

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORBERTO LORENO, FELIX LEAL, SERAFIN RASCON, JOHN EDWARD LEYSA, AND LARRY MOQUERIO, ACCUSED.

G.R. No. 130889. June 06, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated February 3, 1997 of the Regional Trial Court of Iloilo City, Branch 38, in Criminal Case No. 35871, finding appellants John Edward Leysa and Norberto Loreno guilty of murder and sentencing them to suffer the penalty of reclusion perpetua, and to pay the heirs of Igmedio Larupay jointly and solidarily the amount of P48,100 as actual damages and P50,000 as civil indemnity, and to pay the costs.

The Information filed against Norberto Loreno, Felix Leal, Serafin Rascon, John Edward Leysa and Larry Moquerio reads as follows:

That on or about December 26, 1990, in the Municipality of Lambunao, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with guns of different make, with treachery and evident premeditation and with a decided purpose to kill, did then and there wilfully, unlawfully and feloniously attack and shoot one Igmedio Larupay with the weapons they were then provided inflicting upon the latter gunshot wound on the vital part of his body which caused his death.

CONTRARY TO LAW.[2]

During their arraignment, all the accused pleaded not guilty. Thereafter, trial ensued.

The prosecution presented as witnesses Armando Castor, a CVO member; Dr. Eusebio Magbanua, the Rural Health physician who conducted the necropsy on deceased Igmedio Larupay; Sgt. Isidro Palma, who arrested the accused; Pat. Carlos Pagayon, who identified the police blotter entries; and Marina Larupay, wife of the victim, who testified on the expenses and damages she incurred as a result of her husband's death.

ARMANDO CASTOR, testified that he was a member of the Civilian Volunteer Organization (CVO) in charge of peace and order in Lambunao, Iloilo City. On December 25, 1990, he and several others were sent by Sgt. Isidro Palma to patrol the area of Barangay San Gregorio where a dance was to be held to celebrate the eve of the barangay fiesta. Sgt. Palma was the Philippine Army detachment commander at Barangay Tranghawan, Lambunao, Iloilo City.[3]

At about 1:30 A.M. on December 26, 1990, while witness Armando Castor and his companions were about half a kilometer away from the dance floor, he heard a shot coming from the direction of the place where the dance was being held. He and his companions proceeded to the place and there they were informed by one Boding Lesada that it was Serafin Rascon who fired the shot. When they saw Serafin Rascon sitting near the entrance of the dance floor, they approached him. Castor's group leader, Igmedio Larupay confiscated Serafin Rascon's firearm.

On their way back to their detachment at Barangay Tranghawan, Rascon prevailed over Igmedio Larupay to return to the dance hall and to settle the matter among themselves. Rascon and Larupay walked abreast with Castor behind them, about one arm length from Rascon. Upon reaching the dance hall, Castor saw Norberto Loreno and John Edward Leysa. Behind the two were Felix Leal and Larry Moquerio. Loreno was armed with a pistolized .12 gauge short firearm while Leal had a .20 caliber short firearm. Leysa and Moquerio also had short firearms but Castor did not recognize their make. According to Castor, he saw both Loreno and Leysa raise their firearms and shoot at them. Castor dropped to the ground as the shots were fired. He fired back but did not hit anyone. He noticed Igmedio Larupay lying dead on the ground with his face up. He then retrieved Larupay's .22 caliber magnum revolver and other personal belongings.

DR. EUSEBIO MAGBANUA testified that he conducted the necropsy on the body of the victim, Igmedio Larupay, and found a single gunshot wound, left mid-infra clovecular, 1 1/4 inch by 1 1/4 inch in circumference. There was no exit wound. He described the cause of death of Igmedio Larupay as cardio-respiratory arrest secondary to a gunshot wound.[4]

The suspects were arrested by the local CVO and Sgt. Palma.[5]

In their testimonies, accused NORBERTO LORENO,[6] FELIX LEAL,[7] SERAFIN RASCON,[8] and LARRY MOQUERIO[9] admitted they were in the dance hall when they heard a gunshot. They then heard from the people around that Igmedio Larupay was shot. They denied they were together at the dance, had firearms, and participated in the shooting.

Appellant JOHN EDWARD LEYSA in his testimony denied he was in the dance hall when the incident happened. According to him, at around 5:00 P.M., December 25, 1990, he went to Barangay Walang to attend the wake of his aunt. He was there until December 26, 1990. Barangay Walang is about one kilometer away from Barangay San Gregorio.[10]

On February 3, 1997, the trial court rendered its decision finding Norberto Loreno and John Edward Leysa guilty of murder. Its dispositive portion reads:

WHEREFORE, the court finds the accused, Norberto Loreno and John Edward Leysa, guilty beyond reasonable doubt for the crime of Murder penalized under Article 248 of the Revised Penal Code and hereby sentence each of them to suffer a penalty of Reclusion Perpetua. Further, both accused, jointly and solidarily, are ordered to pay the heirs of Igmedio Larupay the sum of P48,100.00 as actual damages and a civil indemnity of P50,000.00 by reason of the death of Igmedio Larupay.

However, for failure of the prosecution to prove their guilt, accused, Felix Leal, Larry Moquerio and Serafin Rascon, are hereby acquitted for the crime charged.

In view of herein conviction, the property bond of accused, Norberto Loreno and John Edward Leysa, are cancelled. No bail is available to both accused pending the finality of this judgment. Both shall remain in detention.

Since accused, Felix Leal, Larry Moquerio and Serafin Rascon, are acquitted of the crime charged, their respective property bonds are automatically cancelled. The Clerk of Court is ordered to return the property bonds to their bondsmen duly receipted.

Cost against the accused, Norberto Loreno and John Edward Leysa.

SO ORDERED.[11]

Both Loreno and Leysa appealed their convictions. However, Norberto Loreno died on July 24, 1997. Hence, this

appeal now concerns only appellant Leysa.

In his Brief, appellant alleges the following errors:

- THE LOWER COURT ERRED IN GIVING CREDENCE TO THE LONE TESTIMONY OF ARMANDO CASTOR.
- THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT JOHN EDWARD LEYSA.

Simply, the issues concern is the credibility of the witness for the prosecution and the sufficiency of the evidence to convict appellant beyond reasonable doubt.

Appellant argues that the testimony of Armando Castor, the lone eyewitness, should not be given credence since he did not actually see who shot the victim. He also assails Armando's credibility because he did not report the crime to authorities promptly. Appellant points out that the victim suffered only one gunshot wound and that the other witnesses testified that they only heard one shot. But witness Armando Castor claimed that both Norberto Loreno and appellant fired their guns at the victim. Further, appellant asserts that Norberto Loreno admitted sole responsibility for the crime and exonerated appellant of any liability in a statement executed on March 25, 1997.[12]

For the appellee, the Office of the Solicitor General (OSG) argues that the lone eyewitness was credible and his testimony should be accorded full faith and credit. The OSG also claims that the affidavit executed by Norberto Loreno that became the basis for a motion for new trial filed on May 27, 1997,[13] was not admissible in favor of appellant.

The well-settled rule is that when the issue is one of credibility of witnesses, the appellate court will generally not disturb the findings of the trial court[14] since the latter is in a better position to decide this issue. [15] However, this rule is not absolute. It is subject to exceptions. One concerns a situation where the judge who penned the decision did not personally hear the evidence for the prosecution.[16] In the present case, Judge David Alfeche, Jr., the ponente, only inherited this case from Judge Amelita K. Del Rosario who conducted the trial and heard the witnesses testify.

Another exception to the general rule is where substantial facts and circumstances have been overlooked which, if properly considered, would justify a different conclusion or alter the result of the case. [17] In this case, we find that based on the evidence on record, the trial court misapprehended certain facts and failed to consider significant portions of the testimony of the witnesses.

We shall now detail these misapprehended or neglected facts adduced during the trial that are, in our view, favorable to appellant's cause. First, the trial court failed to consider Armando Castor's testimony that he did not actually see who shot the victim. According to Armando:

Q:

You did not actually see them fire?

A:

No, sir. I did not actually see as to who of them hit the victim because I was already on the ground face down.
[18]

This at once creates an ambiguity and causes a doubt as to who really killed the victim. This doubt is exacerbated by the physical evidence[19] showing that the victim suffered only one gunshot wound. This physical evidence

reveals that only one shot resulted in the death of Igmedio Larupay. This evidence contradicts the testimony of Armando Castor to the effect that both Lorenzo and Leysa fired their guns. Moreover, the prosecution failed to show that spent bullets were found near the crime scene that would indicate that more than one shot were fired at the victim. It follows that only one gun and one gunman firing at the victim killed him with one bullet. Who this gunman is - whether it is appellant Leysa or his co-accused Norberto Lorenzo - has not been ascertained. Nor could it now be determined, beyond a shadow of a doubt.

Where the physical evidence on record runs counter to the testimonial evidence, the physical evidence, being paramount, prevails.[20] We are unable to give credence to the testimony of Armando Castor that he saw both Lorenzo and Leysa fire their respective weapons when he himself said he was already face down on the ground when the two were about to fire. Patently, we are persuaded that he did not really see who shot the victim.

As the evidence now stands, we are left to surmise whether Norberto Lorenzo or appellant Leysa fired the bullet that caused the death of the victim, Igmedio Larupay. Unfortunately, nothing on record could help us ascertain who of the two is legally responsible for Larupay's death. For while in theory, conspiracy could tie both men to the crime, we find that the trial court's finding of conspiracy is not supported by the evidence on record. Conspiracy must be proved. It cannot be surmised that conspiracy existed just because Norberto Lorenzo and appellant Leysa were both seen raising their arms and aiming at the victim. Conspiracy as a basis for conviction of appellant should be proved in the same manner as the criminal act.[21] Although direct proof is not essential,[22] conspiracy must be shown to exist as clearly as the commission of the offense itself. It is a fundamental rule that a charge of conspiracy must be proven, just like any other criminal accusation, "independently and beyond reasonable doubt." [23] Mere simultaneous aiming by appellant and his co-accused at the victim with their firearms does not by itself demonstrate concurrence of will or unity of action or purpose that could be a basis for their collective responsibility.[24]

The evidence of the prosecution only proves with certainty that appellant Leysa was present when the victim was killed. It does not prove beyond doubt who killed him. There is paucity of evidence that indicate, beyond a scintilla of a doubt, that appellant and Norberto Lorenzo shared a common design and a unity of purpose in killing Igmedio so as to make both responsible by reason of a conspiracy. There is even doubt whether both did fire at the victim. For the victim was hit only once; he suffered only one bullet wound. Accordingly, acquittal of John Edward Leysa is in order. His responsibility for the death of Igmedio Larupay has not been proven beyond reasonable doubt.

WHEREFORE, the assailed decision of the Regional Trial Court of Iloilo City, Branch 38, in Criminal Case No. 35871, is hereby REVERSED and SET ASIDE. Appellant JOHN EDWARD LEYSA is ACQUITTED for insufficiency of evidence to prove his guilt beyond reasonable doubt.

The Director of Prisons is ordered to release appellant JOHN EDWARD LEYSA, unless there are other lawful reasons for his confinement, and to furnish the Court, within 10 days from notice, proof of compliance with this order.

SO ORDERED.

Bellosillo, (Acting Chief Justice), (Chairman), Mendoza, De Leon, Jr., and Corona, JJ., concur.

[1] Records, pp. 184-193.

[2] Records, pp. 1-2.

[3] TSN, July 18, 1991, pp. 8-30; August 7, 1991, pp. 2-10.

[4] TSN, July 17, 1991, pp. 5-6.

[5] TSN, November 6, 1991, pp. 5-28.

[6] TSN, October 25, 1991, pp. 3-16.

[7] TSN, August 28, 1991, pp. 17-26.

[8] TSN, September 19, 1991, pp. 18-35.

[9] TSN, August 28, 1991, pp. 2-16.

[10] *Supra*, note 8 at 3-17.

[11] Records, pp. 192-193.

[12] Rollo, p. 38. The statement was written in the Ilonggo dialect and was translated to English in an affidavit dated April 10, 1997 (See Rollo, p. 39). It was not among the evidence presented during the trial as it was executed only after Norberto Loreno and appellant John Edward Leysa had already been convicted and started serving their prison sentence.

[13] This was denied by this Court in an order dated September 1, 1997.

[14] *People vs. Balano, et al.*, G.R. No. 116721, 272 SCRA 782, 787 (1997).

[15] *People vs. Maalat*, G.R. No. 109814, 275 SCRA 206, 214 (1997).

[16] *People vs. Llaguno, et al.*, G.R. No. 91262, 285 SCRA 124, 136 (1998).

[17] *People vs. Pacina*, G.R. No. 123150, 338 SCRA 195, 207 (2000); *People vs. Ortiz*, G.R. No. 111713, 266 SCRA 641, 653 (1997).

[18] TSN, August 7, 1991, p. 3.

[19] Records, p. 5.

[20] *People vs. Uycoque*, G.R. No. 107495, 246 SCRA 769, 779 (1995).

[21] *People vs. Ferras, et al.*, G.R. No. 119495, 289 SCRA 94, 107 (1998).

[22] *People vs. Maluenda, et al.*, G.R. No. 115351, 288 SCRA 225, 251 (1998).

[23] *Dans, Jr. vs. People*, G.R. No. 127073, 285 SCRA 504, 533 (1998).

[24] *People vs. Quitlong, et al.*, G.R. No. 121562, 292 SCRA 360, 381 (1998).

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