

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOHN KENNETH DE GUZMAN AND JASPER DESIDERIO, ACCUSED,

G.R. No. 137806. December 14, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The probative value of the testimonies of eyewitnesses is not diminished by the mere fact that they are the brothers of the victim. Indeed, relatives are interested in vindicating the crime, and it would be unnatural for them to accuse someone other than the real culprit.

The Case

John Kenneth de Guzman appeals the January 25, 1999 Decision[1] of the Regional Trial Court of Malolos, Bulacan (Branch 12) in Criminal Case No. 527-M-97, finding him guilty of murder and sentencing him to reclusion perpetua.

In an Information dated April 4, 1997, Assistant Provincial Prosecutor Renato T. Santiago charged appellant and one Jasper Desiderio[2] with murder allegedly committed as follows:

"That on or about the 15th day of March 1997, in the Municipality of Baliuag, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, armed with a gun and with intent to kill one William Estrella Y Kliatchko, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery attack, assault and shoot the said William Estrella Y Kliatchko with the said gun, hitting the latter on the upper left shoulder which penetrated his body, thereby inflicting upon him serious physical injuries which directly caused death."[3]

When arraigned on May 8, 1997, appellant, assisted by Counsel de Oficio Julio Contreras, pleaded not guilty.[4] Trial proceeded in due course. Thereafter, the court a quo rendered its Decision, the dispositive portion of which reads as follows:

"WHEREFORE, finding herein accused John Kenneth de Guzman y Baluyot guilty as principal of the crime of murder beyond reasonable doubt, he is hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim in the amount of P75,000.00 as actual damages and to pay the costs of the proceedings."

Hence, this appeal.[5]

The Facts

Version of the Prosecution

In its Brief,[6] the Office of the Solicitor General relates the prosecution's version of the facts in this manner:

"On March 15, 1997, at around 11:00 o'clock in the evening, while William Estrella y Kliatchko and his two brothers, Herminio, Jr. and [Leander], together with three others, were drinking beer and telling stories in front

of Alicia Store, which is located at J. Buizon Street, Sto. Cristo, Baliuag, Bulacan, a scooter driven by accused Jasper Desiderio @ Jugi arrived and slowly passed by the group. Suddenly and without any provocation, appellant, the scooter's other passenger who was armed with a pistol, fired six (6) shots at the group. William, who was at that time standing and whose back was facing the road, was hit at the back portion of his left shoulder. Immediately thereafter, the scooter sped away.

"Julius Silva, who was with William's group minutes earlier, and who was then walking home, heard gun shots coming from the direction of the Alicia Store. This prompted him to go back to the store and, in the process, he met appellant on board a scooter which was driven by another person whom Julius came to know as accused Desiderio.

"Meanwhile, upon seeing William fall after having been shot by appellant, Leander lifted William and brought him to their house, which is located along the same street as the Alicia Store. On the other hand, Herminio, Jr., who had gone to the house ahead of Leander, informed their father that William was shot by appellant. This prompted the father to call up by telephone the Baliuag Police Station and report the shooting incident. Thereafter, PO1 Filemon Tomas was dispatched to the crime scene where he was able to recover a deformed slug. PO1 Tomas also went to the house of the Estrellas and even accompanied them in bringing William to the Carpa District Hospital at Baliuag, Bulacan.

"Unfortunately, as the x-ray machine of the aforesaid hospital was out of order, William was brought to the Provincial Hospital of Bulacan at Malolos which, for lack of doctors who could treat William, referred William to the Jose Reyes Memorial Hospital in Manila, [where] William expired.

x x x x x x x x

"[O]n the morning of March 17, 1997, SPO1 Celso Cruz of the Baliuag Police Station conducted further investigation of the shooting incident. From his interview of Herminio Estrella, Jr., SPO1 Cruz was able to prepare a sketch showing the relative positions of, among others, Herminio, Jr., Leander and William vi[s] a vi[s] appellant at the time the latter shot William while appellant was on board the scooter driven by accused Desiderio. Later that morning, SPO1 Cruz took the sworn statement of Herminio, Jr. SPO1 Cruz took the sworn statement of Leander [o]n the afternoon of March 17, 1997.

"On March 22, 1997, SPO2 Renato Santos, together with two others of the Baliuag Police Station, were sent to Imus, Cavite where, at 6:30 o'clock in the morning, appellant was arrested pursuant to a warrant of arrest which was issued in connection with the shooting of William Estrella."[7]

Version of the Defense

In his Brief,[8] appellant interposes denial and alibi as he narrates the facts as follows:

"x x x [W]hen the defense presented its evidence, there were five (5) witnesses who testified, including the accused-appellant, namely, Rizel Alarcon, Michelle de Guzman, Rolando Romero, Jesus Mallari and accused-appellant himself.

"Witness Rizel Alarcon substantially testified that he personally saw the accused-appellant on the 20th of March 1997 in their house in Las Piñas City, although accused-appellant actually went to Las Piñas City [o]n the afternoon of March 19, 1997, accompanied by his Aunt Loly from Baliuag, Bulacan, and their seeing [each other] was [o]n the 20th of March, 1997 since he did not sleep in their house on the 19th. They talked on the 20th about a motorcycle which can be used for [a] tricycle, in exchange [for] a two-way radio owned by the accused appellant. On the 21st of March, 1997, it was only Alarcon who went to Anabu, Imus, Cavite leaving accused-appellant in Las Piñas City. Alarcon informed accused-appellant that the owner of the motorcycle, a certain Lando, [was] agreeable to exchange his motorcycle with the two-way radio and so they proceeded to Anabu, Imus, Cavite and it was in Anabu, Imus, Cavite where accused-appellant was apprehended by Baliuag, Bulacan policemen.

"Michelle de Guzman, the common-law wife of accused-appellant with two children now testified substantially that on the night of March 15, 1997, about 10:00 post meridian, the accused-appellant and child and herself, ha[d] just finished viewing TV program and by 11:00 o'clock post meridian they were already asleep in their house. The accused-appellant did not leave Baliuag, Bulacan and stayed in the house caring for the child and looking after a pregnant pig which was then [about] to deliver piglets on March 16, 17 and 18, 1997, and on said three (3) days, no policeman arrived in their home to invite the accused-appellant for investigation.

"Witnesses Rolando Romero and Jesus Mallari both substantially testified that they both knew the accused-appellant. On the night of March 15, 1997, at or about 11:00 o'clock post meridian, they saw a scooter with two persons on board, and after the shots were heard, they were sure that it was not the accused-appellant who was riding on the scooter, because according to them, the person at the back of the driver was with long hair and quite big than the physical feature of the accused-appellant.

"And lastly, the accused-appellant testified substantially, that on the night of March 15, 1997, at or about 9:00 o'clock nighttime he was watching [a] TV program together with Michell(e), his common law wife and their child (by then they ha[d] only one child) and they finished viewing TV at or about 10:00 o'clock post meridian and by about 11:00 o'clock p.m. they were already asleep until the morning of the next day.

"On March 16, 17 and 18, 1997, he did not leave his home, instead he cared for his child and attended to a pregnant pig which was [about] to deliver piglets.

"[O]n the afternoon of March 19, 1997, he was told by his Aunt Loly that there was a motorcycle in Anabu, Imus, Cavite, the owner of which was willing to x x x exchange [it] for his two-way radio.

"On the 22nd day of March, 1997, he went with Alarcon to Anabu, Imus Cavite for a negotiation between said motorcycle owned by a certain Lando and the two-way radio owned by accused-appellant.

"It did not push through because he was apprehended by Baliuag Policemen in Anabu, Imus, Cavite."[9]

Trial Court's Ruling

In convicting the accused, the trial court gave credence to the testimonies of the prosecution eyewitnesses and ratiocinated in this wise:

"As earlier observed by the Court in denying the motion of the accused for bail `it is just hard to believe that these eyewitness[es], who are brothers of the slain victim, would point to the accused as the persons who shot their brother, if indeed they were not the real culprits, and [thereby] let x x x the true killers go scot-free.' Maybe their word could be doubted if they took some considerable time to identify accused de Guzman. But the facts show that they immediately recognized him when he fired at them even if that resulted in their scampering for cover, most of them inside the store. That is why when Herminio, Jr. rushed towards home to report that William was shot by the accused Boyet de Guzman, their father immediately called the police and relayed that information which was entered in the police blotter (Exh. "H"). And these eyewitnesses could not just have been mistaken in recognizing accused de Guzman. They were familiar with him x x x for years.

x x x x x x x x

"For whatever reason he committed that dastardly crime, only he knows for sure. But motive is not also that important as long as the identity of the killer is positively established, like in this case of accused de Guzman. And he committed with his co-conspirator, who is still at large, the killing with complete surprise and treachery qualifying the homicide to murder as correctly charged in the information. Fortunately for him the evidence fails to prove the other alleged circumstance of evident premeditation. Neither is any mitigating circumstance attendant in the commission of the offense."[10]

Assignment of Errors

Appellant alleges that the trial court committed the following errors:

"I

The lower court erred in holding that the prosecution evidence virtually overcame the presumption of innocence of the accused pursuant to Sec. 14 (2), Art. III of the Constitution.

"II

The lower court erred in rejecting the defense of alibi of the accused in spite [of the] credible corroboration of disinterested defense witnesses."^[11]

In fine, the Court will resolve two issues: (1) the sufficiency of the prosecution evidence and (2) the defense of alibi.

The Court's Ruling

The appeal is bereft of merit.

First Issue:

Sufficiency of Prosecution Evidence

As a rule, findings of the trial court on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal, absent any clear showing that it has overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the accused.^[12] In the present case, it accorded credence to the testimonies of the prosecution witnesses and rejected those of the defense. Appellant has proffered no cogent reason to dissuade us from upholding its ruling.

Both eyewitnesses -- namely, Herminio Jr.^[13] and Leander^[14]-- testified that the culprit, while riding at the back of a scooter driven by the other accused,^[15] fired upon them. Their categorical identification of appellant as the shooter is bolstered by the fact that right after the shooting, they informed their father of the incident. They told him that their brother William had been killed after appellant fired at their group.^[16]

Moreover, they could not have been mistaken about the identity of appellant, considering that the latter was an acquaintance and a longtime neighbor in Baliuag, Bulacan. Favorable conditions of visibility at the time further strengthened their account. The solicitor general correctly pointed out:

"That Herminio Jr. and Leander did not err in positively identifying appellant is clear from the following circumstances: (a) the scooter ridden by appellant was slowly passing by when appellant shot at William's group in front of the Alicia Store; (b) the approximate distance between the appellant and William at the time the latter was shot by the former was just 7 steps of an adult person; (c) there was sufficient illumination coming from the lamppost nearby; and (d) prior to the shooting incident, they have known appellant for a number of years already."^[17]

The identity of the perpetrator was more than sufficiently established by the positive, credible and consistent testimonies of the witnesses. They had a fair opportunity to observe the commission of the crime and to identify the culprit with a reasonable degree of certainty. Indubitably, the prosecution has established beyond reasonable doubt that appellant is the author of the crime.

Although the witnesses are the brothers of the victim, this fact alone does not impinge on their credibility, especially because they were present at the crime scene.^[18] On the contrary, it would be unnatural for a relative,

who is expected to be interested in vindicating the crime, to violate his conscience callously by accusing someone other than the real culprit.[19] In any case, the defense did not present any evidence to show why the witnesses would falsely implicate appellant.

We are not persuaded by the reliance of the defense on the declaration of Rolando Romero and Jesus Mallari who, on the witness stand, denied that it was appellant who was riding at the back of the scooter. A perusal of their testimonies shows that they were not only inaccurate but unreliable as well. This is evident from the following testimony of Romero:

"COURT:

Why don't you ask him if he recognize[s] those two (2) persons he saw on the hopper?

ATTY. CONTRERAS:

Q:

Do you recognize the two (2) persons who were riding the hopper when it passed by you on that particular night?

A:

I did not recognize the[m;] I just `nabanaagan.'"[20]

For his part, Mallari testified in this manner:

"COURT:

What happened? What was the unusual thing that happened?

A:

When we were under [a] lamp post I saw the hopper with two (2) riders. One was a tall fellow wearing a surefit with long hair and the other one who was not Bojit,[21] your honor.

x x x x x x x x

COURT:

For clarification, Mr. Witness -

Q:

According to you, when you saw these riders on the hopper[,] one was the tall person and the other one was not Bojit[;] if it was not Bojit, who was the other one?

A:

I do not know him, your Honor.

Q:

Can you describe him?

A:

The one I was referring to as not Bojit was a little shorter. I did not recognize his appearance, your honor.

Q:

How could you say that it was not Bojit if you did not see his appearance or [that of] anybody else?"[22]

Second Issue:

Appellant's Alibi

Appellant maintains that he could not have been the perpetrator of the alleged crime, because he was at home with his wife and child in Baliuag, Bulacan, when the incident occurred.

The alibi of appellant cannot be sustained. To prove this defense, he must establish that it was physically impossible for him to be at the scene of the crime or its immediate vicinity at the time of its commission.[23] He failed to do this. His home was located in the same town where the shooting incident occurred. Moreover, his wife testified that she was already asleep at the time and the date of the shooting. Thus, she could not have known for sure whether he was still beside her at the time. Furthermore, being based mainly on the testimonies of appellant himself and his immediate family, this defense becomes even more implausible.[24]

In any event, alibi, which is the weakest of all defenses, cannot overcome the positive identification of appellant by credible eyewitnesses.[25] Courts have always looked upon this defense with suspicion and received it with caution, not only because it is inherently weak and unreliable, but also because it is easy to fabricate.[26] Positive identification, where categorical and credible, prevails over alibi which, if not substantiated by clear and convincing evidence as in this case, deserves scant consideration.[27]

Crime and Punishment

Convicting appellant of murder, the trial court found that the killing was qualified by treachery. The essence of this qualifying circumstance is the swift and unexpected attack on an unarmed victim.[28] In the present case, appellant suddenly shot William at the back without any provocation at all. The assault on the hapless victim was made while appellant was on board a scooter, which afforded convenience in the execution of the crime and the least opportunity for a probable retaliation from the unarmed and unwary victim. Indubitably, treachery attended the killing.

Hence, the trial court was correct in convicting appellant of murder and, in the absence of any aggravating or mitigating circumstance, sentencing him to reclusion perpetua.

Civil Indemnity

The trial court erred, however, in ordering appellant to pay P75,000 as actual damages. We waded into the records, but found no evidentiary basis for such award. Nonetheless, pursuant to current jurisprudence,[29] appellant should pay the heirs of the victim P50,000 as indemnity ex delicto. This amount is awarded without need of proof other than the commission of the crime.

WHEREFORE, the appeal is DENIED and the assailed Decision AFFIRMED, with the modification that the award of actual damages is DELETED and appellant is ordered to pay the heirs of the victim P50,000 as indemnity ex delicto. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 26-29; records, Vol. I, pp. 280-283; written by Judge Crisanto C. Concepcion.

[2] He has remained at large.

[3] Records, Vol. I, p. 1.

[4] Records, Vol. I, p. 16.

[5] This case was deemed submitted for resolution on August 1, 2000, upon receipt by this Court of the Appellee's Brief. The filing of a reply brief was deemed waived, as none was submitted within the reglementary period.

[6] Rollo, pp. 66-82. This was signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Magdangal M. de Leon and Sol. Eric Remegio O. Panga.

[7] Appellee's Brief, pp. 4-7; rollo, pp. 71-74.

[8] Rollo, pp. 44-55. This was signed by Atty. Julio C. Contreras.

[9] Appellant's Brief, pp. 4-6; rollo, pp. 47-49.

[10] RTC Decision, pp. 3-4; rollo, pp. 28-29.

[11] Appellant's Brief, p. 1; rollo p. 44.

[12] *People v. Polanco*, 251 SCRA 503, December 26, 1995; *People v. Morales*, 241 SCRA 267, February 13, 1995; *People v. Sarellana*, 233 SCRA 31, June 8, 1994.

[13] TSN, June 27, 1997, pp. 9-14.

[14] TSN, September 12, 1997, pp. 3-7.

[15] Jasper Desiderio.

[16] Investigation Report dated September 3, 1997, marked as Exhibit "H"; records, Vol. I, pp. 101-102.

[17] Appellee's Brief, pp. 8-9; rollo, pp. 75-76.

[18] See *People v. Patamama*, 250 SCRA 603, December 4, 1995.

[19] *People v. Salvame*, 270 SCRA 766, April 4, 1997; *People v. Cario*, 288 SCRA 404, March 31, 1998; *People v. Crisostomo*, 293 SCRA 65, July 23, 1998.

[20] TSN, September 11, 1998, p. 8.

[21] Appellant.

[22] TSN, October 20, 1998, pp. 3-7.

[23] *People v. Tulop*, 289 SCRA 316, April 21, 1998; *People v. Morin*, 241 SCRA 709, February 24, 1995; *People v. Jose*, 250 SCRA 319, November 24, 1994; *People v. Tumaob Jr.*, 291 SCRA 133, June 22, 1998.

[24] See *People v. Zamora*, 278 SCRA 60, August 21, 1997.

[25] *People v. Sumalpong*, 284 SCRA 464, January 20, 1998; *People v. Namayan*, 246 SCRA 646, July 18, 1995; *People v. Cabresos*, 244 SCRA 362, May 26, 1995; *People v. Rivera*, 242 SCRA 26, March 1, 1995.

[26] *People v. Padre-e*, 249 SCRA 422, October 24, 1995. *People v. Cortes*, 226 SCRA 91, September 3, 1993; *People v. Dabon*, 216 SCRA 656, December 16, 1992.

[27] *People v. Dinglasan*, 267 SCRA 26, January 28, 1997; *People v. Amania*, 248 SCRA 486, September 21, 1995; *People v. Evangelista*, 235 SCRA 247, August 11, 1994.

[28] People v. Ombrog, 268 SCRA 93, February 12, 1997; People v. Oliano, 287 SCRA 158, March 6, 1998; People v. Reyes, 287 SCRA 229, March 9, 1998; People v. Lagarteja, 291 SCRA 142, June 22, 1998.

[29] People v. Badon, 308 SCRA 175, June 10, 1999.

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