PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALIAS KOBEN VISTA, VIC PEDRO AND RICHARD OMALI, ACCUSED. ALIAS KOBEN VISTA, ACCUSED-APPELLANT.

G.R. No. 137369. November 15, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Antique, Branch 64, convicting accused Alias Koben Vista of multiple murder with the use of explosive, sentencing him to reclusion perpetua with the accessories provided by law and to indemnify the heirs of the victims in the amount of P50,000.00.

On February 15, 1995, First Assistant Provincial Prosecutor Romeo Casalan of Antique filed with the Regional Trial Court, Antique, Branch 12, San Jose, an Information charging accused Alias Koben Vista, Vic Pedro and Richard Omali with multiple murder with the use of explosive (hand grenade), committed as follows:

> "That on or about the 2[nd] day of February, 1994, in the Municipality of Tibiao, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another by means of treachery and evident premeditation and with intent to kill and with the use of handgrenade, did then and there, willfully, unlawfully and feloniously attack, assault and hurl a handgrenade to Francisco (sic) Lomugdang, Francisco Catague, Nicanor Lomugdang, Norma Lomugdang and Demetrio Lomugdang thereby inflicting upon Francisco Lomugdang and Francisco Catague fatal wounds on the vital parts of their bodies which caused their death shortly thereafter.
>
> With the qualifying circumstances of treachery and evident premeditation.
>
> Contrary to the provisions of Article 248 of the Revised Penal Code."[2]

On March 29, 1995, Judge Antonio M. Matino issued a warrant of arrest ordering the arrest of the three accused. Only accused Alias Koben Vista was arrested and detained at the Antique Provincial Jail. The other two accused remained at large.

Upon arraignment on April 25, 1996, accused Alias Koben Vista pleaded not guilty to the charge.[3] Trial ensued.

At about 7:00 in the evening, on February 1, 1994, Nicanor Lomugdang, together with his wife, Norma Lomugdang, and their three (3) children, Demetrio Lomugdang, Virgilio[4] Catague and Kennedy Catague were having supper at their house in sitio Kapilokan, Barangay Salazar, Tibiao, Antique. Suddenly, Ceferino Vista, Jr. appeared by the door and, without warning, shot Kennedy Catague at the left side of the latter's stomach with a twelve (12) gauge shotgun. Thereafter, Ceferino Vista, Jr. went inside the house, got his bolo and hacked Demetrio Lomugdang who was hit at the right shoulder. Demetrio Lomugdang and Ceferino Vista, Jr. then grappled for possession of the bolo. While the two were fighting for possession of the bolo, Vic Pedro, who earlier served as lookout while Ceferino Vista, Jr. shot Kennedy Catague, aimed a .38 caliber gun at Demetrio Lomugdang. Demetrio Lomugdang saw this and used the body of Ceferino Vista, Jr. as a shield when Vic Pedro

fired four shots at him.

The shots from Vic Pedro's gun hit Ceferino Vista, Jr. instead of Demetrio Lomugdang. Ceferino Vista, Jr. died instantly, while Vic Pedro immediately fled.

Kennedy Catague was seriously wounded, and Nicanor Lomugdang, Demetrio Lomugdang, Norma Lomugdang, Francario Lomugdang, Francisco Catague and Jonarel Catague prepared to bring him to the hospital in Barbaza, Antique. They placed Kennedy Catague in a hammock made from a blanket. Since there was no motorized transportation from the house of Nicanor Lomugdang to the national road, the group walked for two (2) hours before they reached the national road where they waited for a tricycle ride to the hospital. They armed themselves with a flashlight and a petromax lamp to illumine their trip.

When they reached the feeder road in Barangay Zaragoza, Tibiao, Antique, Nicanor Lomugdang saw accused Alias Koben Vista, Vic Pedro and Richard Omali twenty (20) meters away in front at their right side. He was able to identify the three because they were all familiar to him and the place was sufficiently illuminated by the petromax lamp and the flashlight that they carried. Nicanor Lomugdang saw accused Alias Koben Vista stand up from a squatting position and throw a grenade at the group. The grenade exploded and injured some of them. Francario Lomugdang and Francisco Catague both died on the spot.

Dr. Emilia Monicimpo, Municipal Health Officer of Tibiao, Antique examined the dead bodies of Francario Lomugdang and Francisco Catague at Barbaza Municipal Hospital. The Medico-Legal Report revealed that the cause of death was irreversible shock secondary to blast injuries due to grenade explosion.[5]

PO3 Fred Oribe, PNP, member of the Tibiao Police Station, prepared Entry No. 3654 of the Police Blotter[6] concerning the incident.[7]

On the other hand, accused Alias Koben Vista interposed denial and alibi. He maintained that on February 2, 1994, at the time of the incident, he was at home sleeping. On the morning of February 2, 1994 the wife of his brother, Ceferino Vista, Jr., informed him that the Lomugdangs killed his brother. Accused went to Barangay Salazar to get the dead body of his brother from the policemen who got it from sitio Kapilokan. Thereafter, they brought the body to Tibiao, Antique to be autopsied. After the autopsy, the body was embalmed and brought to his house.[8]

The other witness for the defense was Gloria Imbang, a neighbor for five years and a first cousin of accused. She testified that she was in her house on February 2, 1994. She said that the wife of Ceferino Vista, Jr. came at around 9:00 in the morning of February 2, 1994 and informed accused-appellant about Ceferino Vista, Jr.'s death. Gloria Imbang also told the court that she accompanied accused-appellant, the wife of Ceferino Vista, Jr. and the police in getting the body of Ceferino Vista, Jr.

After due trial, on July 1, 1998, the trial court rendered a decision, the dispositive portion of which reads:

> "In view thereof, this court finds the accused Alias Koben Vista guilty beyond reasonable doubt of the offense of Multiple Murder with the Use of Explosive and considering the mitigating circumstance of immediate vindication of a grave offense, he is hereby sentenced to Reclusion Perpetua with the accessories as provided by law and to indemnify the heirs of the victim for his death in the amount of P50,000.00. No other damages were proven by the prosecution.
>
> "The Provincial Warden of the Antique Rehabilitation Center is directed to deliver the accused to the New Bilibid Prison in Muntinlupa within three (3) months from the finality of the decision.
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> "The case against the other accused namely: Vic Pedro and Richard Omali is sent to the archive.

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"San Jose for Bugasong, Antique, July 1, 1998.

"(sgd.)RAFAEL O. PENUELA
"Presiding Judge"[9]

Hence, this appeal.[10]

In his brief,[11] accused-appellant submitted that the prosecution failed to prove his guilt beyond reasonable doubt. He contended that the prosecution failed to establish the identity of the perpetrator of the crime charged.

In support of this contention, he cites Police Blotter Entry No. 3654[12] and points out that the name of the accused was not mentioned in the entry. A perusal of the said exhibit, he said, would show that it was only "Vic Pedro together with some unidentified companions" that were mentioned. This failure to mention his name in the police blotter, according to accused-appellant, constitutes an inconsistency which injects reasonable doubt as to accused-appellant's guilt. Consequently, accused-appellant maintains that he is entitled to an acquittal, regardless of his defense of denial and uncorroborated alibi since the prosecution failed to discharge its burden of proving accused-appellant's guilt beyond reasonable doubt.

The Solicitor General,[13] on the other hand, contends that the testimony of Nicanor Lomugdang and Demetrio Lomugdang fully established the identity of the accused-appellant as the perpetrator of the crime and that accused-appellant's defense of denial and alibi cannot prevail over this positive identification.

We find the appeal without merit.

In the case at bar, the identity of the accused-appellant as the perpetrator of the crime has been sufficiently established by the positive testimonies of Nicanor Lomugdang and Demetrio Lomugdang. The trial court ascertained that the testimonies of the prosecution witnesses clearly and adequately proved how the killing happened and the extent of accused-appellants' participation in that incident. The Court finds no valid and plausible reason to discredit the veracity of their narration.

It is axiomatic that the determination of the question of credibility is a function of a trial court for it is best equipped to make that assessment, and its factual findings are generally not disturbed on appeal, unless the trial court had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance which, if considered, would alter the result of the case. No such fact or circumstance of weight or substance which had been ignored by the trial court has surfaced. The trial court's findings of fact will, therefore, stand.[14]

The only defense interposed by the accused-appellant is alibi.

Alibi is rejected when the identity of the accused is sufficiently and positively established by the prosecution.[15] Moreover, the accused must establish not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[16]

In this case, the distance between accused-appellant's residence, Barangay Surigao, and the place where the grenade throwing occurred, Barangay Zaragoza, is only two (2) kilometers. According to accused-appellant himself, it would only take half an hour for one to walk that distance.[17] It is not physically impossible for the accused-appellant to be present at the scene of the crime at the time that it was committed.

As to the failure to include accused-appellant's name in the police blotter, the Court agrees with the position of the Solicitor General that the non-inclusion did not operate to diminish the credibility of the prosecution witnesses. The excerpt of the police blotter was prepared by the police on the basis of Jonarel Catague's narration which was hastily made at around 3:45 in the morning of February 2, 1994.

Hence, we find that the trial court did not err in convicting the accused-appellant of multiple murder with the use of explosive and sentencing him to reclusion perpetua with all the accessory penalties provided by law. However, the indemnity for death it awarded to the heirs of the deceased Francario Lomugdang and Francisco Catague was not sufficient. Each set of heirs is entitled to the P50,000.00 indemnity for death.

IN VIEW WHEREOF, the appealed decision is AFFIRMED. Accused-appellant Alias Koben Vista is found guilty beyond reasonable doubt of multiple murder and is hereby sentenced to reclusion perpetua with the accessory penalties provided by law and to indemnify the heirs of the victims Francario Lomugdang and Francisco Catague in the amount of P50,000.00 for each victim and costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In Criminal Case No. 5471, Judge Rafael O. Penuela, presiding.

[2] Information, Original Record, Criminal Case No. 5471, p. 29.

[3] Certificate of Arraignment, Original Record, Criminal Case No. 5471, p. 44.

[4] In the cross-examination of the same witness, he would refer to this person as Jonarel (TSN, June 18, 1997, p. 25).

[5] TSN, June 18, 1997, pp. 6 and 8.

[6] Exhibit C, Original Record, Criminal Case No. 5471, p. 128.

[7] TSN, December 18, 1997, pp. 3-5.

[8] TSN, January 21, 1998, pp. 5-8.

[9] Decision, Rollo, pp. 21-22.

[10] Notice of Appeal, Rollo, p. 23. On June 23, 1999, we accepted the appeal (Rollo, pp. 25-26).

[11] Appellant's Brief, Rollo, pp. 40-51.

[12] Exhibit C, Original Record, Criminal Case No. 5471, p. 128.

[13] Appellee's Brief, Rollo, p. 62-81.

[14] People v. Leonardo Carizo, 343 Phil. 793, 800 (1997), citing People v. Nemeria, 312 Phil. 531 (1995) and People v. Gapasan, 312 Phil. 964 (1995).

[15] People v. Dando, 325 SCRA 406 (2000), citing People v. Belo, 360 Phil. 36 (1998), People v. Dadles, 343 Phil. 916 (1997) and People v. Novales, 334 Phil. 521 (1997).

[16] People v. Dando, supra, Note 15, citing People v. Salvador, 344 Phil. 580 (1997).

[17] TSN, January 21, 1998, pp. 11-12.

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