

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARLON ORTILLAS Y GAMLANGA, APPELLANT.

G.R. No. 137666. May 20, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

On January 6, 1995, an Information[1] was filed against Marlon Ortillas with the Makati Regional Trial Court, and assigned by raffle to Branch 255 (Las Piñas), then presided over by Judge Florentino M. Alumbres.[2] The Information reads:

The undersigned 3rd Assistant Prosecutor accuses MARLON ORTILLAS Y GAMLANGA of the crime of Murder, committed as follows:

That on or about the 21st day of December, 1994, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one Jacob Relox whose true identity and present whereabouts is still unknown and both of them mutually helping and aiding one another, with intent to kill and without justifiable motive and evident premeditation and by means of treachery and use of explosive (pillbox), did, then and there willfully, unlawfully and feloniously attack, assault and throw a Pillbox to one Jose Mesqueriola y Labarosa, thereby inflicting upon the latter serious and mortal wounds, which directly caused his death.

CONTRARY TO LAW.

Las Piñas, Metro Manil

December 28, 1994.

(signed)

APOLINAR C. QUETULIO, JR.

3rd Assistant Prosecutor[3]

Despite the fact that it is stated in the title of the Information that appellant was a minor, detained at the Municipal Jail, Las Piñas, Metro Manila, Presiding Judge Alumbres failed to ascertain and verify the alleged minority of appellant and determine if the provisions of P.D. No. 603, otherwise known as The Child and Youth Welfare Code should be applied to Ortillas.

After arraignment of appellant who pleaded not guilty to the offense with which he is charged, the trial court dispensed with the pre-trial and proceeded to trial on the merits.

On June 8, 1995, the prosecution presented Russel[4] Guiraldo, an alleged eyewitness. After Russel's direct examination, Atty. Jose G. de Leon, the then counsel for Ortillas moved for postponement as he had a very important appointment to keep which Judge Alumbres granted. Subsequently, Atty. de Leon had to withdraw as counsel because of eye ailment which the trial court approved. The only other hearing that took place after the testimony of Russel on June 8, 1995, was on September 5, 1995 when NBI Medico-Legal Officer Roberto Garcia

testified for the prosecution. All in all, the continuation of the hearing was postponed thirteen times from June 8, 1995 until May 8, 1996 when the prosecution finally rested its case[5] with the submission of its documentary evidence. [6] Witness Russel was never presented for cross-examination. The last time he was subpoenaed was for the hearing set on November 6, 1995,[7] but records do not show that he appeared on said date. Although several hearings were scheduled thereafter, Russel was not subpoenaed anymore.

On the basis of the testimonies of Russel and Dr. Garcia, Judge Alumbres rendered a decision[8] dated September 21, 1998 with the following findings:

...Roselle Guiraldo positively identified and pointed to the accused as the one who threw the pillbox to his companion Jose Mesqueriola in the morning of December 21, 1994. He even specified the exact location where the accused was at the time he threw the pillbox. According to him, the accused was standing in front of a gate of a house along Calle Real, near Plaza Quezon, Las Piñas, Metro Manila. He could not be mistaken of the identity of the accused because they were former classmates at the Las Piñas Municipal High School and members of rival fraternities. As could be deduced from the facts, the pillbox was intended for Roselle Guiraldo because the accused has the strongest motive of killing him. It will be recalled that three (3) days after the opening of classes at the Las Piñas Municipal High School, Roselle Guiraldo and the accused could not see eye to eye already because Roselle Guiraldo was stoned and the stone came from the direction of the accused while seated inside the classroom. Roselle Guiraldo tried to get even with the accused by waiting for him outside of the school premises every after classes. Afraid that a personal encounter may happen and he will be in big trouble, the accused sought transfer to the Las Piñas Municipal High School North, which is located at the Vergonville Subdivision in Barangay Pulanglupa II. This is now very far from his residence at San Francisco St. in Barangay Aldana. While if he was not transferred, his school (Las Piñas Municipal High School) is only walking distance from his residence at San Francisco St. His ill-feelings against Roselle Guiraldo became intense because of the increasing problem he has to face or handle. He has his work and a common-law wife to support and who was now getting pregnant. But all the while, he has not severed his relationship with his gangmates, although according to him, he already quit from being an active member of Crime buster fraternity after he became a working student in July 1993.[9]

...

The defense put up by the accused is alibi, a very weak defense because it is easy to fabricate. Just like in the present case, he was still able to tell the authorities that he was in his house when his friend Jose Mesqueriola was killed. If there was truth that he was in his house when Jose Mesqueriola was killed, how come not one occupant in his house came forward to testify for him during the trial. Alibi is considered the weakest defense because it can easily be fabricated and cannot stand in the light of clear, positive and precise evidence of the prosecution establishing the identity of the accused (People vs. Magallanes, 218 SCRA 109; People vs. Santos, 221 SCRA 715; People vs. Bescana, 220 SCRA 93; People vs. dela Cruz, 217 SCRA 283). It is a fundamental dictum that the defense of alibi cannot prevail over the positive identification of the accused (People vs. Tanco, 218 SCRA 494).

The charge against the accused is murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by RA 7659. The commission of the crime in the present case was attended by the circumstance of explosion (the use and exploding of the pillbox). In the Certificate of Post-Mortem Examination (Exh. "C") which Dr. Garcia issued, he placed that the cause of death which is "Traumatic-head injury" was the result of an alleged explosion. On whether there was the circumstance of evident premeditation, the evidence does not clearly show.

There is present in the circumstantial evidence of flight. As earlier established, the accused was one of those who escaped from detention in the jail of Las Piñas City on April 17, 1997. It is well-settled rule that flight is indicative of guilt of the accused. Flight is a silent admission of guilt, and is an indication of his guilt or of a guilty mind (People vs. Martinado, 214 SCRA 712; People vs. Cruz, 213 SCRA 601; People vs. Alabaso, 204

SCRA 458; People vs. Babac, 204 SCRA 968; People vs. Lorenzo, 204 SCRA 361).[10]

The dispositive portion of the assailed decision reads:

WHEREFORE, the Court finds the accused Marlon Ortillas y Gamlanga guilty beyond reasonable doubt of the charge against him in the information, and he is hereby sentenced to suffer the penalty of reclusion perpetua; to suffer the accessory penalties provided for by law; to indemnify the heirs of the victim Jose Mesqueriola in the sum of P100,000.00; and to pay the costs.

SO ORDERED.[11]

Hence, the present petition for review on certiorari with the following Assignment of Errors:

I

THE TRIAL COURT ERRED IN NOT COMMITTING THE ACCUSED-APPELLANT TO THE CARE OF THE DEPARTMENT OF SOCIAL WELFARE WHICH SHALL BE RESPONSIBLE FOR HIS APPEARANCE IN COURT WHENEVER REQUIRED.

II

THE TRIAL COURT ERRED IN DENYING THE REQUEST OF ATTY. TERESITA CARANDANG-PANTUA OF THE PUBLIC ATTORNEY'S OFFICE TO CROSS-EXAMINE THE WITNESS PRESENTED BY THE PROSECUTION DURING THE HEARING ON JUNE 8, 1995.

III

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS ROSELLE GUIRALDO AND IN DISREGARDING THE TESTIMONY OF ACCUSED-APPELLANT.[12]

Anent the first assigned error:

In his Brief, appellant points out that the first counsel of appellant, Atty. Jose de Leon, raised the minority of appellant and invoked the provisions of P.D. No. 603 during the initial hearing conducted on June 8, 1995 but Judge Alumbres outrightly denied his request. Atty. de Leon submitted to the ruling and prosecution witness Russel was called to the witness stand. There is merit to the complaint of appellant. Judge Alumbres was remiss of his duty to ascertain the minority of appellant at the onset of the proceedings. The records further disclose that he likewise ignored the letter of Director Milda S. Alvior of the Department of Social Welfare and Development (DSWD) filed with his court on January 31, 1996 informing him that appellant at that time was sixteen years old and alleging that his prolonged stay in the Las Piñas Jail for one year and one month at the time, mixed with hundred criminals affected him physically, intellectually, emotionally and socially.[13]

The Presiding Judge should be sanctioned for his negligence in the performance of his duties with respect to accused minor - but these particular omissions are not sufficient grounds to merit the reversal of the assailed decision.

As to the second assigned error:

The Court finds merit to appellant's claim that the judgment of the trial court has unduly deprived him of his constitutional right to meet the witness face to face[14] which includes the right to cross-examine the witness.

Section 1(f), Rule 115 of the then prevailing Rules of Criminal Procedure provides:

SECTION 1. Rights of the accused at the trial. – In all criminal prosecutions, the accused shall be entitled to the following rights:

...

(f) To confront and cross-examine the witnesses against him at the trial. . . .

Section 6, Rule 132 of the then prevailing Rules on Evidence provides:

SEC. 6. Cross-examination; its purpose and extent. – Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.

As the Court held in *People vs. Rivera*, to wit:

The right of a party to cross-examine a witness is embodied in Art. III, §14(2) of the Constitution which provides that the accused shall have the right to meet the witnesses face to face and in Rule 115, §1(f) of the Revised Rules of Criminal Procedure which states that, in all criminal prosecutions, the accused shall have the right to confront and cross-examine the witness against him. The cross-examination of a witness is essential to test his or her credibility, expose falsehoods or half-truths, uncover the truth which rehearsed direct examination testimonies may successfully suppress, and demonstrate inconsistencies in substantial matters which create reasonable doubt as to the guilt of the accused and thus give substance to the constitutional right of the accused to confront the witnesses against him.[15]

Records disclose that there was never a valid waiver on the part of appellant or his counsel to cross-examine the prosecution witness Russel. The first counsel, Atty. de Leon, in the hearing of June 8, 1995 requested for postponement of the cross-examination of Russel in view of his “professional engagement”, without objection on the part of the prosecution.[16] The next hearing was also postponed in view of the eye problem of Atty. de Leon.[17] And on August 3, 1995, the hearing was again postponed due to the withdrawal of appearance of Atty. de Leon on ground of eye-ailment.[18] Subsequent dates of hearing were postponed because the Presiding Judge went on leave.[19] It is only on September 25, 1995 that Atty. Leopoldo Macinas appeared as new counsel for appellant.[20] However, although it appears in the Minutes of the hearing scheduled on said date that the same is for cross-examination of Russel,[21] there is no showing that Russel was present during that day. In fact, the Minutes show that Russel had to be notified for the next hearing set on November 6, 1995.[22] But on November 6, the hearing was again postponed to November 11, 1995 due to typhoon Rosing. The Minutes again does not show that on November 6, Russel appeared in court as only complaining witness Grace Mesqueriola signed thereon.[23] Thereafter, Russel was never notified of the hearings set on December 11, 1995, January 17, 1996, January 22, 1996, January 31, 1996, February 26, 1996, March 25, 1996 and May 8, 1996.

Judge Alumbres’ refusal to give opportunity for Atty. Teresita Carandang-Pantua of the Public Attorney’s Office (PAO), the new counsel for appellant, to cross-examine prosecution witness Russel on the ground that prosecution had already rested its case, is patently a grave abuse of discretion on his part. Although Atty. Pantua had adequately explained appellant’s predicament, on the first scheduled date of hearing for the presentation of defense evidence, Judge Alumbres, upon the perfunctory objection of the prosecution, unreasonably refused to heed Atty. Pantua’s request.

It was well within the trial court’s discretion to allow the recall of witness Russel under the then prevailing Section 9, Rule 132 of the Rules on Evidence, to wit:

SEC. 9. Recalling witness. – After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The Court will grant or withhold leave in its discretion, as the interests of justice may require.

Certainly, under the foregoing circumstances, Judge Alumbres should have known that the interest of justice

required that appellant should have been given the opportunity to cross-examine Russel, as it was not his fault that Russel had not been cross-examined. While a petition for certiorari could have been duly availed of by counsel for appellant to rectify the judge's grave abuse of discretion, appellant should not be made to suffer for the failure of his counsel to do so; as a layman, he could not have known better as to what must be done under the circumstances. On this matter, the PAO, as de officio counsel for appellant was remiss of its duty to protect the interest of its client.

Under the peculiar facts and circumstances of the case, it is evident that appellant had not been given the opportunity to cross-examine the lone prosecution witness. In the absence of cross-examination, which is prescribed by statutory norm and jurisprudential precept,[24] the direct examination of the witness should have been expunged from the records, in which case, the trial court would have had no valid basis to deny the demurrer to evidence.

Nevertheless, the Court will resolve the third issue so as to put an end to the question whether or not the trial court erred in giving weight and credence to the testimony of prosecution witness Russel and in disregarding the testimony of appellant.

The trial court declared that "the issue in this case hinges mainly on credibility of the witnesses, both of the prosecution and the defense".[25]

The prosecution evidence is principally based on the testimony of Russel which is narrated by the trial court, as follows:

. . . He testified that at around 6:00 o'clock in the morning of December 21, 1994, he was with one Jose Mesqueriola, alias Joey, hearing Misa de Gallo at the Bamboo Organ Church in Las Piñas, Metro Manila. After the mass, he and Jose Mesqueriola were walking side by side at the side of the road leading to the direction of Quezon Plaza. Upon reaching a point at the side of the road near Plaza Quezon, and at a distance of about fifteen (15) meters, he saw the accused in front of a gate of a house threw (sic) a pillbox towards their direction and the pillbox exploded on the head of his companion Jose Mesqueriola. He was also hit at a portion of his right face. After the bomb exploded on the head of Jose Mesqueriola, the latter fell down so he helped him by bringing him to the Las Piñas Emergency Hospital which is just nearby. However, the next day, he died. After the accused threw the bomb, he ran away and hid. He came to know of the accused since June 1994 (they being classmates in the Municipal High School, according to the accused). . .[26]

On the other hand, the defense evidence consist only of the testimony of appellant which is aptly narrated by the trial court, as follows:

. . . he testified that on December 21, 1994, at around 6:00 o'clock in the morning, he was in his house at his given address when he heard an explosion. He then ran towards the direction where the explosion was to find out what was it all about. Reaching the place, he found some people around and he saw a person lying prostrate on the street and blooded. He was being assisted and brought to the hospital by his classmate Roselle Guiraldo. After the wounded person was brought to the hospital, he learned from his neighbors that the person lying on the street was a victim of pillbox explosion and he came to know that his name was Joey and his friend. When he ran out of his house, he saw his classmate Jacob Relox was running away from the scene of the explosion, together with companions, and he was also told by Aling Itang, one of his neighbors, that the one who threw the pillbox to Joey was Jacob Relox. He learned also from his neighbor, Aling Itang, that the reason why Jacob Relox threw pillbox at Joey is because on December 20, 1994, Jacob was mauled by Joey Mesqueriola and his companions.

The accused revealed during the trial that he was a working student enrolled at the Las Piñas Municipal High School near Saint Joseph Church in Las Piñas Poblacion. In their school, there were two rival fraternities, the

Crimebuster and the Taugamma. He was a member of the Crimebuster together with Roselle Guiraldo and Jose Mesqueriola, his classmates. He left the Crimebuster because he did not like the rules and he joined the Taugamma.

After one (1) week of attending classes at the Las Piñas Municipal High School, he asked for transfer to Las Piñas North Municipal High School because in the Las Piñas Municipal High School, every after classes, his classmate Roselle Guiraldo always waited for him outside (inaabangan) and look (sic) for trouble, and this Roselle Guiraldo has a bad blood or grudge against him. It started when there was stone throwing inside their classroom on the third day of their classes. Roselle Guiraldo was hit and he thought that he (accused) was the one who threw the stone because it came from the direction where he was sitting, not knowing that it was his sitmate (sic) who threw the stone. So that even if he was not the one who threw the pillbox in the early morning of December 21, 1994 which cause the death of Jose Mesqueriola, he was the one pointed to by Roselle Guiraldo because of this grudge against him.

He also testified that Jacob Relox has the motive for killing Jose Mesqueriola because on December 20, 1994, Jacob Relox was mauled by Jose Mesqueriola and the other members of the Crimebuster fraternity. Jacob Relox then was a member of the rival fraternity, the Taugamma.[27]

Considering that appellant was unlawfully deprived of the opportunity to cross-examine prosecution witness Russel, his testimony should have been strictly scrutinized and analyzed with utmost care and any doubt thereon should have been interpreted by the trial court in favor of appellant.

We reproduce hereunder the testimony of Russel on direct examination:

FISCAL QUETULIO

Q

How long have you been rather how long have you know (sic) this Marlon Ortillas?

WITNESS

A June, 1994, Sir.

FISCAL QUETULIO

Q Now, will you please tell us, at around 6:00 o'clock in the morning of December 21, 1994, where were you?

WITNESS

A I was in the church, Sir.

FISCAL QUETULIO

Q Where is that church located, Mr. Witness?

WITNESS

A Las Piñas, Sir.

...

FISCAL QUETULIO

Q Now, at around that time also, who were your companions, if any in going to church?

WITNESS

A Joey, Sir. His name, true name is Jose Miscariola, Sir.

FISCAL QUETULIO

Q Now, where is this Jose Miscariola now, Mr. Witness?

WITNESS

A He died already, Sir.

FISCAL QUETULIO

Q When did he die?

WITNESS

A December 22, 1994, Sir.

FISCAL QUETULIO

Q

Now, when you and Jose Miscariola were in the church, was there, at around 7:00 rather 6:00 o'clock in the morning of December 21, 1994, was there any unusual incident that happened?

WITNESS

A Yes, there was, Sir.

FISCAL QUETULIO

Q What was that incident, if any, Mr. Witness?

WITNESS

A

When we were about to leave the church, Joey or Jose Miscariola was hit with the pillbox that was thrown by the accused, Marlon Ortillas.

FISCAL QUETULIO

Q Now, when this incident happened, how far were you then from the church, Mr. Witness?

WITNESS

A We were already far from the church because the incident happened in the plaza, Sir.

FISCAL QUETULIO

Q Now, what happened at the plaza, Mr. Witness?

WITNESS

A The incident was about the throwing of pillbox by Marlon Ortillas, Sir, to Jose Miscariola.

FISCAL QUETULIO

Q Now, this pillbox that was allegedly thrown to Joey, what happened to him, if any?

WITNESS

A It exploded in his head, Sir, or in the head of Jose Miscariola, Sir.

FISCAL QUETULIO

Q And what happened to Joey Miscariola after the pillbox thrown by Marlon Ortillas exploded in his head?

WITNESS

A He fell down, Sir.

FISCAL QUETULIO

Q And how about you, what did you do when you saw Joey Miscariola fell down?

WITNESS

A I helped him, Sir.

FISCAL QUETULIO

Q Now, this Joey Miscariola, when he was hit with the pillbox that exploded in his head, how far were you then, Mr. Witness?

WITNESS

A I was beside him, Sir.

FISCAL QUETULIO

Q Were you not also hit by the pillbox, Mr. Witness?

WITNESS

A I was also hit, Sir.

FISCAL QUETULIO

Q Where were you hit, Mr. Witness?

WITNESS

A In my face, Sir.

INTERPRETER

Witness pointing to the right portion of his face.

FISCAL QUETULIO

Q

Now, Now, where was Marlon Ortillas at that time when you saw him threw (sic) the pillbox to your direction?

WITNESS

A At the gate located at the opposite side of the street.

FISCAL QUETULIO

Q What is this gate, gate of a house or gate of the plaza?

WITNESS

A Gate of house, Sir.

FISCAL QUETULIO

Q Now, how far was Marlon Ortillas from both of you and Joey when you saw Marlon throwing the pillbox towards you?

WITNESS

A It is just near, Sir.

INTERPRETER

Witness pointing to a distance from the chair where he is sitting to the door of the courtroom which was estimated by the prosecution and counsel for the accused to be about fifteen (15) meters, more or less.

COURT

Q Do you agree that the distance is about fifteen (15) meters more or less, Fiscal?

FISCAL QUETULIO

A Yes, Your Honor.

ATTY. DE LEON

No objection, Your Honor.

FISCAL QUETULIO

Q Now, you said that you helped Joey when he fell down, what help did you do, Mr. Witness?

WITNESS

A I brought him to the Las Piñas Emergency Hospital which was located nearby, Sir.

FISCAL QUETULIO

Q What about Marlon Ortillas, after throwing the pillbox or after it exploded, did you notice what happened to him?

WITNESS

A He hid, Sir.

FISCAL QUETULIO

Q Where did he hide, Mr. Witness?

WITNESS

A In their house, Sir.

FISCAL QUETULIO

Q Where is this house of Marlon located, Mr. Witness?

WITNESS

A It was just located nearby, Sir.

FISCAL QUETULIO

Q How far from the gate where Marlon was standing from where Marlon threw the pillbox up to his house, how far is that, if you know?

WITNESS

A From here up to that distance, Sir.

INTERPRETER

Witness is pointing to a distance of more or less six (6) meters from the place where he is sitting.

FISCAL QUETULIO

Q More or less six meters, is that agreed, Counsel?

ATTY. DE LEON

A Yes, Your Honor.[28]

It is doctrinal that the Court will not interfere with the judgment of the trial court in passing upon the credibility of witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misapprehended or misinterpreted.[29]

The trial court's assessment of Russel's testimony is not only perfunctorily done but its decision is also partly based on the evidence presented by the defense, in stark violation of the well-settled rule that the conviction of appellant must not act on the weakness of the defense but on the strength of the prosecution.[30]

First, it cannot be over-emphasized that there is no direct, positive testimony that Russel actually saw appellant throw the pillbox. He only testified that when he and victim Joey or Jose Miscariola[31] were about to leave the church, Joey "was hit with the pillbox that was thrown by the accused, Marlon Ortillas". This statement is a conclusion of fact rather than a declaration of what he actually saw. He did not testify that he actually saw appellant in the act of throwing the pillbox at them. It was only the Fiscal who expressed in his question or who presumed that Russel saw appellant throw the pillbox to the place where they were, which although not objected to by counsel for appellant, should not have been a basis for appellants' conviction. The purported eyewitness should at least have declared, positively and explicitly, having seen appellant throw the pillbox or an unidentified object. There is not even a testimony that Russel saw appellant holding the pillbox before he threw it.

Second, it is difficult to reconcile the contradiction in the declaration of Russel that it is when they were about to leave the church that Joey was hit with the pillbox thrown by appellant as against his succeeding answer to the next question of the Fiscal as to how far were they from the church when the incident happened and he replied that they were already far from the church because the incident happened in the plaza. Where did the throwing of the pillbox actually take place, when he was about to leave the church or in the plaza? Why the discrepancy? Did he really see the actual throwing of the pillbox? These are questions, the answers to which are not found in the testimony of Russel.

Third, Russel testified that appellant was fifteen meters away from them at the opposite side of the street. To be able to testify that he saw appellant throw a pillbox, Russel should have seen the actual throwing by appellant before the pillbox left the hand of appellant; otherwise, how could Russel say for certain that it was appellant who threw the pillbox? And if Russel did see the actual throwing of an object thrown at their direction, how could he not have at least attempted to avoid the same when the distance between them and appellant is fifteen meters. At the normal speed of a hand thrown object as big as a pillbox, if Russel had actually seen appellant in the act of

throwing the pillbox from that distance, instinct would have naturally spurred him, at least, to attempt to dodge the same, even if he would not have succeeded in doing so. As it is, Russel did not testify that upon seeing the pillbox or the object being thrown by appellant at their direction, he tried to evade the same. Neither is there any testimony on the part of Russel that when he saw the pillbox being thrown at him and Joey, there was no time to evade the same.

Fourth, the testimony of Russel that he helped Joey when the latter was hit and fell down, but, at the same time, he saw appellant run and hide in his (appellant's) house that was six meters away from the place where appellant threw the pillbox, is not credible. It goes beyond human experience for Russel to be able to follow the movements of a culprit right after Joey, his companion, had been hit at the same time that he was helping Joey when the latter fell to the ground, not to mention the fact that he was also hit on the right side of his face. Does it mean that Russel just stood by watching appellant's movements while the latter threw the pillbox at them and hit him and Joey? The failure of the prosecution to explain this incredible feat is fatal to its cause. No better test has been found to measure the value of a witness' testimony than its conformity to the knowledge and common experience of mankind.[32]

Fifth, the motive attributed by the trial court to appellant in throwing a pillbox at Russel is based not on the testimony of prosecution witness Russel but on the testimony of appellant. It is a hornbook doctrine that the prosecution must rely on its own evidence to prove the guilt of appellant beyond reasonable doubt[33] and therefore, the trial court should not depend on the evidence of the defense to support the conviction of appellant. However, considering that the presiding judge had given probative weight or credibility to the testimony of appellant by using his testimony to establish motive on his part to commit the crime, the same testimony may be used likewise to prove that witness Russel had an ill-motive to testify against appellant. And when the evidence admits of two interpretations, that which is favorable to appellant should prevail.[34]

Sixth, while indeed, it is true that flight evidences guilt and a guilty conscience,[35] the escape of appellant from jail pending trial of his case, cannot, under the attendant circumstances, be considered as evidence of his guilt in the commission of the offense, or as basis of his conviction in this case. Appellant had sufficiently explained that he escaped from detention because he got bored in jail, he wanted to see his first new born child and to look for his own father.[36] It is quite surprising why the trial judge in his decision only mentioned and denigrated the explanation of appellant that he wanted to look for his father and not mention at all the other reasons of appellant for bolting out of jail. At any rate, it is not refuted that appellant subsequently surrendered to a member of the Office of the Assistant Regional Director, BJMP, because of fear for his life.[37]

On the other hand, in denying that he threw the pillbox, no other witness was presented by appellant to corroborate his testimony. Nonetheless, the testimony of appellant fully explains why Russel testified against him. Russel was of the belief that appellant was the one who earlier threw a stone at him in the classroom. Unfortunately, the trial court misapprehended the import of his testimony and interpreted it against him to explain the latter's purported motive in throwing the pillbox at Russel and Joey.

Although denial, like alibi, can be fabricated, it is not always false and without merit, and when coupled with the improbabilities and uncertainties of the prosecution evidence, the defense of alibi deserves merit.[38]

Settled is the rule that conviction should rest on the strength of evidence of the prosecution and not on the weakness of the defense.[39] The weakness of the defense does not relieve it of this responsibility.[40] And when the prosecution fails to discharge its burden of establishing the guilt of an accused, an accused need not even offer evidence in his behalf.[41] A judgment of conviction must rest on nothing less than moral certainty.[42] It is thus required that every circumstance favoring his innocence must be duly taken into account. The proof against him must survive the test of reason and the strongest suspicion must not be

permitted to sway judgment. [43] There must be moral certainty in an unprejudiced mind that it was accused-appellant who committed the crime. Absent this required quantum of evidence would mean exoneration for accused-appellant.[44]

As the Court declared in *People vs. Tajada*:

While we strongly condemn the senseless and gruesome crime and sincerely commiserate with the suffering and emotional stress suffered by the bereaved family of the victim, nevertheless, we find the pieces of circumstantial evidence insufficient to prove the guilt of accused-appellant beyond reasonable doubt. They do not pass the requisite moral certainty, as they admit of the alternative inference that other persons, not necessarily the accused-appellant, may have perpetrated the crime. Where the evidence admits of two interpretations, one which is consistent with guilt and the other with innocence, the accused must be acquitted. Indeed, it would be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.[45]

Thus, the Court is constrained to set aside the conviction of appellant.

Had not Judge Alumbres been compulsorily retired in 2001, he together with the Public Attorney's Office would have been admonished to be more circumspect in the performance of their respective duties so as to prevent miscarriage of justice.

WHEREFORE, the appealed judgment is REVERSED AND SET ASIDE. Another judgment is entered ACQUITTING appellant MARLON ORTILLAS y GAMLANGA for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered IMMEDIATELY RELEASED from prison, unless he is being held for some other lawful cause. The Director of Prisons is DIRECTED to inform this Court of the action taken hereon within five (5) days from receipt of copy of herein Decision.

The Public Attorney's Office is admonished to be more circumspect in the performance of its duties so as to prevent miscarriage of justice. Let copy of herein decision be furnished the Chief Public Attorney of the Public Attorney's Office so that appropriate steps may be taken to ensure the improvement of the service of that office.

SO ORDERED.

Quisumbing (Acting Chairman), Callejo, Sr., and Tinga, JJ., concur.
Puno, (Chairman), on official leave.

[1] Docketed as Criminal Case No. 95-096.

[2] Compulsorily retired on June 3, 2001.

[3] Records, p. 1.

[4] Roselle in some parts of the Records and in the Brief for Accused-Appellant.

[5] Records, p. 79.

[6] Records, p. 137.

[7] Records, dorsal side of the Minutes for May 8, 1996 proceedings, p. 132.

[8] Penned by Judge Florentino M. Alumbres.

[9] Records, p. 209.

- [10] Records, p. 210
- [11] Records, p. 211.
- [12] Brief for Accused-Appellant, pp. 1-2.
- [13] Records, p. 115.
- [14] Article III, Sec. 14 (2), Constitution.

[15] 362 SCRA 153, 170 (2001).

- [16] Records, p. 39.
- [17] Records, pp. 40 and 42.
- [18] Records, pp. 47 and 50.
- [19] Records, pp. 60 and 63.
- [20] Records, pp. 73-74.
- [21] Records, p. 73.
- [22] Ibid.,
- [23] Records, p. 87.
- [24] People vs. Barasina, 229 SCRA 450, 466 (1994); United States vs. Santos, 37 Phil. 449, 453 (1918).
- [25] Records, pp. 208-209.
- [26] Records, pp. 205-206.
- [27] Records, pp. 207-208.
- [28] TSN, Russel Guiraldo; June 8, 1995, pp. 6-14.
- [29] People vs. Nang, 289 SCRA 16, 26 (1998).
- [30] People vs. Marquita, 327 SCRA 41, 52 (2000).
- [31] Mesqueriola in other parts of the Records.
- [32] Huang Chua vs. People, 349 SCRA 662, 672 (2001).
- [33] People vs. Bisda, G.R. No. 140895, July 10, 2003; People vs. Delima, 396 SCRA 386, 399 (2003).
- [34] People vs. Corpuz, G.R. No. 148198, October 1, 2003; People vs. Tajada, 394 SCRA 159, 169 (2002).
- [35] People vs. Aranjuez, 285 SCRA 466, 477 (1998).
- [36] TSN, April 30, 1997, pp. 14-15.
- [37] TSN, Marlon Ortillas, April 30, 1997, p. 15.
- [38] People vs. Aranas, 345 SCRA 377, 393 (2000).
- [39] People vs. Doinog, 332 SCRA 366, 392 (2000).

[40] Ibid..

[41] People vs. Aranas, supra.

[42] People vs. Tajada, supra.

[43] People vs. Marquita, 327 SCRA 41, 52 (2000).

[44] Id., p. 394; People vs. Comesario, 306 SCRA 400, 405 (1999).

[45] People vs. Tajada, supra; People vs. Capili, 333 SCRA 355, 366 (2000).

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