

CESAR BARRERA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 134727. February 19, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals[2] dated March 25, 1998 in C.A. G.R. CR No. 19650, and its Resolution[3] dated July 24, 1998 denying the motion for reconsideration.

The petitioner, Cesar Barrera, and his erstwhile co-accused, Domingo Lazo and Celedonio Itape, were charged with the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, in an Information that reads:

That on or about May 24, 1981 in the evening at Brgy. Mayapa, Calamba, Laguna and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and jointly helping with (sic) each other, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and stab one Mario Anacay with a deadly weapon (knife) thereby inflicting upon the latter serious stab wounds at the back which immediately caused his death, to the damage and prejudice of the surviving heirs of the victim Mr. Mario Anacay.

That the crime was committed with the aggravating circumstances of nighttime, evident premeditation and treachery in the commission thereof.

CONTRARY TO LAW.

Upon being arraigned on November 9, 1981, the three accused, assisted by counsel, separately entered the plea of "Not guilty" to the charge in the information. Thereafter, trial on the merits ensued.

It appears from the evidence adduced that the victim, Mario Anacay, and his companion, Jojo Fernandez, were setting up a "beto-beto" stall when they met the group of herein petitioner Cesar Barrera, Domingo Lazo and Celedonio Itape, near the fair ground ("periahan") on the eve of the fiesta in Barangay Mayapa, Calamba, Laguna on May 24, 1981. Barera confronted Anacay about Domingo Lazo's cousin whom Anacay allegedly stabbed in Silang Cavite. As Anacay turned to leave with Fernandez, Barrera suddenly stabbed Anacay once on the back thereby causing the victim to fall on the ground. Afraid that he might also be stabbed, Fernandez ran away to seek help from their other companions.[4]

Police officers Cosme Malabanan, Juanito Fajardo and Eugenio Banaag went to the scene of the crime in Barangay Mayapa, Calamba, Laguna after receiving a report of the stabbing incident. Thereafter, they proceeded to the Canlubang Estate Hospital in Laguna where the victim was brought earlier.

At the hospital, police officer Malabanan interrogated the victim, Anacay, who declared that Cesar Dictado, Doming and Dolong were his attackers. The declaration of the victim was put down in writing which he thumbmarked with his own blood. Anacay believed that he was going to die ("Mamatay po ako.") when asked by

police officer Malabanan how he felt as a result of his stab wound.[5]

Anacay also mentioned to prosecution witness, Lauro Ejeda, the same names of Cesar Dictado, Doming and Dolong as his attackers. Ejeda knew that Anacay was referring to Cesar Barrera, Celedonio Itape and Domingo Lazo whom he had known for a long time because they were engaged in the same business of "beto-beto".

Upon the request of Anacay, Ejeda accompanied the policemen back to Barangay Mayapa in Calamba, Laguna and helped them identify the victim's attackers. Doming (Domingo Lazo) and Dolong (Celedonio Itape) voluntarily surrendered to the policemen while the petitioner attempted to evade arrest but was prevented by Ejeda.[6]

Meanwhile, the victim was transferred to the Philippine General Hospital in Manila where he died on May 25, 1981 due to shock secondary to stab wound in the back.[7]

Petitioner Cesar Barrera denied that he stabbed Mario Anacay in the evening of May 24, 1981. He claimed that on the said occasion he was busy attending to his "beto-beto" business when a commotion occurred at the fair ground. Nevertheless, he never left his place and that he learned only later what actually happened when people began talking about the stabbing incident.[8]

On January 26, 1998, the trial court rendered its decision convicting herein petitioner of the crime of homicide but acquitting his two (2) co-accused of the crime charged in the information. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered-

- CONVICTING Cesar Barrera but only for homicide, the prosecution having proved his guilt beyond reasonable doubt. He shall be sentenced to an indeterminate jail term of ten (10) years and one (1) day of prision mayor as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum. He shall indemnify the heirs of Anacay the amount of P50,000.00 and shall be credited for time spent in jail.

- ACQUITTING accused Domingo Lazo and Celedonio Itape, the quantum of proof for their conviction not having been met.

SO ORDERED.

Aggrieved by the decision of the trial court, the petitioner appealed to the Court of Appeals. On March 25, 1998, the Court of Appeals rendered its decision affirming the decision of the trial court.

After his motion for reconsideration was denied on July 24, 1998 by the appellate court, the petitioner filed with this Court the instant petition for review on certiorari containing the following assignments of error, to wit:

I

THE HON. COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR WHEN IT RULED THAT PETITIONER'S DENIAL OF THE CRIME CHARGED CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF THE PROSECUTION WITNESS JOJO FERNANDEZ, DESPITE THE FACT THAT FACTS AND CIRCUMSTANCES EXIST WHICH RENDER THE IDENTIFICATION OF THE PETITIONER AS BOUBTFUL AND CANNOT BE THE BASIS OF HIS CONVICTION.

II

A DOCUMENT CONSISTING OF AN AFFIDAVIT HEREIN SUBMITTED WHICH ACCOMPANIES THE INSTANT PETITION IF ADMITTED WILL CERTAINLY EXCULPATE THE

ACCUSED-PETITIONER OF THE CRIME CHARGED.

III

THE HON. COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR WHEN IT ACCORDED CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS JOJO FERNANDEZ DESPITE THE FACT THAT HIS TESTIMONY IS FULL OF CONTRADICTIONS AND INCONSISTENCIES WHICH CLEARLY IMPAIR HIS CREDIBILITY.

IV

THE HON. COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN NOT ACQUITTING THE ACCUSED-PETITIONER OF THE CRIME CHARGED, ESPECIALLY CONSIDERING THAT HIS CO-ACCUSED, DOMINGO LAZO AND CELEDONIO ITAPE, WERE ACQUITTED BY THE TRIAL COURT, THEIR GUILT NOT HAVING BEEN PROVED BEYOND REASONABLE DOUBT, AND THE ABOVE-MENTIONED AFFIDAVIT EXCULPATING THE ACCUSED OF THE CRIME CHARGED.

In substance, the petitioner contends that there is doubt as to his identity as the perpetrator of the crime inasmuch as the victim, Mario Anacay, himself identified his attackers as "Cesar Dictado, Doming and Dolong." The said dying declaration of the victim was confirmed by a prosecution witness, police officer Cosme Malabanan who investigated the victim in the hospital where he was brought after the stabbing incident.

Petitioner's contention is not impressed with merit. Prosecution eyewitness Jojo Fernandez positively identified the petitioner, Cesar Barrera, as the same person whom he saw stabbed Mario Anacay on the evening of May 24, 1981. Fernandez categorically declared on the witness stand that he was able to recognize petitioner Barrera for the reason that he (Fernandez) was with the victim, and the premises were well-lighted when the victim was stabbed by the petitioner. Regardless of whatever name Anacay may have known his attacker, the same is not sufficient to overturn the fact that petitioner Barrera was positively identified by prosecution eyewitness, Jojo Fernandez, as the perpetrator of the crime. Besides, another prosecution witness, Lauro Ejeda testified during the trial that he knew Cesar Dictado, who was referred to by Anacay in his dying declaration as his attacker, to be the same person as the herein petitioner, Cesar Barrera, whom he (Ejeda) had known for a long time.[9]

Consequently, the defense of denial by the petitioner pales in the light of the categorical identification made by the prosecution eyewitness, Jojo Fernandez. Positive identification where categorical and consistent and without any showing of ill-motive on the part of the eyewitness testifying on the matter, as in the case at bar, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[10]

Petitioner assails the testimony of prosecution eyewitness Jojo Fernandez for being allegedly incredible. He contends that it would be contrary to human experience for the victim, who used to operate "beto-beto" business in Canlubang, Laguna, to put up his "beto-beto" stall in Brgy. Mayapa, Calamba, Laguna only on the eve of the fiesta; that it was highly improbable for the petitioner to exact revenge on Anacay when it was Domingo Lazo whose cousin was stabbed by the victim; that if Fernandez were indeed an eyewitness to the crime, he would not have deserted the wounded Anacay who was his "kumpadre"; and that his non-flight from the scene of the crime until the police officers arrived and arrested him and his erstwhile co-accused indicated his innocence.

The above contentions refer to factual matters which have already been raised by the petitioner and thoroughly passed upon by the Court of Appeals in its Decision dated March 25, 1998 and hence do not warrant a review[11]by this Court. We quote with approbation the appellate court's disquisition, thus:

The arguments are, if not without basis in fact, clearly insubstantial and inconsequential. The fact, as testified to by Jojo Fernandez, that the three (3) accused and the victim and Jojo Fernandez set up their "beto-beto"

tables at 10:00 o'clock in the evening on the very day of the fiesta is not cause for disbelieving the testimony of the prosecution eyewitness Jojo Fernandez. While it is true that it is customary to put up the "beto-beto" stands on the eve of the fiesta, such customary practice does not make incredible that the three (3) accused, the victim and Fernandez put up their "beto-beto" stands at 10:00 o'clock in the evening on the very day of the fiesta. After all, "beto-beto" stands are not difficult or expensive to put up and the decision to put them up naturally depends on the volume of the crowd or "beto-beto" players, even if already on the very night of the fiesta.

That Fernandez and the victim are "compadres" does not by itself render the testimony of the former inadmissible or devoid of probative value. Fernandez's testimony that he was at the crime scene and was a witness to the crime is credible. That Fernandez volunteered to be a prosecution witness and that Anacay was his "compadre" did not render Fernandez's testimony unreliable, because his testimony, independent of their relationship, is not inherently improbable and neither is there proof that he might have been compelled by improper or evil motive in pointing to the accused-appellant as the assailant.

We also have to reject appellant's contention with respect to the lack of motive on his part to stab the victim. It is well-established rule that proof of motive is not crucial where the identity of the accused has been amply established.

The fact that Fernandez ran away upon seeing the stabbing incident and did not help the fallen victim is not difficult to understand. Fernandez explained in his testimony why he ran away. He explained that he was overcome by fear that he would be stabbed next.

Finally, it is argued that all three (3) accused did not leave the "peryahan" even after the stabbing. To quote from a decision of the Supreme Court, 'Appellants pretended innocence is clearly non sequitur to his decision not to flee. Apart from the fact that there is no case law holding that non-flight is a conclusive proof of innocence, the argument does not hold weight in the light of the positive identification of the appellant'.[12]

In a desperate attempt to escape criminal liability, the petitioner presented at this late stage an Affidavit[13] dated September 3, 1998 allegedly executed by a certain Elena de Sagun vda. de Gatdula. The affidavit states, in substance, that affiant Gatdula met and befriended petitioner Cesar Barrera and his wife on June 1, 1996; that she learned from the petitioner of his conviction for the death of Mario Anacay; that she recalled and informed the Barrera couple of her alleged late husband's admission to the killing on May 24, 1981 of a certain person by the name of Mario Anacay; that she had no opportunity then to give her statement on the matter; and that she decided to do it now allegedly for the sake of truth and justice to petitioner.

The said affidavit of Elena de Sagun vda. de Gatdula is patently hearsay, and therefore, carries no probative value.[14] It appears therein that she learned of the identity of the alleged culprit when her husband, who died in 1983, purportedly admitted to her having killed Mario Anacay on May 24, 1981. In other words, she had no personal knowledge of the killing of Mario Anacay except for the information allegedly revealed to her by her late husband. It is an established doctrine that when the evidence is based on what was supposedly told the witness, the same is without any evidentiary value or weight, being patently hearsay.[15]

WHEREFORE, the instant petition is hereby denied for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Petition, Annex "A", Rollo, pp. 37-44. Montenegro, J., ponente, Valdez and Cosico, JJ., concurring.

[2] Sixteenth Division.

- [3] Petition, Annex "B", Rollo, p. 46.
- [4] TSN dated December 18, 1981, pp. 4-13.
- [5] Exhibit "A", Records, p 10; TSN dated December 10, 1981, pp. 5-13.
- [6] TSN dated January 29, 1982, pp. 6-17.
- [7] Exhibit "D", Records, p 96.
- [8] Petition, Rollo, pp. 10-34.
- [9] TSN dated January 29, 1982, p. 8.
- [10] Bautista vs. Court of Appeals, 288 SCRA 171, 177 (1998); People vs. Bibat, 290 SCRA 27, 38 (1998).
- [11] Reyes vs. Court of Appeals, 258 SCRA 651, 659 (1996).
- [12] Petition, Annex "A", supra.
- [13] Petition, Annex "D", Rollo, pp. 55-57.
- [14] Waterous Drug Corporation vs. NLRC, 280 SCRA 735, 745 (1997); People vs. Laurente, 255 SCRA 543, 567 (1996); Batiquin vs. CA, 258 SCRA 334, 342 (1996).
- [15] People vs. Villaran, 269 SCRA 630, 637 (1997).

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