

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEPE LOZADA, ACCUSED-APPELLANT.

G.R. No. 130589. June 29, 2000

Ponente: VITUG, J.

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VITUG, J.:

Accused-appellant Pepe Lozada interposed an appeal from the decision of the Regional Trial Court of Negros Occidental, Branch 50 stationed at Bacolod City, finding him guilty of murder and imposing upon him the penalty of reclusion perpetua.

On 07 July 1993, in Purok Talaba, Bacolod City, Philippines, at around 8:30 in the evening, Danilo Morin y Alisbo was shot to death. On 12 August 1993. Prosecutor Jesus S. Ocdinaria filed the following Information indicting Pepe Lozada for the killing; viz:

"That on or about the 7th day of July, 1993, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, being then armed with a firearm, with intent to kill, and by means of treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously assault, attack and shoot several times one Danilo Morin, thereby inflicting upon the latter the following wounds:

"1. Wound, gunshot: Entrance, ovaloid, 0.8 cm. in diameter with contusion collar, arm, left, proximal third lateral aspect, fracturing the left humerus simple, complete, to run underneath skin and muscle of axilla, to enter the thoracic cavity, left, lacerating the superior lobe of left lung, making no point of exit, two (2) metallic fragments were recovered admixed with blood in the left thoracic cavity.

"2. Wound, gunshot: Entrance, ovaloid, 0.8 cm. in diameter with contusion collar, scapular region (level of axilla), along left posterior axillary line, 17.0 cm. to left mid-vertebral line, 126.0 cm. above left heel, fracturing left scapular bone, to enter thoracic cavity, lacerating the superior lobe of left lung, perforating ventricle of the heart, then lacerating the lower lobe of right lung, making no point of exit, a slug is lodged and recovered underneath the skin, chest, anterior level of the 5th ICS, 15.5 cm. to right of mid-sternal line and 115.0 cm. above right heel.

"CAUSE OF DEATH: Shock and Hemorrhage due Gunshot Wounds.

"which directly caused the death of said victim Danilo Morin, to the damage and prejudice of his heirs, as follows:

- 1) As indemnity for the death of the victim P 50,000.00
- 2) As indemnity for the loss of the earning capacity of the victim P120,000.00
- 3) As moral damages P 10,000.00

"Act contrary to law.

"Bacolod City, Philippines, August 12, 1993."[1]

On 09 June 1997, following the arraignment of the accused and the presentation of evidence proffered by the prosecution and the defense, the Honorable Roberto S. Chiongson, presiding judge, found the accused guilty of the offense charged. The trial court adjudged:

"The evidence of the Prosecution clearly and sufficiently established the guilt of the accused beyond reasonable doubt. In view thereof, the Court finds the accused guilty as Principal of the crime of Murder defined and punished under Article 248 of the Revised Penal Code, and there being no modifying circumstance, the accused is sentenced to suffer the penalty of Reclusion Perpetua. The bond of the accused is cancelled and his immediate detention is ordered.

"By way of civil liability, the accused is ordered to pay the heirs of Danilo Morin the sum of P20,000.00 as actual damages and the sum of P50,000.00 as indemnification for his death."[2]

The Court has gone anew over the evidence adduced by the prosecution which presented six witnesses - Enrique Alisbo, an eyewitness and a first cousin of the deceased; police officers Dennis Versoza, Eduardo Garcia, and Ernesto Cabisag of the homicide section of the Bacolod City police station; medico-legal officer Romeo Gellada; and Susana Morin, mother of the deceased - and by the defense with its own witnesses - Felecito Gulaja, a resident of Purok Sigay which adjoins Purok Talaba; Aniceto Belleza, a construction worker; and Jolly Gomez, a resident of Purok Talaba - including the accused himself, Pepe Lozada.

The Case for the Prosecution. -

Testimony of Enrique Alisbo

At 8:30 in the evening of 07 July 1993, Enrique Alisbo and his cousin, the deceased Danilo Morin y Alisbo, were walking along Purok Talaba, Barangay Airport Singcang, Bacolod City, when Alisbo noticed that someone was directly behind them some meters away. He recognized the person to be Pepe Lozada. Suddenly there was a gunshot. Danilo Morin fell. When Enrique Alisbo instinctively turned around and looked, he saw Pepe Lozada pointing a gun at them. Fearing for his life, Enrique left his fallen cousin and ran. He heard more gunshots. He sought refuge inside a house with an open door. Soon, he reported the incident to her aunt Susana Morin, the mother of the victim, and his brothers who all promptly proceeded to the crime scene. From there, they brought Danilo Morin to the hospital where he was pronounced dead on arrival. The following day, Alisbo told the police that the assailant of Danilo Morin was Pepe Lozada.

SPO4 Dennis Versoza

At about 8:30 in the evening of 07 July 1993, SPO4 Dennis Versoza, assistant head of the homicide section of the Bacolod City police station, was informed of a shooting incident at Purok Talaba. He and fellow officer, SPO3 Eduardo Garcia, along with medico-legal officer Romeo Gellada, repaired to the crime scene. By the time they arrived, the victim had already been brought to the Bacolod Sanitarium Hospital. At the hospital, the officers saw the victim lying on a stretcher with gunshot wounds at the upper left back portion of his body. Also at the hospital was Morito Lozada, the father of accused-appellant, who was reported to have been hit by a stray bullet. SPO4 Versoza questioned the relatives and those present at the scene of the crime, as well as those at the hospital, but no one dared identify the assailant. He testified that the people at the crime scene, including the relatives of the victim, had appeared to him in a state of shock or fear. The following day, however, Enrique Alisbo and Mary Ann Vidal, went to the police station and reported that it was Pepe Lozada who killed the deceased. The police wanted to investigate Pepe Lozada but he was by then nowhere to be found.

SPO1 Ernesto Cabisag

Police officer Ernesto Cabisag was the desk officer on duty at the Bacolod City Police Department when police

officers Versoza and Garcia reported the shooting incident. Contrary to standard procedure, SPO1 Cabisag recorded the murder of Danilo Morin y Alisbo together with two other incidents, also occurring at approximately 8:30 that same evening - the injuries sustained by Morito Lozada from a stray bullet and the arrest of Nori Vidal for illegal possession of firearms - in the same blotter report. When asked to explain why he recorded three incidents in one police blotter report, SPO1 Ernesto Cabisag answered that it was because these incidents appeared to be related to each other.

PO3 Eduardo Garcia

PO3 Eduardo Garcia was with SPO4 Dennis Versoza and Dr. Romeo S. Gellada at the Bacolod Sanitarium Hospital where the body of the victim was brought and identified to be that of Danilo Morin. Also at the hospital for treatment at the time was Morito Lozada, the father of the accused, who was hit at the right arm by a stray bullet while sleeping in his house. The following day, Enrique Alisbo and Mary Ann Vidal, the wife of Nori Vidal, went to the police station and executed affidavits stating that they actually saw Pepe Lozada shoot Danilo Morin. PO3 Garcia said that the three incidents contained in the police blotter, i.e., the murder of Danilo Morin, the injuries sustained by Morito Lozada from a stray bullet, and the arrest of Nori Vidal for illegal possession of firearms were all related. Anent the case against Nori Vidal for illegal possession of firearms, Garcia stated that it was PO3 Gayona who recovered the illegal firearm from under the pillow of Nori Vidal. Gayona brought Vidal to the police headquarters for investigation. The charges, notwithstanding, no case for illegal possession of firearm was filed against Vidal.

Dr. Romeo S. Gellada

Dr. Romeo S. Gellada, the medico-legal officer of the Bacolod City police station, conducted an autopsy on the body of deceased Danilo Morin. Introduced as an expert witness, Gellada attributed the cause of death of Danilo Morin to shock and hemorrhage due to gunshot wounds. The first wound, located at the left arm, was a bullet wound on the proximal third left arm, lateral aspect, which, upon entrance, fractured the left humerus, and subsequently penetrated the left thoracic or chest cavity, hitting the superior lobe of the left lung. No point of exit was found. Two metallic fragments of a slug from an unknown caliber stained with blood were lodged inside the chest cavity. The second wound was located at the left upper back at the level of the left axilla. The second bullet fractured the left scapular bone and entered the chest cavity, perforating ventricle of the heart. No point of exit was found. A slug of a .38 caliber firearm was recovered embedded underneath the chest on the level of the fifth intercostal space anterior left chest. From the location of the wounds, Dr. Gellada concluded, that the victim could have been in a standing position when the assailant, positioned at no less than two feet behind him because of lack of powder burns on the victim, fired the shots. On cross-examination, he stated that there could be no certainty that the two wounds were caused by the same firearm.

Susana Morin

Susana Morin, mother of the victim, was at home when Mary Ann Vidal informed her that her son, Danilo, was shot. She immediately repaired to the crime scene and brought her wounded son to the Bacolod Sanitarium Hospital where he was pronounced dead on arrival. Susana Morin said that at the time of his death, Danilo Morin was 33 years old, unmarried, and was hauling sand and gravel earning not less than P200.00 a day. Upon his death, Danilo was the only breadwinner of the family. They spent about P20,000.00 for the funeral.

The Case for the Defense. -

Felicito Gulaja

Felicito Gulaja, a construction worker, would usually leave his work place at 5:00 in the afternoon. To reach

home, Gulaja would ride a passenger jeepney and disembark at a junction in front of the Pea store, being the last stop for jeepneys taking that particular route, from where he would then walk the rest of the way home. A few times, he would stay awhile at the Pea store, owned by Pepe Lozada, to drink beer before proceeding home. In the evening of 07 July 1993, Gulaja was at the Pea store drinking beer. Pepe Lozada, who personally served him his drink, did not appear to be armed. Gulaja had just consumed two bottles of beer when he suddenly heard three successive shots. He saw two masked persons whose identities he could not ascertain. He saw the victim, approximately 12-13 armslength from where he was seated, sprawled at the place just across the street. Gulaja did not immediately recognize the victim and only later learned that it was Danilo Morin. Gulaja knew Enrique Alisbo but the witness did not see him in the vicinity when the incident happened.

Aniceto Belleza

Aniceto Belleza, although not a resident of Purok Talaba, happened to be in the vicinity that evening of 07 July 1993 attending the local fiesta at the invitation of a friend, a certain Edgar, whom he had known for about a week before the incident. Belleza decided to drink beer at the Pea store where he got acquainted with Pepe Lozada. The latter served him beer and showed a Betamax tape. After a brief conversation, Lozada left him to look after other customers. A while later, Belleza heard two gunshots. Through a reflection of the light coming from the electric post, he saw a person wearing a bonnet. Belleza was approximately forty meters from the place where the victim fell from gunshot wounds he sustained.

Jolly Gomez

Jolly Gomez, store-owner and a long time resident of Purok Talaba, testified that at the time of the incident, the place was teeming with people since a "carnival" ("fair") was being held in the basketball court of the purok. He was watching a dice game when, suddenly, he saw people running towards the other side of the junction. He was to later learn that Danilo Morin was shot. At that instant, about 8:30 in the evening, he saw Pepe Lozada standing in front of the Pea store. Inside the store was Felecito Gulaja. His store and the Pea store owned by the accused were adjacent to each other. Across the street was the basketball court. A little further down the street, about 50 yards from the basketball court, was a waiting shed where, from a distance of approximately three meters, Morin was shot. The place was well-lighted because a streetlight was located just beside the shed.

Pepe Lozada

In the evening of 07 July 1993, Pepe Lozada was personally serving his customers and operating his "betamax" player when he heard successive gunshots. From his store, he could see the person who was shot, the area being beside a waiting shed which was well-lighted. People were running in different directions, and he heard that two masked persons had been responsible for the shooting. Moments later, his sister, Lilibeth Yuro, came running to him to say that their father, Morito Lozada, was hit by a bullet. His mother, who told him to stay at the store, and his sister brought Morito Lozada to the Hospital. Moments later, several police officers arrived at the scene of the crime, and he saw them arrest Nori Vidal from whom a .38 revolver was recovered. Nobody among those investigated by the police at the scene of the crime pointed to him as being the killer nor did any of the members of the Alisbo and Morin families mentioned his name to be the perpetrator of the crime. Prior to his arrest on 20 August 1993, he was not aware that a case had been filed against him. He claimed that he did not know nor had a grudge against Danilo Morin, Enrique Alisbo or anyone from Purok Neptune where the deceased and members of his family resided. The accused did narrate, however, the incident involving his brother-in-law, Fernando Halaghay, who was accused in the 1991 killing of several members of the Alisbo and the Alvarado families. On 06 June 1993, Jessie Morin, brother of deceased Danilo Morin, in retaliation of the massacre committed by Halaghay, killed the latter's helper, a certain Florencio Incelencia. Pepe Lozada surmised that Florencio Incelencia

might have had brothers and sisters, cousins or other relatives who, to avenge his death, could have taken it upon themselves to kill a member of the Alisbo family and to pull the trigger on Danilo Morin that fateful night of 07 July 1993. On cross-examination, Pepe Lozada admitted having been previously charged with, albeit acquitted of, the killing of two persons while being a security guard at the Victoria's Milling Company.

The Case according to the Trial Court. -

Assessing the evidence adduced before it, the trial court found the case presented by the prosecution to have been sufficiently established. It described the testimony of defense witness Aniceto Belleza as being "contrived and untruthful," and that of Felicito Gulaja not as incredible as that of Belleza but "just as impersuasive." The denial of accused Pepe Lozada, the trial court held, could not prevail over the positive identification made by eyewitness Enrique Alisbo.

Accused-appellant, in this appeal, assails the finding made by the trial court on the credibility of the witnesses. The Court, quite often, has stated that unless compelling reasons exist, such as when the trial court would clearly appear to have unjustifiably ignored the evidence, or any significant part of it, enough to warrant a different judgment of the facts or the case, an appellate court will, as a matter of course, defer to the judgment of the court a quo. Not too infrequently, the witnesses on a case give variant statements with each contender giving completely contradictory declaration. It is the trial judge before whom the witnesses appear and give their testimony, and no one else other than he, who can best determine their credibility or lack of it. A judge, a neutral and nonpartisan individual, is in a peculiar position to observe the behavior and the manner in which the witnesses deport themselves while giving testimony that almost invariably can reveal reliable marks of forthrightness or deceptiveness.

The Court, in the instant case, has not perceived any undue partiality on the part of the trial judge in giving more weight to the testimony of the witnesses presented by the prosecution than that which has been proffered by the defense. The eyewitness account of Enrique Alisbo, in the view of the Court, has sufficiently established the responsibility of accused-appellant in the killing of Danilo Morin. The Court quotes pertinent portions of Alisbo's testimony.

"FISCAL ESQUILLA:

"Q Mr. Witness, at about 8:30 in the evening more or less, on July 7, 1993 where were you?

"x x x x x x x x

"WITNESS:

"A At Purok Talaba.

"Q And this Purok Talaba, in what Barangay, and what City is this situated?

"A Barangay Singcang, Airport, Bacolod City.

"Q While you were walking at Prk. Talaba, Brgy. Airport, Singcang, Bacolod City, together with your two (2) companions Danilo Morin and a certain Moso, were there other persons walking also on the road?

"WITNESS:

"A There was no person, but we noticed that a certain Pepe was following us.

"FISCAL ESQUILLA:

"Q A certain 'Pepe.' Do you know the family name of Pepe?

"A Yes, sir.

"Q Please tell us his family name?

"A Lozada.

"Q If this Pepe Lozada is inside this Courtroom, will you able to identify him?

"A Yes, sir.

"Q Please identify him.

"COURT INTERPRETER:

"At this juncture, the witness pointing the accused.

"FISCAL ESQUILLA:

"Q And while you were walking at Prk. Talaba, Brgy. Airport, Bacolod City, you saw Pepe Lozada, the accused of this case where was Pepe Lozada then, when you saw him?

"A He was following us.

"Q How far was, Pepe Lozada walking while he was following you and your two (2) companions?

"A. He was about ten (10) meters away from us.

"Q So you want to convey this Honorable Court that Pepe Lozada was behind or was . . .

"ATTY. ABASTILLAS:

"Objection your Honor, the question is leading.

"FISCAL ESQUILLA:

"This is a follow-up question Your Honor, to enlighten the Court.

"ATTY. ABASTILLAS:

"If you saw somebody at your back following you, it does not mean that he is following you.

"COURT:

"It does not mean that he is following you.

"FISCAL ESQUILLA:

"So what is the exact location of Pepe Lozada when you said that Pepe Lozada was following you and your two (2) companions?

"COURT:

"Change your word 'following.'

"FISCAL ESQUILLA:

"Q Ah . . . Where was Pepe Lozada when you saw him while you were walking with your two (2) companions?

"WITNESS:

"A He was behind us, following us.

"Q When you said just he was 'following you' where was he on his right side, in the left side or at the back side, while you were walking with your two (2) companions at Purok Talaba?

"A He was directly behind us.

"Q And that was ten (10) meters away from you, as you have said, is that correct.

"A Yes, sir.

"FISCAL ESQUILLA:

"Q So while the accused was following you, what happened next?

"A I heard a gun fired and when I turned back, I saw Pepe Lozada pointing a gun to us.

"Q. You said you heard a gun fire, and you saw the accused in this case Pepe Lozada pointing . . .

"ATTY. ABASTILLAS:

"Ah - Your Honor, please, . . .

"FISCAL ESQUILLA:

"I'm not yet through Your Honor.

"ATTY. ABASTILLAS:

"I am referring to the last answer of the witness Your Honor giving us that the answer of the witness in the vernacular be copied to the records Your Honor. 'Paglupok amo to pagbalikid ko.'

"COURT:

"The Ilongo dialect, the answer, should be placed in quotation 'mark' and then the translation.

"WITNESS:

"A 'Paglupok amo 'to pagbalikid ko nakita ko dayon si Pepe Lozada nga nagataya sa amon.' There was a gun fired, and when I turned back I saw Pepe Lozada pointing a gun to us.

"FISCAL ESQUILLA:

"Q You said you heard a gun fire and you look back and you saw the accused Pepe Lozada, pointing to - in your position what was he pointing then at you?

"WITNESS:

"A A revolver.

"FISCAL ESQUILLA:

"Q Will you please illustrate before this Honorable Court what was the actual position of Pepe Lozada when you saw him after that gun fire?

"COURT INTERPRETER:

"The witness illustrated how the accused pointed a gun towards them by holding his both hands pointing to a person.

"FISCAL ESQUILLA:

"Q When you saw Pepe Lozada, was there anybody else accompanying him?

"A No, he had no companion.

"Q So, when you saw the accused pointing the firearm in your direction what did you do?

"WITNESS:

"A I ran after I saw that he was pointing a gun towards us. After that gun fire, and I saw Danilo Morin fell down, after I saw what had happened, I also fled.

"Q And when you ran, where was Danilo Morin, your companion?

"A I left Danilo Morin at the place where he fell down.

"Q How about the other one, a certain Moso?

"A We already conducted Moso but he was not already there when the incident happened, we already conducted Moso.

"FISCAL ESQUILLA:

"Q Mr. Witness, it was at night time 8:30 o'clock in the evening, more or less?

"WITNESS:

"A Yes, sir.

"Q Is there an electric post along the road of Prk. Talaba?

"A Yes sir, there was a light.

"Q And how is this place lighted at the scene where the shooting incident happened?

"A The place of incident is lighted with the electric post of the City.

"Q Is it a florescent lamp colored white or is it a lamp which is colored yellow, its reflection.

"ATTY. ABASTILLAS:

"I object Your Honor, leading Your Honor.

"FISCAL ESQUILLA:

"Either Your Honor is not leading because, it may be a yellow color or white color.

"ATTY. ABASTILLAS

"But this is not a examination wherein he will give a choice because if you give him a choice your Honor, that is leading.

"COURT:

"Yah, what kind of light.

"FISCAL ESQUILLA:

"I will reform, Your Honor. What kind of light in the electric post that you saw?

"WITNESS:

"A I do not know what kind of light but I'm sure there was a light.

"FISCAL ESQUILLA:

"Q Was the place well lighted or was it dimmed?

"WITNESS:

"A Yes, sir the place was well lighted.

"FISCAL ESQUILLA:

"Q. In your own personal knowledge you said that you saw Pepe Lozada with a firearm pointing in your direction. Do you know or were you able to identify the firearm? What kind of firearm?

"COURT:

"There was a previous statement which was not finished.

"FISCAL ESQUILLA:

"Yes.

"WITNESS:

"A According to the autopsy it is a .38 caliber.

"Q Do you know the motive or the reason why the accused shot Danilo Morin?

"A I do not know.

"FISCAL ESQUILLA:

"Q Do you know, of your own personal knowledge, that prior to this shooting incident where Danilo Morin was then, was there an occasion before that Pepe Lozada and Danilo Morin have a fight?

"ATTY. ABASTILLAS:

"Leading. The question is leading and other that Your Honor, the witness had already testified that he does not know of any motive.

"FISCAL ESQUILLA:

"Q So when you ran away because you were already scared, and you were behind Danilo Morin who fell down after that gun fire where did you go?

"WITNESS:

"A After what I have seen . . . after the incident I felt scared, I immediately proceeded to the house where there was an opened door, and then I got inside that house, and then passed to that house going to the place then I told them about what had happened.

"FISCAL ESQUILLA:

"Q After that shooting incident, do you know what happened to Danilo Morin?

"A Yes, sir.

"Q Mr. Witness, how long have you known the accused Pepe Lozada?

"A I know him for years.

"Q For five (5) years?

"A Almost three (3) years.

"Q Why do you know the accused Pepe Lozada?

"WITNESS:

"A I know him very well. (Nakilala ko gid na sya ya.)

"COURT:

"The question is, why?

"WITNESS:

"A While he was there, I also frequently there. I go to that place. I usually stay there.

"Q Do you know where the accused, Pepe Lozada, resides?

"A Yes, sir.

"Q Where?

"A At Purok Talaba."[3]

As the Solicitor General so points out, not even the "grueling cross-examination" of Enrique Alisbo could shake the witness away from his insistence that it was accused-appellant who shot the victim to death. Thus -

"CROSS-EXAMINATION OF ENRIQUE ALISBO

"ATTY. ABASTILLAS:

Now, when you said you and Danilo Morin, were walking together you heard a gunshot?

"WITNESS:

Gunfire.

"ATTY. ABASTILLAS:

"Q. Now, let us clarify this, Mr. Alisbo when you were walking together with Danilo Morin, you heard a gunshot and this made you to look back?

"A While we were walking we did not hear any gunfire.

"Q So, not in any instance, have you heard a gunfire, that evening of July 7, 1993?

"A No, I'm not heard of any gunfire.

"Q You did not hear any gunfire? So, in that entire evening of July 7, 1993 you have not heard the gunfire?

"A He is the one who fired at us.

"Q Now, so your answer again is 'Yes,' that you have not heard any gun fire in that evening of July 7, 1993?

"A Yes, sir.

"Q Now, even after you left Danilo Morin, you have not heard any gunshot because you said you have not heard any gunshot that evening of July 7, 1993?

"A When I left Danilo Morin, I was running at that time when I heard three (3) gunshots.

"Q Now, again Mr. Alisbo, you state here, that you have not heard any gunshot that evening of July 7, 1993 at 8:30 in the evening. Now you are again changing your statement that you have heard three (3) gunshots?

"A After Danilo was shot I fled and ran away when I was running I heard three (3) gunfire.

"Q Three (3) gunfire, so you are changing your statement in that effect, because you said you have heard three (3) gun fires?

"A Yes, sir I heard three (3) gun shots after the incident at the very time.

"Q So, that was only the gun shots that you heard that evening, July 7, 1993?

"A Yes, sir.

"Q And this gunshot which you said you heard, happened at the time you were already running away?

"A Yes, sir.

"Q Now, and you have not seen anybody fire this gunshot because you were running away?

"x x x x x x x x

"A When I looked back I saw Pepe Lozada pointing a gun at us, besides there was a light at the time and so was scared I run.

"ATTY. ABASTILLAS:

"Q So, let us clarify this Mr. Alisbo this three (3) gunshots which you heard allegedly heard, after changing your testimony, is that when you were already running away from the scene of the incident and you did not see that person who fired that gun shot?

"A Yes, sir.

"Q So, you have not seen the person who fired this gunshot because you were already running away. Please tell the truth Mr. Alisbo.

"A The three (3) gunshots were fired . . . that was the time when he fired . . . A three (3) gunshot were fired.

"COURT:

A while ago you testified while you were running away, because Danilo Morin was already on the ground, you heard three (3) gunshots?

"A Yes, Ma'am.

"Q And when you heard those three (3) gunshots you have not seen the person who fired those three (3) gunshots because you were running away?

"A Yes, Ma'am when I was running I looking back I saw Pepe Lozada that was the three (3) shots that I heard.

"x x x x x x x x

"ATTY. ABASTILLAS:

Now, and you have stated in your affidavit that you have only heard the three (3) gunshots that means you did

not see, is it not?

"A I saw it was Pepe Lozada.

"x x x x x x x x

"Q And you did not even bother to look back because you were running away from the scene?

"A When I was running I was also looking back.

"Q Now, you have not noticed any other person there in that place because this place is a very busy place?

"A I have seen Pepe Lozada."[4]

There may have been some imperfections in the narration of the incident by Alisbo but it is this kind of infirmity in the testimony of a witness that can in fact, strengthen that testimony and erase suspicions of it as having been previously rehearsed. The trial court itself has observed that the inconsistencies in the testimony of Enrique Alisbo have been "clearly the results of his misapprehensions of cross-examination questions."

Accused-appellant bewails the 14-hour delay of Enrique Alisbo in disclosing the identity of the killer. The initial reluctance of a witness to a crime is understandable, and it has hardly been held to impair credibility. Fear of reprisal, threat or intimidation, kinship or relationship, the trouble of being involved in criminal investigations, and the like can initially silence an ordinary man until good conscience finally overtakes his self-interest and overcomes his apprehensions. The vacillation of a witness of only about 14 hours is not so unusual as to place a zero value to his testimony. To discredit a witness merely for his understandable procrastination is to forever seal the lips of any reluctant or fearful witness.[5]

The testimony of a single person, when not incredible, could be sufficient basis for conviction. This matter of whom, when and how many to present in support of its case is in the hands of the prosecution, leaving it thereafter to the court to make the judgment call. Lack of corroborating evidence will not necessarily affect the credibility of a witness who gives testimony. Indeed, the testimony of a single eyewitness is sufficient to support a conviction so long as it is found to be clear enough and worthy of credence by the trial court.[6] Nowhere is it required that a testimony has to be corroborated in order to be adjudged credible.[7] Witnesses are to be weighed, not numbered.

The Court has consistently adhered to the principle that proof of motive is not indispensable for a conviction, particularly where the accused is positively identified by an eyewitness and his participation is adequately established.[8] Motive assumes true significance only when there is no showing of who the perpetrator of a crime might have been.[9]

The two conditions before treachery may be considered a qualifying circumstance are: (a) the employment of means, methods, or manner of execution to ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, and (b) the deliberate adoption by the offender of such means, methods, or manner of execution.[10] The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby ensuring its commission without risk to himself.[11] The trial court is thus correct in appreciating the attendance of the qualifying circumstance of treachery in the shooting from behind of the unsuspecting and unarmed Danilo Morin by accused-appellant.

The penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death. There being neither ordinary aggravating nor mitigating circumstances shown, the lower of the two indivisible penalties, along with the unassailed civil liability, has been rightly imposed on accused-appellant by the trial court.

WHEREFORE, the judgment appealed from is AFFIRMED. Costs against accused-appellant.

SO ORDERED.

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

[1] Records, pp. 1-2.

[2] Rollo, p. 38.

[3] TSN, 06 September 1994, pp. 246-265.

[4] Ibid, pp. 281-292.

[5] People vs. Pallarco, 288 SCRA 151.

[6] People vs. De Roxas, 241 SCRA 369.

[7] People vs. Rayray, 241 SCRA 1.

[8] People vs. Sandoval, 254 SCRA 436.

[9] People vs. Padlan, 290 SCRA 388.

[10] People vs. Noay, 296 SCRA 292.

[11] People vs. Reyes, 287 SCRA 229.

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