PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCIAL CAÑARES Y ORBES, ACCUSED-APPELLANT.

G.R. No. 132743. November 22, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated January 24, 1997, of the Regional Trial Court, Branch 22, Cagayan De Oro City, finding the accused-appellant Marcial Cañares guilty of murder and sentencing him to suffer the penalty of reclusion perpetua; to indemnify the heirs of the victim, Gerson Luceñara, in the amount of P50,000; and to pay P30,000 as moral damages, P20,000 as actual damages, and the costs.

Appellant was charged under the following Information:

> That on August 25, 1993 at about 7:20 P.M., more or less, at De Castro Street, Carmen, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, without any justifiable cause and with intent to kill, armed with a .38 caliber revolver which he was conveniently provided, with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one Gerson Luceñara, by then and there shooting him twice with the firearm he was provided, thus inflicting two (2) serious and mortal wounds on said victim, namely at the back of the head and center of the abdomen, causing said victim's untimely death.
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> Contrary to Article 248 of the Revised Penal Code.
>
> Cagayan de Oro City, Philippines, September 2, 1993.[2]

On November 3, 1993, appellant pleaded not guilty. Trial on the merits followed, with the prosecution presenting Luis Alsola and Jovelindo Corrales as eyewitnesses.

LUIS ALSOLA testified that on August 25, 1993, at about 7:20 P.M., Gerson Luceñara and he were on their way home after their duty as security guards at Gaisano shopping mall when appellant, who was about 2 meters away, shot Luceñara. He recalled that when Luceñara was hit at the back of his head, the latter bent towards the ground and turned around as he dropped on his back. Appellant shot Luceñara again hitting him in the center of the abdomen. Then appellant fled. As he did, appellant passed between him and Jovelindo Corrales. Alsola said he was sure the assailant was Marcial Cañares. Alsola added that he tried to chase appellant but the latter was already far, so he went back to Luceñara and brought him to the hospital. At the City Hospital, Luceñara was pronounced dead on arrival.[3]

JOVELINDO CORRALES corroborated Alsola's testimony.[4]

GREGORIA LUCEÑARA, mother of the victim, testified on the expenses she incurred as a result of her son's death.

For the defense, Adelo Ayuban, Estemio Reyes, and Virginia de los Reyes were presented as witnesses. They

testified that a certain Roy Velos - and not appellant Marcial Cañares - was the one who killed Luceñara.

ADELO AYUBAN testified that on August 25, 1993, he was at the Carmen Public Market, in his usual place, selling coconuts, when he heard two shots coming from the area of the First Community Credit Cooperative (FICCO) at V. Castro St., Carmen, Cagayan de Oro City. He headed towards the place and on his way, he met Roy Velos, running from the scene of the crime. Two men were pursuing him. Velos' face was covered with a handkerchief but it fell as Velos rushed towards him.[5]

ESTEMIO REYES testified that on August 25, 1993, at around 7:30 P.M., he was at the Public Market along Dabatian Street at Carmen, Cagayan de Oro City, selling vegetables when he saw Roy Velos with a pistol and with his face covered by his jacket. He recognized him because while he was running, he hit his stall which moved his jacket, thus, revealing his face.[6]

VIRGINIA DE LOS REYES testified that on August 25, 1993, at around 7:00 P.M., she was at FICCO, Carmen Market, near Castro Street, buying potatoes when she saw Roy Velos shoot the victim with a pistol. She knew Roy Velos because he was her neighbor and he frequented her dress shop. She also recalls that Velos was then wearing shorts, a "Chalico" vest, a hat, and a towel covering his face.[7]

On the witness stand, appellant MARCIAL CAÑARES denied the accusation against him and alleged by way of alibi that he was inside the Gothic Theater watching a movie from 6:30 P.M. to 9:00 P.M. at the time Luceñara was killed.[8]

In its decision dated January 24, 1997, the trial court rendered its decision as follows:

> WHEREFORE, the accused Marcial Cañares y Orbes is found guilty beyond reasonable doubt of the crime of murder, and accordingly, he is sentenced to suffer the penalty of reclusion perpetua; likewise orders him to indemnify the heirs of the victim the sum of P50,000.00, for the latter's death; P30,000.00, for moral damages they suffered; P20,000.00, for actual damages and to pay the costs.
>
> SO ORDERED.[9]

Aggrieved, appellant interposed this instant appeal, assigning the following errors:

> 2.1 THAT THE TRIAL COURT COMMITTED SERIOUS ERRORS IN THE APPRECIATION OF THE EVIDENCE OF THE DEFENSE AND ALSO COMMITTED SERIOUS ERRORS IN APPLICATION OF THE LAW AND JURISPRUDENCE INVOLVED, SUCH THAT THE CRIME CHARGED WAS NOT BASED ON THE UNDISPUTED FACTS UNREBUTTED TESTIMONIES OF THE WITNESSES FOR THE ACCUSED, HENCE, THE CRIME CHARGED FOR MURDER WAS NOT PROVEN BY PROOF BEYOND REASONABLE DOUBT
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> x x x
>
> 4.0 THE PROSECUTION HAD NOT PROVEN THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT DUE TO THE POSITIVE TESTIMONIES OF THE WITNESSES FOR THE DEFENSE THAT ROY VELOS WAS THE ONE WHO SHOT GERSON LUCEÑARA AND NOT THE ACCUSED MARCIAL CAÑARES
>
> x x x
>
> 5.0 THE ACCUSED MARCIAL CAÑARES BE ACQUITTED BECAUSE HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[10]

Essentially, the issues raised involve the identification of the offender and the credibility of witnesses and their testimonies.

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Appellant claims in his brief that another person killed Gerson Luceñara and that he was only framed. He attacks the credibility of the prosecution witnesses saying that it was highly unlikely for them to have recognized him considering that (1) the incident happened fast, (2) they did not know the appellant prior to the crime, and (3) they were able to identify the appellant only in court and after a lapse of one year.

The Solicitor General, for the State, points out that the testimonies of prosecution witnesses Alsola and Corrales, being candid, straightforward and positive must prevail over the negative assertions of the appellant. In his view, the testimonies of the defense witnesses, who were appellant's neighbors and friends, deserve little merit since they were biased witnesses. He contends that friendship between a witness and a party is frequently just as powerful an influence in shaping the testimony of a witness as any mercenary motive.

Well-enshrined in jurisprudence is the principle that when the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court,[11] unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[12] This is because the trial judge is in a better position to decide the question of credibility since he has personally heard the witnesses and observed their deportment and manner of testifying.[13] While it is true that the defense presented three witnesses who swore that it was a different person who committed the crime, the trial court disbelieved their testimonies on substantial grounds. For one, the records show that defense witnesses Ayuban and Reyes did not actually see the shooting. They merely saw a Roy Velos, running away from the scene of the crime, as opposed to the two prosecution witnesses who were right beside the victim when he was gunned down and who actually saw appellant shoot the victim. Strangely, Ayuban, De los Reyes and Reyes got a look at Velos' face because as he was passing them, the cover of his face (a handkerchief according to Ayuban, a towel according to delos Reyes and a jacket according to Reyes) dropped or moved and conveniently unmasked appellant's face.

Further, we find Ayuban's testimony full of loopholes and inconsistencies. Note that when asked when he first saw Roy Velos, Ayuban first answered that it was on August 25, 1993, to wit:

> Q:
>
> Was that your first time to see the person of Roy Velos on August 25, 1993?
>
> A:
>
> Yes.[14]

He changed his answer later and testified that he first saw Velos on the 24th of August, 1993.

> Q:
>
> When was the time you saw this Roy Velos in his house?
>
> A:
>
> On August 24, 1993 in the evening, I saw Roy Velos.
>
> Q:
>
> What time?
>
> A:
>
> At 10:00 o'clock

x x x

Q:

The first time that you saw Roy Velos was on August 24, 1993 at 10:00 o'clock in the evening?

A:

Yes.[15]

Upon further prodding, however, Ayuban began flip-flopping in his answers:

Q:

And the first time you saw him on August 24, 1993, from whom did you know him?

A:

I know him for a long time.

Q:

So, you are changing your testimony now that the first time you saw Roy Velos was long time ago.

A:

The truth is August 24.

Q:

So, that was the only time you saw Roy Velos?

A:

Yes.

Q:

So, it is a wrong testimony on your part that you knew him before August 24, 1993?

A:

Yes.

Q:

When did you know that his name is Roy Velos?

A:

Before, I knew him in the basketball court.

Q:

You also testified before this court that you knew Roy Velos before August 24- - which is which now? August 24 or before August 24?

A:

Before August 24 I already knew him.

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Q:

So it is wrong to say that you saw Roy Velos on August 24, 1993?

A:

Yes.[16]

Likewise, he also said he saw Velos running away from the scene of the crime right after he heard the gunshots. He stated that he saw two persons chasing him. However, in court, he testified that when he arrived at the crime scene, he did not see the body of Luceñara anymore. What he saw was only splattered blood. His testimony on this point is as follows:

Q:

So, upon seeing Roy Velos passed by, being ran after by the two men, you immediately proceeded to the place of the incident?

A:

Yes.

Q:

But when you went to the place of the incident which is only two arm's length from you, the body of the victim was no longer there?

A:

Yes, I only saw the blood.

Q:

Now, you want, at least, this court to believe that with that distance of two arm's length from the time you saw Roy Velos, you did not see anymore the body of the deceased?

A:

I only saw blood.

Q:

But the two people running after Roy Velos were the ones who took the body of the deceased?

A:

Yes.

Q:

And yet, you did not see the two persons carrying the dead body of the victim?

A:

I just knew from stories.[17]

Patently, Adelo Ayuban's testimony is not only inconsistent but also directly contradicted the testimonies of Reyes and De los Reyes. Recall that Ayuban narrated that when he saw Velos, Velos had his face covered with a handkerchief which fell and exposed his face as he rushed by. On the other hand, Estemio Reyes alleged that

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when he saw Velos at roughly the same time in the same place, Velos' face was covered by his jacket but the jacket "moved" and exposed his face when he bumped into Reyes' stall. Contradicting both Ayuban and Reyes, witness Virginia De los Reyes testified that the face of Velos was covered by a towel, not a handkerchief or a jacket. These glaring contradictions undermine the credibility of the defense witnesses.

Further, we find it strange that three witnesses who allegedly saw the real culprit did not tell anyone about what they knew during the investigation. They waited until appellant had already been apprehended. Most unusual, appellant himself chose to remain silent during the investigation and did not mention the name of Roy Velos as the gunman. Given these circumstances, we are inclined to believe that the testimonies of the defense witnesses were mere afterthoughts, fabricated to favor their neighbor, herein appellant.

As to the alibi of appellant that he was inside a moviehouse at the time of the shooting of Gerson Luceñara, between 6:30 to 9:00 P.M. of August 25, 1993, suffice it to state that appellant's testimony on this point is uncorroborated. It is self-serving and deserves scant consideration.

We only need to stress that the prosecution witnesses had no reason to particularly implicate appellant in a serious crime. No motive was shown to discredit their testimonies. With two positive identifications, the appellant's weak alibi and bare denial cannot prevail. Alibi cannot stand against strong and positive identification.[18]

Further, appellant would want to discredit the testimony of Alsola. He mentions that Alsola said, "only saw him (Cañares) after shooting Gerson Luceñara because he was facing us when he ran away."[19] He asks how was it possible for appellant to be facing the witnesses if appellant was running away. Our review of the transcript of stenographic notes on record reveals that appellant seems to have conveniently omitted the paragraph below:

> Court:
>
> I think the proper interpretation is- I only recognized him when he ran and passed me by, because the first time he fired his gun, the victim fell.[20]

Correctly read, the record would reveal that the witness saw appellant's face because he was running towards them and passed them as he escaped.

We also found grossly inaccurate appellant's statement that the witnesses identified appellant only a year after the incident. Even before appellant was pointed to in court by the witnesses, Corrales had already identified appellant as the assailant as early as September 1, 1993. Corrales testified:

> Q:
>
> When was the second time when you saw Marcial Cañares?
>
> A:
>
> When he was apprehended.
>
> Q:
>
> When was that?
>
> A:
>
> September 1, 1993.[21]

Corrales identified appellant six days after he saw him shoot Luceñara. At that time, the picture of appellant as he

fled was still vivid in the mind of the witness.

Was the killing attended by treachery or alevosia, qualifying the crime to murder?

On this score, we find that this qualifying circumstance was specifically alleged in the information. We also find that the trial court correctly appreciated this circumstance. There is treachery when the offender commits any of the crimes against persons employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from defense which the offended party might make.[22] For treachery to be considered a qualifying circumstance, two conditions must be satisfied: (a) the malefactor employed such means, method or manner of execution as to insure his or her safety from the defensive or retaliatory acts of the victim; and (b) the said means, method or manner was deliberately adopted.[23] The essence of treachery is that the attack is deliberate and without warning - done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[24] This was how Luceñara was attacked and killed. He was shot at the back of his head to insure that the killing was consummated without any risk to appellant, and again on Luceñara's belly after he fell down. The killing was also totally unexpected since the victim was ambushed on his way home in the middle of the night.

Finally, a modification of the damages is in order. The trial court awarded P20,000 as actual damages, not supported by evidence on record. Actual damages can be given only to claims which are duly supported by receipts.[25] Nonetheless, under Article 2224 in lieu of actual damages, temperate damages may be recovered as it has been shown that the victim's family suffered some pecuniary loss although the amount cannot be proved with certainty.[26] For this reason, the P20,000 award shall be for temperate damages. Further, conformably with prevailing jurisprudence, moral damages is increased to P50,000.[27]

WHEREFORE, the decision of the Regional Trial Court of Cagayan de Oro City, Branch 22, finding MARCIAL CAÑARES guilty beyond reasonable doubt of murder and sentencing him to reclusion perpetua is AFFIRMED with MODIFICATION as to damages, so that the award of actual damages in the amount of P20,000 is deleted but, conformably with prevailing jurisprudence, the amount of moral damages is increased from P30,000 to P50,000; and P20,000, is hereby awarded also as temperate damages to be paid by appellant to the victim's heirs, together with the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp.14-28.

[2] Id. at 4.

[3] TSN, January 13, 1994, pp. 7-12.

[4] TSN, April 12, 1994, pp. 6-11.

[5] TSN, June 22, 1994, pp. 7-8.

[6] TSN, October 28, 1994, pp. 4-6.

[7] TSN, January 24, 1995, pp. 5-11.

[8] TSN, September 21, 1995, p. 6.

[9] Rollo, pp. 27-28.

[10] Id. at 49, 57, 65.

[11] People vs. Cristobal, G.R. No. 116279, 252 SCRA 507, 515 (1996).

[12] People vs. Hubilla, Jr., G.R. No. 114904, 252 SCRA 471, 478 (1996).

[13] People vs. Conde, G.R. No. 112034, 252 SCRA 681, 688 (1996).

[14] TSN, June 22, 1994, p. 8.

[15] Id. at 9, 17.

[16] Id. at 25-26.

[17] Id. at 26-27.

[18] People vs. Dinglasan, G.R. No. 101312, 267 SCRA 26, 44 (1997).

[19] TSN, April 12, 1994, p.15.

[20] Ibid.

[21] Id. at 20.

[22] People vs. Galano, G.R. No. 111806, 327 SCRA 462, 475 (2000).

[23] People vs. De la Cruz, G.R. No. 109619-23, 291 SCRA, 164, 184 (1998).

[24] People vs. Zamora, G.R. No. 101829, 278 SCRA 60, 76 (1997).

[25] People vs. Guillermo, G.R. No. 113787, 302 SCRA 257, 275 (1999).

[26] People vs. Suplito, G.R. No. 104944, 314 SCRA 493, 504 (1999).

[27] People vs. Lopez, G.R. No. 119380, 312 SCRA 684, 702 (1999); People vs. Panida, G.R. Nos. 127125 and 138952, 310 SCRA 66, 98 (1999); People vs. Viovicente, G.R. No. 118707, 286 SCRA 1, 12 (1998).

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