Street, Phase III BF Homes, Parañaque, in the company of SPO1 Alexander Anggulo, SPO1 Herbert Borja, Boy Marquez, Bueno, Miranda, SPO2 Benjamin de Jesus, and SPO1 Benjie Faustino. He also took note of their vehicles; a red Lite Ace van, a green Lite Ace van, a red Mazda pick-up, and three taxi cabs, all parked thereat.

The civilian volunteer Michael Laurenti, assigned at Block 5, Parañaque Police Station, was among those dispatched to investigate the BPI Family robbery incident. He testified that at around 1:30 in the afternoon of 11 March 1996, Insp. Escobar apprised him that there was a shootout at the corner of El Grande Avenue and Aguirre Street. He boarded the mobile car to join Insp. Escobar and SPO1 Cres. At the corner of El Grande Avenue and Aguirre Street, he saw two armed men, one was positioned in front of BPI Family, holding a M-203 grenade launcher, while the other was right in the middle of the street armed with a M-14 firearm. Accused-appellant fired the grenade launcher the moment he spotted the mobile car. It hit and shattered the car windshield. A volley of gunfire ensued. He crawled out of the car and ran past Insp. Escobar, who appeared to have been hit in the left arm and left temple. Shortly after the gunfire, they all boarded an ambulance which headed for Parañaque Medical Center.

Two days after the incident, Laurenti, upon being shown a photograph of accused-appellant, and informed by SPO3 Buccat that the man on the picture was one among the suspects in the robbery and shootout incident that took Insp. Escobar's life, acknowledged that accused-appellant was the culprit.

Dr. Bienvenido Munoz, Medico Legal Officer of the National Bureau of Investigation, examined the cadaver of Insp. Florendo Escobar. His findings disclosed that the deceased sustained one gunshot wound and one shrapnel wound. He prepared an autopsy report and the death certificate showing that Insp. Escobar died of gunshot wounds.

Moises Tamayo, an agent assigned with the Task Force Anti-Kidnapping, Homicide, and Robbery Division of the National Bureau of Investigation ("NBI"), recounted that at around 2 o'clock in the afternoon of 11 March 1996, his office received a call from Director Toledo, instructing him and his men to proceed to BPI Family at El Grande. He, together with Atty. Sacaguing and cartographer Armando Mendoza, immediately went to the scene of the crime. Once inside the bank, witnesses were presented to the cartographer, one after the other, and they described the individual appearances of the armed men who robbed the bank. Seeing that a cartographic sketch resembled one of the Faustino brothers, he directed Atty. Sacaguing to pass around the photographs of Bernie Faustino, Benjie Faustino, Benjamin de Jesus, and Herbert Borja to the witnesses, and from one of these pictures, accused-appellant was identified to be among the malefactors by a witness.

Tamayo related that months before the robbery, a certain Atty. Perito and a woman went to their office to report that Benjamin De Jesus, Herbert Borja, Francisco Baltazar, and the Faustino brothers were responsible for the series of robberies in Metro Manila. Following the information, he requested for photographs of the people named by the informants from the Western Police District. Eventually, photographs were obtained from the National Police Commission. From 1995 up until March 1996, he consistently made a follow-up investigation on the intelligence report but his verification produced negative results insofar as accused-appellant was concerned.

Joan M. Escobar, daughter of deceased Lt. Escobar, testified that her father, 49 years of age at the time of his untimely death, was receiving a monthly income of P14,026.50. The family incurred (a) P600.00 at the Parañaque Medical Center; (b) P65,000.00 at Trinidad Funeral; (c) P10,000 burial expenses; and (d) P50,000 additional funeral expenses.

The defense, during its turn, presented a number of witnesses in support of the denial and alibi of the accused.

Senior Inspector Emiliano R. Amatosa, block commander of Block 3 (Sub-Station 9) of the Malate Police Station, testified that accused-appellant reported for duty at around 10:00 in the morning of 11 March 1996. Shortly before 11:00 a.m., the police station received a complaint from Ella Ocampo Celeste and Allan Matic regarding a theft incident in Munoz Street, Malate, Manila. As soon as accused-appellant and SPO2 Datu returned from a lunch break, the police officers proceeded to the place where the reported theft occurred and were able to apprehend a

suspect, a certain Daloso, thought to be a member of the akyat bahay gang proliferating within the neighborhood. Upon returning to the police headquarters, accused-appellant and SPO2 Datu took turns in conducting a tactical interrogation on Daloso. Insp. Amatoso first interviewed Daloso, followed by accused-appellant, and finally by SPO2 Datu. The interrogation ended at about four o'clock in the afternoon. Insp. Amatoso instructed SPO2 Datu and accused-appellant to then bring the suspect to Malate Police Station, Sub-station 9, of the Western Police District Command. At around eight o'clock in the evening, Insp. Amatoso received a phone call from his immediate superior, Police Chief Inspector Felix Garcia, inquiring on the whereabouts of accused-appellant. It was only then when he learned that accused-appellant had been implicated in the crime of robbery with homicide. Insp. Amatoso ordered accused appellant to report to him the following morning.

SPO1 Jose Jeffrey Mendiola, a police investigator assigned at the Investigation Unit (Station 9) of Malate Police Station, recounted that at around five o'clock in the afternoon of 11 March 1996, SPO2 Datu, Luzviminda Manalo, complainants Ella Ocampo Celeste and Allan Matic, and accused-appellant went to the police station and referred a theft case against suspect Daloso. Since accused-appellant and SPO2 Datu were both in a hurry to return to their block headquarters, said to be unattended at the time, the former merely signed in blank an affidavit for the arrest of the suspect. It was Manalo, an alleged witness to the crime of theft, who supplied the entry found in paragraph 4 of the affidavit of arrest, stating "that they effected the arrest of Romualdo Daloso at about 10:00 in the morning of 11 March 1996 along Meding Street, Malate, Manila," a practice which, although tolerated, was not the standard procedure in the arrest of a suspect.

Ella Ocampo Celeste testified that on 11 March 1996, at about 10:30 in the morning, she went to Block 3 Police Station, together with Allan Matic and Luzviminda Manalo, in order to report a robbery of which she was the victim. She claimed that in the early dawn of that day, she was robbed of a VHS machine, a cassette tape, a calculator, and P5,000.00 cash. Celeste and her two companions went to F. Munoz Street at around 10:30 a.m. with Lt. Amatoso, SPO2 Datu, and accused-appellant. At around 11:30 a.m., the group returned to the station, after which they again repaired to the crime scene and then got back to the station at about an hour past lunchtime.

Isagani T. Neri was chairman of Barangay 744, Zone 80, 5th District Manila, on 11 March 1996, when the shootout in Parañaque occurred. On that day, around noon, he saw Lt. Amatoso, SPO2 Datu, the handcuffed suspect Daloso and accused-appellant pass by his house and board a jeepney bound for Dagonoy.

Reynaldo G. Zamora, barangay kagawad, testified that on 11 March 1996, accused-appellant stayed from 1:00 p.m. to 4:20 p.m. at the second floor of the barangay hall, which also served as the headquarters of the "cops on the block" at Bgy. 73 Zone 80, conducting a tactical interrogation on Daloso. Neither accused-appellant nor he left the premises of the building. Immediately following the customary interrogation, Zamora left the barangay hall to accompany accused-appellant and SPO2 Datu in delivering the suspect to Precinct 9. It was already past five when they all came back to the barangay hall.

Ernesto Rosales, chairman of Barangay 78, Zone 80, stated that at around 11:30 in the morning of 11 March 1996, while inside the barangay hall, he saw SPO2 Datu and accused-appellant talking to a man and a woman, whom he presumed were there to file a complaint. Not long afterwards, SPO2 Datu, accused-appellant, and the two complainants left the detachment. The group returned at about one o'clock in the afternoon, this time with a suspect in handcuffs. All went upstairs where a tactical interrogation was promptly conducted. He himself went up and saw accused-appellant asking suspect if he took a VHS machine. Lt. Amatoso and SPO2 Datu then left the detachment to apprehend another suspect, pointed to by Daloso, leaving accused-appellant behind to guard the suspect. About half an hour later, Lt. Amatoso and SPO2 Datu returned to the detachment and the interrogation resumed. Between four and five o'clock in the afternoon, the police officers escorted Daloso to Block 9.

Ritchie L. Ylaya stated that, between the hour of 12:30 and 1:30 in the afternoon of 11 March 1996, he saw Dante Inting and company drinking beer inside Rojonet Restaurant in Sucat, Parañaque. Inting even asked him over for a drink but he turned down the invitation since he was with his younger son. When he reached home, his other son told him that there was a robbery incident at BPI Family bank, just a block away. Being then the security chairman of BF Northwest, Parañaque, he grabbed his radio and proceeded to the scene of the crime. He called some people to assist him in directing traffic and in making sure that the area was secured. He belied the allegation that Inting was an officer of the homeowners security.

SPO Rodolfo Villadolid, a polygraph examiner assigned at the PNP Crime Laboratory, attested that, upon the request of Police Superintendent Rodolfo Castillo Sison, he conducted a polygraph examination on accused-appellant. His examination yielded negative results.

Marilyn de Quinto, a forensic chemist at PNP Crime Laboratory, Camp Crame, Quezon City, declared that on 12 March 1996, upon a referral given by Chief Inspector Vicencio Cabasal, she conducted a paraffin test on the person of accused-appellant, and her findings revealed that both hands of the accused were negative of gunpowder residues. Considering the kind of test she had employed, she dismissed outrightly any possibility of error.

SPO2 Datu, a member of Station 9, Western Police District Command, was presented to show that on 11 March 1996, between the hours of 11:30 in the morning and 4:00 in the afternoon, he was with accused-appellant performing official functions. He had lunch at a nearby eatery with accused-appellant. Upon their return to the detachment, they attended to the complaint of Celeste and Matic and looked for the alleged suspect, Daloso, who was finally accosted in an eatery along Meding Street, Singalong, Manila. Daloso was taken to the detachment where he underwent the standard tactical interrogation until four o'clock in the afternoon. In later bringing the suspect to Station 9, he was accompanied by accused-appellant and kagawad Zamora.

Accused-appellant, SPO1 Bernie Jamon Faustino, vehemently denied any participation in the crime leveled against him. With a regular tour of duty from 7:00 in the morning until 3:00 in the afternoon, he was assigned at Block 3, Station 9 of Western Police District Command, located in Dagonoy, Singalong, Manila. On 11 March 1996, with the prior permission of his superior, Lt. Amatos, accused-appellant reported late for work because he needed to follow-up his loan application. He attended to the complaint lodged by Ella Ocampo Celeste and Matic upon the instructions of Lt. Amatos. He had lunch with SPO2 Datu in an eatery along Arellano Street corner Estrada Street, Malate, Manila. Shortly upon returning from lunch, he, in the company of SPO2 Datu, Lt. Amatos, and the complainants, went to Meding Street, Singalong, Manila, at around 12:45 p.m. to conduct an investigation. The police officers arrested Daloso around one o'clock in the afternoon and escorted him to Block 3 where they subjected him to tactical interrogation until 4:30 p.m. Upon orders of Lt. Amatos, Daloso was turned over to the Investigation Unit of Station 9 in Adriatico Corner Quirino Avenue, Metro Manila. SPO2 Datu, the complainants, the suspect, and Zamora were with him in bringing Daloso to the station.

While he stated in his affidavit of arrest that suspect Daloso was arrested at around 10:30 in the morning, accused-appellant, nevertheless, maintained in court that the arrest was actually effected at about 1:00 in the afternoon.

The Regional Trial Court, Branch 260, Parañaque, Metro Manila, after a long trial, rendered its decision, finding accused guilty of the crime charged; thus:

“WHEREFORE, finding accused Bernie Jamon Faustino guilty beyond reasonable doubt of the crime of robbery with homicide as defined and penalized in Art. 294 of the Revised Penal Code, as amended by R.A. No. 7659, he is hereby sentenced to death. For the civil liability, he is hereby condemned to pay the amount of P1,277,956.68 representing the amount taken from the Bank of the Philippine Islands, and to the heirs of the

deceased the following:

P50,000.00 as civil indemnity for death in line with existing jurisprudence;

P600.00 for hospitalization expenses of Florendo Escobar;

P125,000.00 for funeral and burial expenses of Florendo Escobar;

P14,026.50 for a period of six (6) years representing his monthly income;

P500,000.00 as moral damages;

P500,000.00 as exemplary damages.

"The Clerk of Court is directed to prepare the mittimus for the immediate transfer of Bernie Jamon Faustino from the Municipal Jail of Parañaque, Metro Manila to the Bureau of Corrections in Muntinlupa and to forward all the records of the case to the Supreme Court for automatic review in accordance with Section 9, Rule 122 of the Rules of Court and Art. 47 of the Revised Penal Code, as amended by Sec. 22 of the Republic Act No. 7659.

"SO ORDERED.

"Parañaque, Metro Manila, May 22, 1997"[3]

In its appeal brief, the defense ascribed to the trial court the following "errors":

"I

The trial court gravely erred in not heeding accused-appellant's prayer for inhibition sought during the trial.

"II

The trial court gravely erred in convicting appellant Bernie J. Faustino to death based on the fantastic and incredible testimony of witnesses.

"III

The trial court gravely erred in convicting appellant Bernie J. Faustino to death based on the irregular and belated if not spurious identification.

"IV

The trial court gravely erred in disregarding the defense of alibi, when the evidence of the prosecution is doubtful and weak.

"V

The trial court gravely erred in not considering accused-appellant defense of alibi when the same was fully corroborated by testimonial as well as documentary exhibits.

"VI

The trial court gravely erred in convicting the accused-appellant when the prosecution failed to establish his guilt beyond reasonable doubt."[4]

It is axiomatic that the prosecution bears the onus to prove beyond reasonable doubt not only the commission of a crime but likewise to establish, with the same quantum of proof, the identity of the person or persons responsible therefor.

There is no question about the fact that a grave and most unfortunate crime has been committed. It is, in this case, indeed a given, but next to it is the pivotal issue of whether or not the prosecution has been able to discharge its equal burden in substantiating the identity of accused-appellant as being among the perpetrators of the crime. So here, as usual, we must look at the strength of the evidence introduced by the prosecution and certainly not to take a greater glance at the weakness of the cause for the defense.

Accused-appellant was fingered by three witnesses, namely: Dante K. Inting, SPO1 Zaldy Cres and Michael Laurenti. In assessing an out-of-court, as well as in-court, identification of suspects, court ought to be guided by the "totality of circumstances test." Under this standard, various factors figure in the appreciation of the testimony of the witness, to wit:

"(1) The witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure." [5]

The Court must now examine this touchstone and see it has been satisfactorily accomplished by the prosecution in placing its pointing hand on the shoulder of accused-appellant.

Inting's testimony may not but be regarded with jaundiced eyes. He asserted that he was at A&C Minimart, across BPI Family, when the bank heist took place. Inting claimed to have known accused-appellant prior to the robbery. In fact, he vehemently asserted that he knew him personally. He vaunted that he was once a policeman himself connected with the Southern Police District, Intelligence Division, [6] and later the deputy chairman of the Security Unit of BF Homeowners Association, Phase III. [7] He said that, during his surveillance from 05-09 March 1996, he caught glimpses of accused-appellant and his group [8] with several vehicles including the get-away red Mazda pick-up, parked within his area of responsibility. [9] Yet despite having observed and vividly recalled all these seemingly suspicious actuations of accused-appellant and his group, he did not disclose this fact to the authorities despite several opportunities to do so. In fact, it was only on 25 March 1996, or several days after the robbery, that he volunteered this information to the authorities and only after he was supposedly threatened not to reveal his knowledge of the incident.

Inting's behavior is less than congruent with human nature and experience. The natural reaction of one who witnesses a crime and recognizes the offender is to reveal it to the authorities at the earliest opportunity. [10]

"The natural tendency of a person who has witnessed the commission of a crime is to report it, and describe the malefactors at the earliest possible opportunity. This is particularly true where the victim is so closely related to the witness who claims to have seen the commission of the crime. Edwina's failure to promptly come out with such information to the police, casts a serious doubt on the accuracy, if not veracity, of the identification of accused-appellant later made by the same witness." [11]

Even perhaps more strangely is that the witness would only come out into the open when, precisely, fear is instilled by a threat against it.

While the Court is not unmindful of the natural reticence of witnesses from volunteering information on criminal acts they have witnessed, the impasse and the number of opportunities wherein they could have relayed such vital information and failed to do so, however, somehow detract from the credibility of their testimony. [12] Inting's failure to tell on accused-appellant to SPO1 Abangan, Major Pascual and SPO1 Cres casts doubts on his reliability and can merely infer an afterthought. [13] Notably, the delay in identifying accused-appellant to the authorities has not been sufficiently explained.

SPO1 Cres, for his part, was not really that certain in identifying accused-appellant as being the gunman. In his

Sinumpaang Salaysay, dated 14 March 1996, during the preliminary investigation, as well as in the trial itself, witness suddenly appeared to be too dazed to be convincing when asked about the identity of the gunman.

"Q:

Babasahin ko sa iyo itong salaysay na ibinigay mo question no. 5 'Namukhaan mo ba mobile na dala ninyo?' Sagot: Hindi ko po masyadong mamukhaan pero pag nakita ko siya sa personal baka sakaling makilala ko siya', dito sa sagot mong ito papayag ka ba na ikaw ay hindi mo siguradong natatandaan ang mukha ng bumaril sa inyo?

"A:

Hindi ko po siya masyadong mamukhaan pero kung makikita ko po siya, maaaring matatandaan ko po ang kanyang mukha.

"Q:

Ibig mong sabihin babaguhin mo ang sagot mong ito na hindi mo masyadong na mukhaan ang bumaril sa inyong mobile car?

"A:

Hindi ko po siyang masyadong mamukhaan pero kung makikita ko po, siya ay aking mamumukhaan, sir.

"ATTY. VERZOSA:

"Your Honor, counsel already arguing with the witness.

"COURT:

"Don't argue to the witness Atty. Agoot.

"Atty. Agoot:

"Your Honor, I am trying to impeach this witness because his statement contradict to the statement which he gave to the police, Your Honor.

xxx xxx xxx

"Q:

SPO1 Zaldy Cres, natatandaan mo pa ba ng tayo ay magkita sa opisina ni Fiscal Elizabeth Guray noong Marso 25, 1996?

"A:

Yes, sir.

"Q:

At natatandaan mo rin ba na tinanong ni Fiscal Guray sa iyo na kung maituturo mo ang akusado na si SPO1 Bernie Faustino, natatandaan mo ba ang iyong sagot doon?

"A:

Opo, sir.

"Q:

Hindi ba ang iyong sagot ay hindi ko sigurado?

"A:

Opo, sir.

xxx xxx xxx

"Q:

Noon hindi ka sigurado at tayo ay magkausap sa opisina ni Fiscal Guray iyon ay mas maaga pa sapagkat iyon ay March 25, 1996 noong mangyari iyon ngayon ay sigurado ka na si SPO1 Bernie Faustino and humawak at nagpapatok sa inyo ng baril?

"A:

Kamukhang kamukha niya kasi, sir.

"Q:

So, hindi ka sigurado sa sagot mo?

"A:

Hindi ako sigurado pero kamukhang kamukha niya po kasi ang nagpaputok sa amin nang baril, sir." [14]

Laurenti, on the other hand, identified accused-appellant as being one of the malefactors only after he was shown a picture of him by SPO3 Buccat two days after the incident.[15] He did not inform the investigators of the identity of the gunman when they took his statement the day before.[16] He acknowledged that SPO3 buccat showed him pictures of accused-appellant and his twin brother, Benjie, and informed him that they were their suspects in the robbery,[17] which could have likely influenced the witness. Laurenti testified:

"Q:

Kailan mo sinabi sa kanya na maisasa-larawan mo o mamumukhaan mo iyung taong bumaril sa inyo?

"A:

Mga dalawang araw po.

"Q:

Nakalampas?

"A:

Opo.

"Q:

So, dalawang araw, March 13, and ibig mong sabihin?

"A:

Opo.

"Q:

So, noong kunin ang statement mo noong March 12, 1996, hindi mo pa sinabi sa kanyang mamumukhaan mo ang bumaril sa kanya. Iyon ang ibig mong sabihin?

"A:

Hindi ko po sinabi sa kanya dahil kinakabahan po ako.

"Q:

Kaya, hindi tinanong sa iyo dito sa statement mo?

"A:

Ano po?

"Q:

Dahil hindi mo sinabi sa kanya na maisasalarawan mo iyung bumaril sa inyo, kaya hindi inilagay dito sa statement mo at hindi tinanong sa iyo ni SPO3 Buccat kung mamumukhaan mo iyung bumaril sa inyo?

"Atty Verzosa:

The question is vague, Your Honor.

"Atty Agoot:

Very clear, Your Honor.

"Court:

Witness may answer.

"xxx xxx xxx

"A:

Opo.

"Q:

Ngayon, bakit mo nasabi naman kay SPO3 Buccat noong March 13 na namumukhaan mo iyung taong bumaril sa iyo, bakit naimbestigahan ka bang muli noong March 13?

"A:

Opo.

"Q:

Sino ang nag-imbestiga sa iyo?

"A:

Binalikan po ako ni SPO1 Buccat.

"xxx xxx xxx

"Q:

Noong ikaw ay balikan muli ni Buccat, saan ka binalikan, sa hospital?

"A:

Block 5 po.

"Q:

Sino ang mga kasama mo doon?

"A:

Mga pulis po.

"Q:

Sino ang mga pulis na iyon?

"A:

SPO1 Pactolan po, Sahara, SPO1 Ricardo.

"Q:

Sinabi mo ba kay SPO1 Pactolan na ang bumaril sa inyo ay maisasalarawan mo?

"A:

Opo.

"Q:

Ano ang ginawa ni Pactolan noong masabi mo sa kanya na maisasalarawan mo iyung bumaril sa inyo. Mayroon ba siyang ginawa, dinala ka ba sa NBI?

"A:

Hindi po.

"Q:

Hindi ka rin kinunan ng statement ng pulis na iyon?

"A:

Hindi po.

"xxx xxx xxx

"Q:

xxx Ngayon, batik tayo mull doon sa pagbalik sa iyo ni Pedro Buccat noong March 13. Di ba, ang katotohanan noon may dala-dala siyang picture na ipinapakita sa iyo, iyung picture ni SPO1 Bernie Faustino?

"A:

Paki-ulit.

(Stenographer read back the question)

"A:

Mayroon po.

"Q:

Hindi ba ang katotohanan, sinabi niya, ito ang ituro mo?

"A:

Hindi po.

"Q:

Hindi ba sinabi sa iyo ni SPO3 Buccat na ito ang ituro mo?

"A:

Hindi po.

"Q:

Ano ang sinabi niya sa iyo?

"A:

Magsabi po ng katotohanan tungkol doon sa larawan na ipinapakita sa akin.

"Q:

Ibig mong sabihin, sinabi sa iyo ni Buccat, habang ipinapakita sa iyo ang picture, hindi ito ang bumaril o ito ang bumaril?

"A:

Sinabi po niya, ito ba ang bumaril.

"Q:

Sinabi niya sa iyo, ito ba ang bumaril?

"A:

Ako po mismo ang nagsabi.

"Q:

Sinabi ba sa iyo?

"Atty. Verzosa:

That is the answer.

"Court:

Ano ang sinabi sa iyo ni Buccat noong ipinapakita sa iyo ang litrato?

"A:

Noong ipinapakita po sa akin, itinuro ko po iyung tao.

"Court:

Ano ang sinabi mo?

"A:

Siya po ang bumaril.

"Q:

Ibig mong sabihin, mayroong picture na dala-dala si Buccat, ito ba ang picture na dala-dala ni SPO3 Buccat noong March 13?

"A:

Iyan po.

"Q:

Noong ipakita sa iyo ito, ano ang sabi niya, ito ang picture ni SPO3 Bernie Faustino at picture ni P03 Ben Faustino. Hindi ba sinabi niya iyon?

"A:

Opo.

“xxx xxx xxx

"Q:

Hindi ba ang katotohanan ng ipakita sa iyo ni SPO3 Buccat itong picture na ito, sinabi niya na ito ang mga suspects namin?

"A:

Opo."[18]

The pictures, furnished by Atty. Sacaguing after the cartographic sketch was prepared, were passed around by NBI agent Manuel Tamayo, who, in turn, received them, months before the incident, from a certain Atty. Fernando Perito and a lady companion who informed him that the Faustino brothers were responsible for the spat of robberies in Metro Manila.

Laurenti asserted that he was able to distinguish accused-appellant from his twin brother because accused-appellant, unlike his brother Benjie Faustino, did not have a mark on his face. It bewilders the Court how he could have detected the presence or absence of any distinguishing mark meters away and even while a gruesome incident was unfolding before his eyes. His testimony:

"Q:

Sabi mo, itinuro mo kanina na si SPO1 Bernie Faustino ang nakita mo?

"A:

Opo.

"Q:

Mayroon siyang kapatid ditong kamukha, tignan mo nga ang kapatid niyang si PO3 Ben Faustino kung kamukha niya?

"A:

Kamukha.

"Q:

Sinabi mo kanina na itong si SPO1 Bernie Faustino ang nakita mo. Bakit hindi itong si Ben Faustino? Mayroon ka bang distinguishing - marks kay SPO1 Bernie Faustino na magpapakita na iba siya kay PO3 Ben Faustino?

"Atty. Verzosa:

We will object, Your Honor. That is argumentative, based on speculation.

"Court:

Sustained. You should ask questions properly, Atty. Agoot. That is argumentative.

"Q:

Sabi mo kanina, magkamukha iyong dalawang tao, SPO1 Bernie Faustino at PO3 Ben Faustino. Di ba, totoo iyon?

"A:

Opo.

"Q:

Ngayon, sinabi mo rin kanina at sinigurado mo na si SPO1 Bernie Faustino ang nakita mo. Hindi kaya itong si PO3 Ben Faustino ang nakita mo, sapagkat magkamukha naman sila?

"A:

Hindi po. Siya po.

"Q:

Bakit mayroon ka bang marka sa kanilang mukha na nagpapakita na ang taong nakita mo sa puno ng niyog ay si SPO1 Bernie Faustino?

"A:

Siya po. Wala pong marka ang mukha niya. Iyung isa po meron.

"Q:

Saan ang marka niya?

"A:

Dito po sa may ilong at sa may mata niya.

"Q:

Wala namang marka diyan, di ba?

"Atty. Verzosa:

Argumentative, Your Honor.

"Court:

Sustained.

"Q:

Ibig mong sabihin, nakita mo, walang marka sa ilong, ganoon ba iyon?

"A:

Oho.

"Q:

Nakita mo iyong taong bumaril na nasa malapit ng niyog, walang marka sa ilong at walang palatandaan?

"A:

Oho.

"Q:

Kaya sinabi mong si SPO1 Bernie Faustino iyon?

"Atty. Verzosa:

The question is argumentative, Your Honor.

"Court:

Atty: Agoot, the question is very argumentative.

"Atty. Agoot:

I withdraw the question, Your Honor." [19]

The identification of an accused by an eyewitness is a vital piece of evidence and most decisive of the success or failure of the case for the prosecution. But even while significant, an eyewitness identification, which authors not infrequently would describe to be "inherently suspect," [20] is not as accurate and authoritative as the scientific forms of identification evidence like by fingerprint or by DNA testing. In cases where only pictures of accused-appellant are presented for identification, the supposed positive identification is regarded as being tainted almost like an uncounselled confession. [21]

Regrettably, neither bank teller Tina Ocampo nor security guard Wilfredo Novilla, who supposedly had described the gunman to the cartographer, was put to the witness stand.

True, the defense of alibi can easily be fabricated and is thus a weak defense but it should not be an excuse for at once looking at it with a biased mind. Alibi is not always undeserving of merit, for, at times, it can only be the possible defense that can be offered by an accused. Where the prosecution evidence on the identification of an accused enfeebles, so, also, alibi assumes commensurate strength. [22] Here, the time and sequence constituting

the alibi proffered by accused-appellant are corroborated by five witnesses, namely, S/Ins. Amatos, SPO2 Datu, Chairmen Ned and Rosales, and Celeste, none of whom appears to be a relative or possessed with a perceptible reason, cause, or motive to give false testimony and to thus perjure themselves. In fact, the purported positive identification of the prosecution witnesses pales when juxtaposed against the individual testimony of the defense witnesses.

Given all, serious doubt persists in the mind of the Court in laying the blame of the crime on accused-appellant and affirming his death sentence.

WHEREFORE, premises considered, the assailed decision in Criminal Case No. 96-340 of the Regional Trial Court, Branch 260, Parañaque, finding accused-appellant SPO1 Bernie Jamon Faustino guilty of the crime of robbery with homicide, is REVERSED and SET ASIDE. He is ACQUITTED of the crime charged and prison authorities to whose custody he has been given are directed to forthwith release him unless there are other lawful reasons for his continued custody. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.
Ynares-Santiago, J., on leave.

[1] Rollo, p. 12.

[2] Referred to in some parts of the TSN as "ANC."

[3] Rollo, p. 197.

[4] Rollo, pp. 63-65.

[5] *People vs. Teehankee*, 249 SCRA 54; *People vs. Verzosa*, 294 SCRA 466; *Neil vs. Biggers*, 409 U.S. 188, 34 L Ed, 401 93 S Ct 375, 29 Am Jur 2d § 627.

[6] TSN, 12 May 1996, p. 11.

[7] *Ibid*.

[8] SPO1 Alexander Anggulo, SPO1 Herbert Borja, Boy Marquez, Bueno, Miranda, SPO2 Benjamin de Jesus, SPO1 Benjie Faustino.

[9] *Idem.*, pp. 16-25.

[10] *People vs. Baquiran*, 20 SCRA 451.

[11] *People vs. Escalante*, 238 SCRA 554, 555.

[12] *People vs. Bautista*, 290 SCRA 58.

[13] See *People vs. Delmendo*, 109 SCRA 350.

[14] TSN, 24 April 1996, pp. 29-33.

[15] TSN, 10 July 1998, p. 88.

[16] *Ibid.*, 89.

[17] Ibid., 100.

[18] TSN, 10 June 1996, pp. 88-100.

[19] TSN, 10 June 1996, pp. 31-34.

[20] La Fave and Israel, Criminal Procedure, Hornbook Series.

[21] People vs. Padua, 215 SCRA 266.

[22] People vs. Peruelo, 105 SCRA 226.

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