

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAFAEL D. TORRES, JR., APPELLANT.

G.R. No. 138046. December 08, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Due process demands that the procedure for the identification of criminal suspects be free from impermissible suggestion. In the present case, appellant failed to show that there was such an irregularity.

The Case

Rafael D. Torres Jr. appeals the February 22, 1999 Decision[1] of the Regional Trial Court of Quezon City (Branch 104), finding him guilty of murder and sentencing him to reclusion perpetua.

In an Information[2] dated January 2, 1989, Assistant City Prosecutor Virgilio M. Gilera charged appellant with murder allegedly committed as follows:

"That on or about the 16th day of December, 1987, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously, attack, assault and employ personal violence upon the person of LUISITO ANGELES Y LOPEZ, by then and there shooting him with a revolver of unknown caliber on the different parts of his body thereby inflicting upon said Luisito Angeles y Lopez mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs in such amount as may be awarded under the provisions of the Civil Code."

When arraigned on January 22, 1996,[3] appellant, assisted by Atty. Teodoro M. Jumamil, pleaded not guilty.[4] After trial in due course, the court a quo rendered its assailed Decision, the dispositive portion of which reads as follows:

"WHEREFORE, the Court hereby renders judgment finding the accused, RAFAEL D. TORRES, Jr., guilty beyond reasonable doubt of the crime of MURDER defined and penalized in Article 248 of the Revised Penal Code, for the killing of Luisito Angeles on December 16, 1987 with the attendant circumstances of treachery and evident premeditation, and imposing on him the penalty reclusion perpetua, as well as ordering him to pay the heirs of Luisito Angeles the following: P50,000.00 as indemnity for death, P95,000.00 as actual damages, P150,000.00 by way of lost earnings and P20,000.00 as moral damages."[5]

In view of the penalty involved, the appeal was filed directly with this Court.[6]

The Facts

Version of the Prosecution

In its Brief,[7] the Office of the Solicitor General presents the prosecution's version of the facts as follows:

"At 5:30 AM of December 16, 1987, prosecution witness Lincoln Leyretana was on his way to work on board a passenger jeepney along Dapdap St. corner Aurora Boulevard, Quezon City (p. 4-5, TSN, July 8, 1996).

Aside from prosecution witness Lincoln Leyretana, there were thirteen other passengers on board the passenger jeepney (Ibid).

"Suddenly, Luisito Angeles, a passenger of the Jeepney, was shot twice at close range by the person seat[ed] next to the prosecution witness Lincoln Leyretana (ibid). Thereafter, the assailant alighted from the passenger jeepney and shot again the victim twice (p. 7, ibid). Prosecution witness Lincoln Leyretana saw the assailant board another passenger jeepney [in front] of the Aurora Market, Quezon City (p. 8, ibid). Meanwhile, prosecution witness Lincoln Leyretana, together with several other male passengers and the driver, brought Luisito Angeles to the nearest hospital where Luisito Angeles was pronounced dead on arrival (ibid).

"From the hospital, prosecution witness Lincoln Leyretana and several other passengers of the jeepney proceeded to the police station where they gave their sworn statements to the police (ibid). The investigation of the shooting incident was handled by SPO3 Juan Dacillo. On February 6, 1988, prosecution witness Lincoln Leyretana accompanied the group of SPO3 Juan Dacillo to Marikina City where appellant was allegedly seen by another prosecution witness, Carmelita Mendoza (ibid). He saw appellant riding a passenger bus and pinpointed him to the police authorities (ibid). The police officers followed the passenger bus and boarded the same. They apprehended appellant who introduced himself as a police officer.

"[O]n the afternoon of February 8, 19[8]8, appellant escaped.

"On January 5, 1989, an Information charging appellant [with] murder was filed.

"On December 13, 1995, appellant was arrested in Nueva Ecija."

Version of the Defense

In his Brief,[8] appellant interposes denial and alibi and relates his version of the facts in this wise:

"Appellant categorically and emphatically denied the charge and invoked the defense of alibi, claiming that he was at his place of work in Pasig on the date and time of the incident complained of, x x x work attendance [on which] was confirmed by the defense witness, SPO1 Arsenio Eugenio, and that he [did] not know the person of Luisito Angeles. Appellant likewise proved that Luis Angeles (father of the deceased) and Carmelita Angeles Mendoza (aunt of the deceased) were once in the place of appellant's friend, Priscilla De Guzman; that when appellant pacified them while they were arguing about their business, Luis Angeles got mad at him, telling him not to intervene; that at the police station on 6 February 1998, appellant heard Mr. Leyretana saying to SPO3 Dacillo 'malayo naman sa hitsura doon sa sketch' but the latter replied, 'ituro mo na lang;' that appellant left the police station after being pinpointed by Mr. Leyretana because nobody minded him; that appellant was arrested on his birthday, 13 December 1995, at Nueva Ecija; and that when the appellant was in jail, a man took pictures of him many times while Mr. Leyretana and Carmelita Mendoza visited him."

Trial Court's Ruling

Rejecting appellant's defense, the trial court gave full faith and credence to the testimony of the lone eyewitness. It ruled thus:

"This Court finds no substantial imperfection in the testimony of Mr. Leyretana who saw the accused and observed the manner in which he killed the victim who was in a defenseless state on board a passenger jeepney, as well as in the testimony of Carmelita Mendoza whose account of the earlier circumstances involving the accused from 4:00 a.m. of December 16, 1987 until the victim went out of their house proves the act manifestly indicating the determination to make possible the succeeding incident witnessed by Mr. Leyretana.

"Accused interposes alibi as a defense which cannot prevail over his positive identification by an eyewitness, Lincoln Leyretana, who has no motive to falsely testify. Moreover, it was not sufficiently established that it

was physically impossible for accused to be in the scene of the crime at Aurora Boulevard, Quezon City, at 5:30 a.m., the time complained of. Then, too, it bears noting that while it was the direct testimony of the accused that he was at his place of work in Pasig on December 16, 1987, he also testified on cross examination that he reported for work on December 16, 1987 at 7:00 a.m.

x x x x x x x x

"Accused seeks to exculpate himself by saying that Police Officer Juan Dacillo prodded Lincoln Leyretana to point to him as the perpetrator of the crime even if his face was different from the cartographic sketch. Accused testified thus:

'Q

What happened when Mr. Leyretana arrived at the Quezon City Police Station?

A

I heard what Mr. Leyretana was saying "Malayo naman sa hitsura doon sa sketch" and Dacillo told him "Ituro mo na lang."

Q

Did Leyretana comply?

A

Yes, sir.' (TSN, Rafael Torres, May 25, 1998, p. 18)

"No motive was shown by accused why Police Officer Juan Dacillo would prod Mr. Leyretana to point to him as the culprit. Moreover, Mr. Leyretana rebutted the testimony of the accused, as follows:

'Q

Mr. witness, accused Rafael Torres testified last May 25, 1998 particularly on page 26 denying the accusation against him, meaning that he was not present when the incident occurred. What can you say to this?

A

That is not true, sir.

Q

What is the truth, Mr. witness?

A

The truth, sir, is that I saw him in the place of the incident [and] that he was the one who shot the victim, sir.

Q And he also testified last May 25, 1998 on page 18, he stated that when you arrived at the Quezon City Police Station, you uttered the following word, which I quote: "Malayo naman sa hitsura doon sa sketch." What can you say to this?

A This is not also true.' (TSN, Lincoln Leyretana, September 8, 1998, pp. 3-4)

"Prior to the identification of the accused at the police line up, Mr. Leyretana pointed to the accused as the person who shot the victim while boarding the jeep on February 6, 1998. Police Officer Juan Dacillo then

followed the jeep which accused had boarded. However accused, sensing that he was being followed, transferred to a passenger bus where he was apprehended by the group of Police officer Juan Dacillo. It is not unnatural for an eyewitness of a heinous crime to strive to see the face of the culprit and to observe the manner in which the crime was committed, and thereafter to cooperate with the police authorities for the sole purpose of bringing the culprit to justice.[9]

Assignment of Errors

Appellant submits that the trial court erred in the following ways:

"I

"The trial court gravely erred:

- "a.) In convicting the appellant despite lack of positive identification;
- b.) In failing to give credence to appellant's defense of alibi;
- c.) In convicting the appellant despite lack of proof beyond reasonable court;
- d.) In not acquitting the appellant; and

"Assuming arguendo that the killing of the victim may be validly imputed [to] the appellant, the trial court gravely erred:

- a.) In appreciating the qualifying aggravating circumstances of treachery and evident premeditation;
- b.) In awarding the amount of P150,000.00 for actual damages despite lack of proof, and
- c.) In imposing the penalty of reclusion perpetua."[10]

In the main, the Court will determine the sufficiency of the prosecution evidence regarding the identification of the author of the crime.

The Court's Ruling

The appeal is not meritorious.

Main Issue

Identification of the Culprit

Appellant asserts that the prosecution's lone eyewitness "made not only a hazy identification of the suspect but also a highly contradictory testimony." [11] The former firmly assails the "highly suggestive" identification procedure during which the latter pinpointed him to the police.

Identification Made During the Incident

Generally, the Supreme Court accords great respect to the factual conclusions of trial courts, because they had the opportunity to observe the witnesses' demeanor.[12] However, the rule does not apply here because one judge heard the testimony of the eyewitness and another[13] penned the assailed Decision.[14] Hence, the Court scrutinized the testimonies of the witnesses, but found no reason to reverse or modify the trial court's factual findings.

The evidence on record shows that Lincoln Leyretana, the lone prosecution eyewitness, was able to identify appellant because the former had seen the latter during the incident. Leyretana testified in this wise:[15]

"Q

Will you kindly tell the Court, Mr. Witness, what was that unusual incident that happened?

A

I witnessed a gunshooting, sir.

Q

Will you kindly tell the Court, Mr. Witness, what was that shooting incident which you witnessed?

A

I boarded a passenger jeep and I was sitting two (2) seats away from the back of the driver. I noticed the uneasiness of the person beside me and that time I was also uneasy because I was wearing a fatigue also.

Q

What was that shooting incident which you have just stated before this Court?

A

When we came out [of] a street near St. Joseph church, there was a man who alighted from the jeep. Then passing at the back of the jeep, this man suddenly pulled his gun and shot a certain man who [was] the victim in this case.

Q

How many shots did you hear when this man who was seated beside you shot at the victim by the name of Luisito Angeles?

A

Before he was able to alight, he was able to sh[o]t the victim two (2) times, sir.

Q

Were there other shots that were made after than shooting incident?

A

After the first two (2) shots, I thought the suspect [would] run, but instead he again went around the jeep and looked around and when he was immediately [in front of] the victim, he again [shot] him twice."

Even before the shooting, Leyretana had already noticed appellant seated next to him, acting "uneasily." A few minutes later, while alighting from the vehicle, appellant shot the victim. Once outside, the former turned around and shot the latter two more times. At that moment, appellant was directly facing not only the victim inside the jeepney, but also the other passengers. Hence, although there was commotion at the time, appellant's image was etched in the memory of the eyewitness.

Appellant's contention that it was still dark at the time is not convincing. It was established that there was sufficient illumination coming from a light inside the jeepney.[16] Just as unacceptable is the challenge to the reliability of the identification made by Leyretana, whose description of the court interpreter would allegedly fit a lot of other individuals. We need only to stress that the eyewitness, even under grueling cross-examination, did not waver in asserting that appellant was the culprit.

Furthermore, we reject the argument that there was "serious doubt" on the testimony of Leyretana because he had

not immediately volunteered information to the police.[17] Witnesses are commonly reluctant to involve themselves in criminal actions, and the Court has held that this reluctance is insufficient to affect their credibility.[18]

Appellant also cited other inconsistencies in the testimony of Leyretana. These, however, pertained to minor and insignificant details, which did not materially affect the substance of his testimony that he had seen appellant shoot the victim.

Suggestive Identification

Procedure

Due process demands that the procedure for the identification of criminal suspects be free from impermissible suggestion.[19] Indeed, the "corruption of out-of-court identification contaminates the integrity of in-court identification during the trial." [20]

Appellant contends that there was "suggested identification," because "at the precinct where [Leyretana's] statement was taken, he was told by Pfc. Dacillo that the suspect was already apprehended and that he [would] be asked to identify him." [21] Appellant implicitly argues that Leyretana would not have pinpointed the former, had the latter not been told that the suspect had already been apprehended.

Appellant's argument is not supported by the records. True, policemen fetched Leyretana from his house, so that he could confirm the identity of the culprit. However, we find nothing in the acts of the law enforcers that would constitute any impermissible suggestion. They did not coach or suggest to Leyretana to point to appellant. The witness did so on his own. In fact, the policemen took him to a busy intersection where he pointed to appellant, who was about to board a bus. Indeed, appellant was not presented alone to Leyretana. This was clear from the latter's testimony, which we quote:[22]

"A

I was brought to Marikina and when they reached a place where the suspect was supposed to hang around, I pointed to him even without alighting from the jeep and so he was pursued by the policemen and apprehended inside the bus.

ATTY. JUMAMIL:

Q

So, you were inside a jeep when you pointed to the suspect, is that correct?

A

It was a private vehicle, sir.

Q

Whose car was it, if you know?

A

If I am not mistaken, it belongs to the lawyer.

Q

You were told, were you told by Pfc. Dacillo that that is the suspect, is that him?

A

No, sir.

Q

You were told, were you told by the lawyer of the victim's family that that is the suspect, is that him?

A

No, sir." (*Italics supplied.*)

Leyretana's account was corroborated by Pfc. Juan A. Dacillo, who testified thus:[23]

"Q

Will you please tell the Court the circumstances as to how this identification made by the witness Lincoln Leyretana [of] the accused happened?

A

We went there early in the morning between 5:30 or 6:00 a.m. We positioned ourselves in a far distance near that corner where passengers usually board a passing jeepney or a passing bus. The witness is with us in the car waiting for the suspect or the male person that may take a ride on that corner. The event happened so fast that 'Sir, sir, yong sumasakay, yon yon.' x x x. (*sic*)

Q

Who made such pronouncements (referring to the quoted statement, earlier quoted statement)?

A

Leyretana, Your Honor."

Leyretana repeated his earlier assertions after the policemen included appellant in a lineup. Clearly, there was no impermissible suggestion from the law enforcers.

Significantly, it was not shown that there was any undue motive on the part of the police officers to incriminate appellant, who was also a policeman. Absent such showing, they are presumed to have performed their duties regularly.[24]

The present case should be distinguished from *Natividad v. Court of Appeals*,[25] in which the witnesses were fetched by police officers and brought to the place where the accused was apprehended. The Court narrated the factual antecedents as follows:

"The record shows that on January 25, 1972, three police officers "fetched" Primavera, Galvadores and Soliman in a jeep and they proceeded to the office of the Allied Brokerage Corporation. Primavera, et al. and a police officer stayed behind in the jeep and the two police officers looked for Natividad inside the Allied Brokerage Corporation office in order to invite him for interrogation at the MMP Headquarters. Outside said office, one of the police officers 'threatened' Natividad, for he desisted from joining them while Primavera, et al. watched from inside the jeep. Thereafter, they all proceeded 'together' to the MMP Headquarters where the police officers directed Natividad to join a line-up of ten (10) men. Then, the police officers called the two women (Primavera and Galvadores) and the man (Soliman) and asked them to make the identification. It can thus be readily seen that at the premises of the Allied Brokerage Corporation office, the police officers literally paraded Natividad before Primavera et al. whom they purposely 'fetched' from the Manila Christian Guesthome 'to see' Natividad." (*Emphasis supplied*)

In *Natividad*, there was impermissible suggestion because the policemen let the witness know from the start who

their suspect was. In the present case, while the police already had a suspect, they did not reveal his identity to Leyretana. In fact, it was the witness himself who pointed out the culprit to them.

Right to Counsel During Police Lineup

Appellant also argues that the identification made by Leyretana during the police lineup was inadmissible, because the former was not assisted by counsel at the time.[26]

The argument contradicts settled jurisprudence. The Court has held that the assistance of counsel is not essential during a police lineup. Thus, the Court ruled in *People v. Pavillare*: [27]

"x x x. The stage of an investigation wherein a person is asked to stand in a police line-up has been held to be outside the mantle of protection of the right to counsel because it involves a general inquiry into an unsolved crime and is purely investigatory in nature. It has also been held that an uncounseled identification at the police line-up does not preclude the admissibility of an in-court identification."

Appellant's Flight

Further militating against the cause of appellant was his flight. The records show that he escaped from the police station after his arrest. He explained that "[w]hen nobody minded me, I already left the place." [28] At the time, he already knew that he would be charged. Instead of defending his innocence, he escaped from the law, even if it meant being AWOL from his post as a policeman. Clearly, his flight evinced his guilt.

Collateral Issues

Appellant's Alibi

Appellant insists that he was in his office in Pasig City when the crime was committed. This argument scarcely deserves consideration. The well-settled rule is that alibi is a weak defense, which cannot prevail over the positive identification of the accused by a credible witness, [29] as in this case.

Treachery and Evident

Premeditation

We agree with the trial court that the killing was qualified by treachery. This qualifying circumstance is appreciated when the attack was executed in such a manner as to ensure the offender's safety from any defense or retaliatory act of the offended party. [30] In the present case, appellant shot the unsuspecting victim point-blank inside the jeepney. Not content, once outside, the former shot the latter two more times.

We disagree with the ruling, however, that evident premeditation was present. The prosecution failed to establish the following elements of this aggravating circumstance: (a) the time when the accused determined to commit the crime, (b) an act manifestly indicating that the accused clung to that determination, and (c) a lapse of time between the determination and the execution sufficient to allow the accused to reflect upon the consequences of the act. [31] That appellant had been seen near the victim's house a few minutes before the shooting did not by itself establish evident premeditation.

Proper Penalty

And Civil Liabilities

Be that as it may, the trial court correctly sentenced appellant to reclusion perpetua. When the crime was committed in 1987, the penalty for murder was reclusion temporal, in its maximum term, to death. There being no aggravating or mitigating circumstance, the penalty should be imposed in its medium term, which is reclusion

perpetua.[32]

The trial court correctly awarded the amount of P50,000 as indemnity ex delicto. Pursuant to current jurisprudence,[33] this is awarded without need of proof other than the commission of the crime. We also sustain the awards of P95,500 as actual damages and P20,000 as moral damages, for these were supported by evidence.

We disagree, however, with the award of P150,000 for loss of earning capacity. The amount of indemnity for such loss is based on the income at the time of death and the probable life expectancy of the victim. It should also be stressed that this indemnity refers to the victim's total earnings minus the necessary living expenses. In computing this award, the Court has used the following formula:

" $\frac{2}{3} \times (80 - \text{age of the victim at the time of death}) \times (\text{reasonable portion of the annual net income which would have been received as support by the heirs})$ "[34]

In the present case, it was shown that the victim, a mechanical engineer, was 35 years old and earning P20,000 a month (or an annual income of P240,000) when he was killed. Under the circumstances, we believe that the amount of necessary living expenses should be fixed at P10,000 a month. Applying the above formula, the indemnity in the present case should be computed as follows:

$$\begin{aligned} &= \frac{2}{3} \times (80 - 35) \times (P240,000 - P120,000) \\ &= \frac{2}{3} \times 45 \times P120,000 \\ &= P3,600,000. \end{aligned}$$

WHEREFORE, the appeal is hereby DENIED and the assailed Decision AFFIRMED, with the sole modification that the heirs of the victim are awarded P3,600,000 as indemnity for the lost earnings of the deceased, in addition to the other amounts awarded by the trial court. Costs against appellant.

SO ORDERED.

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

[1]Rollo, pp. 21-40; records, pp. 216-235. This was written by Judge Thelma A. Ponferrada.

[2]Rollo, p. 4; records, p. 1.

[3]The arraignment was held only in 1996, more than six years after the filing of the Information, because appellant had escaped from police custody in 1988 and been rearrested only in 1995.

[4]Records, pp. 29-31.

[5]Rollo, p. 40; records, p. 235.

[6]The case was deemed submitted for resolution on June 13, 2000, upon receipt by this Court of the Appellee's Brief. The filing of a reply brief was deemed waived, as none had been submitted within the reglementary period.

[7]Rollo, pp. 114-150. This was signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Fernanda Lampas Peralta and Sol. Ma. Carla Ofilada.

[8]Rollo, pp. 54-87. This was signed by Atty. Teodoro M. Jumamil of Brillantes Navarro Jumamil Arcilla Escolin & Martinez Law Offices.

[9]Rollo, pp. 35-37.

- [10]Appellant's Brief, pp. 6-7; Rollo, pp. 64-65.
- [11]Ibid., p. 10; Rollo, p. 68.
- [12]People v. Sarellana, 233, SCRA 31, June 8, 1994; People v. Calegan 233 SCRA 537, June 30, 1994.
- [13]Judge Angel V. Colet heard the testimony of Leyretana during direct and cross-examination, while Judge Thelma A. Ponferrada wrote the Decision.
- [14]People v. Escalante, 238 SCRA 554, December 1, 1994; People v. Compendio Jr., 258 SCRA 254, July 5, 1996.
- [15]TSN, July 8, 1996, pp. 6-8.
- [16]Leyretana testified that there was "a light inside the jeep." (TSN, July 8, 1996, p. 5.)
- [17]Appellant's Brief, p. 11; Rollo, p. 69.
- [18]See People v. Lising, 285 SCRA 595, January 30, 1998.
- [19]People v. Alcantara, 240 SCRA 122, January 17, 1995.
- [20]People v. Teehankee, 249 SCRA 54, 95, October 6, 1995, per Puno, J. Emphasis found in the original.
- [21]Appellant's Brief, p. 11; Rollo, p. 69.
- [22]TSN, July 8, 1996, pp. 40-42.
- [23]TSN, November 19, 1996, pp. 26-27.
- [24]Section 3 (m), Rule 131, Rules of Court.
- [25]98 SCRA 335, June 25, 1980, per Teehankee, J.
- [26]Appellant's Brief, p. 13; Rollo, p. 71.
- [27] GR No. 129970, April 5, 2000, per curiam.
- [28]TSN, May 25, 1998, p. 19.
- [29]See People v. Aguilar, 222 SCRA 394, May 21, 1993.
- [30]People v. Arellano, GR No. 122477, June 30, 2000; People v. Lazarte et al., GR No. 130711, June 29, 2000; People v. Lozada, GR No. 130589, June 29, 2000; People v. Porras, 255 SCRA 514, March 29, 1996; People v. Sabado, 168 SCRA 681, December 22, 1988.
- [31]See People v. Naguita, GR No. 130091, August 30, 1999.
- [32]Article 64 (1), Revised Penal Code.
- [33]People v. Adoc, GR No. 132079, April 12, 2000.
- [34]People v. Cabande, GR No. 132747, February 8, 2000, per Panganiban, J.

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