

TEMISTOCLES TAPDASAN, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND SPOUSES LUISITO AND JUANITA BORJA, RESPONDENTS.

G.R. No. 141344. November 21, 2002

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a petition for review on certiorari for the reversal of the decision[1] of the Court of Appeals in CA-G.R. No. 16385(CR) affirming, on appeal, the decision[2] of the Regional Trial Court of Iligan City in Criminal Case No. 4453 filed against the petitioner for reckless imprudence resulting in homicide.

As summarized by the Court of Appeals, the facts of the case are as follows:

“About 6:30 o’clock in the evening of December 5, 1992, while walking along the side of the national highway in Taguibo, Iligan City, twelve (12) year old Salmero Payla and nine (9) year old Loue Boy Borja saw a red ‘sakbayan’ motor vehicle moving very fast and attempting to overtake a big truck. Before the red sakbayan could complete the maneuver, however, a cargo truck emerged from the opposite direction. To avoid a collision, the red ‘sakbayan’ swerved to the right shoulder where the two boys were walking, hitting Louie Boy in the process and throwing him away for about six (6) meters (TSN, pp. 7-10, August 31, 1993).

Salmero rushed to his friend and found him all bloodied and mortally wounded; at this instance, Salmero saw the red ‘sakbayan’ stop and its occupants, one male and a female holding a child, get off and look at their direction. The occupants then boarded their vehicle and backed-up until it was merely five meters from where Salmero and Loue Boy were. At this point, the driver of the sakbayan got off but merely looked at the two boys, after which he again boarded his vehicle and sped away (supra, pp. 10-17).

Fortunately, Salmero was able to see clearly the face of the driver and the plate number of the sakbayan because of the lights coming from other passing vehicles (supra, pp. 16-17).

Loue Boy was brought to the Mindanao Hospital for treatment of his wounds, but he died four days later. The driver, on the other hand, found to be Temistocles Tapdasan, Jr., was subsequently identified by Salmero as the person driving the red sakbayan which hit Loue Boy (TSN, pp. 9-12, September 3, 1993).”[3]

An Information was filed with the Regional Trial Court of Iligan City against petitioner for “Reckless Imprudence Resulting in Homicide,” the accusatory portion of which reads:

“That on or about December 5, 1992, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the driver and person in charge of a Sakbayan with Plate No. MAA-237 owned by one Temistocles Tapdasan, Sr., did then and there wilfully (sic), unlawfully and feloniously drive, manage and operate his driven vehicle in a negligent, careless, reckless and imprudent manner, without due regard to traffic laws, rules and regulations and without taking the necessary precautions to avoid accident to persons and damaged (sic) to properties, and causing by such negligence carelessness, recklessness and imprudence, said Sakbayan driven and operated by said accused to bump and hit Loue Boy

Borja who was walking on the shoulder of the road along the national highway of Tag-ibo, Iligan City, thus inflicting upon said Loue Boy Borja the following physical injuries, to wit:

--- Cardiac Arrest secondary to Cerebral contusion secondary to vehicular accident.

which caused his death.”[4]

The case was docketed as Criminal Case No. 4453.

At arraignment, petitioner, assisted by counsel, entered a plea of “Not Guilty.” Trial ensued with the prosecution presenting Salmero Payla as its principal witness. Petitioner testified in his behalf and interposed the defenses of denial and alibi claiming that, on December 5, 1991, from 8:00 a.m. to 7:00 p.m., he was tending to their family-owned gasoline station in Lugait, Misamis Oriental.

On January 31, 1994, the trial court rendered its decision finding petitioner guilty as charged. The decretal portion thereof reads:

“WHEREFORE, the Court finds the accused, TEMISTOCLES TAPDASAN, JR., guilty beyond reasonable doubt of the crime of reckless imprudence resulting in homicide, defined and penalized under Art. 365 of the Revised Penal Code, as amended by Rep. Act No. 1790 and imposes him an indeterminate sentence from 4 years, 2 months and 1 day as MINIMUM, to 7 years, 4 months and 1 day as MAXIMUM, there being no mitigating or aggravating circumstances proven; and to pay the heirs of the deceased Louie Boy Borja the sums of:

- (1) P50,000.00 for the life indemnity of the deceased;
- (2) P24,777.30 for actual compensatory damages;
- (3) P100,000.00 for moral damages;
- (4) P50,000.00 for exemplary damages;
- (5) P10,000.00 for attorney’s fees; and costs.

SO ORDERED.”[5]

Aggrieved, petitioner appealed the trial court’s decision to the Court of Appeals. The appellate court affirmed in toto the decision of the RTC.

Petitioner forthwith filed his aforementioned petition claiming that:

“THE COURT OF APPEALS AND THE INFERIOR COURT DECIDED THE CASE NOT IN ACCORDANCE WITH LAW, NOR IN ACCORDANCE WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT, WHEN THEY CONVICTED THE ACCUSED DESPITE THE FACT THAT THE IDENTITY AND THE GUILT OF THE ACCUSED WAS NOT PROVED BEYOND REASONABLE DOUBT.”[6]

A. THERE WAS FAILURE TO IDENTIFY THE ACCUSED BEYOND REASONABLE DOUBT[7]

B. THE EVIDENCE FOR THE PEOPLE FAILED TO OVERCOME THE DEFENSE OF ALIBI.”[8]

On the issue of the identification of petitioner as the driver of the offending vehicle, he argues that although there was ample time for the police investigators to assemble a police line-up for the identification of the culprit by Salmero Payla, they never did. Further, the identification of petitioner by Payla during trial was unreliable as he indulged in selective amnesia and he was rehearsed and instructed to point to and identify petitioner as the driver of the offending vehicle and to testify on the particulars of said vehicle. The prosecution thus failed to prove with

certitude that petitioner was the driver of the offending vehicle. Hence, petitioner insists that he should be acquitted of the charge against him. In fine, petitioner impugns the credibility of Payla and the probative weight of his testimony.

We are not persuaded. To begin with, the issues posed by petitioner are factual. There is no law or regulation to support his claim that police investigators are required to create a police line-up for the identification of offenders by witnesses or for the confirmation of the identity of an offender.[9] A police line-up is merely a part of the investigation process by police investigators to ascertain the identity of offenders or confirm their identification by a witness to the crime. Police officers are not obliged to assemble a police line-up as a condition sine qua non to prove the identity of an offender. If on the basis of the evidence on hand, police officers are certain of the identity of the offender, they need not require any police line-up anymore.

In this case, Payla, the principal witness for the prosecution, testified that he was at the situs criminis with the victim Louie Boy Borja when he (Borja) was sideswiped by the vehicle driven by petitioner. The latter drove back his vehicle and stopped four or five meters away from where Borja and Payla were. Petitioner forthwith alighted from the vehicle as another vehicle passed by with its headlights focused on and illuminating petitioner, thus, enabling Payla to identify him. Payla said:

“Q: Now, Salmero, do you remember where were you (sic) on December 5, 1992 at about 6:30 o’clock in the afternoon?

A: Yes, sir.

Q: Will you tell the Court where you were?

A: We were from our friend Edna Cagula and we were walking at the side of the road towards our house.

Q: Now, as you said ‘going towards our house’ who was your companion, Mr. Salmero?

A: Myself together with the deceased Loue Boy Borja.

Q: And towards which direction you were heading in your way home?

A: Towards East District.

Q: And which side of the road were you walking?

A: Left side of the road.

Q: Did anything unusual happened (sic) when you were walking at that time, Salmero?

A: Yes, sir.

Q: Please tell the Court what happened?

A: There was a vehicle and was running fast, it overtook another vehicle but when he overtook the vehicle coming from Cagayan de Oro City. Then there was a collision with the big truck and the vehicle attempted to swerve and to (sic) hit Loue Boy Borja.

Q: Now, tell the Court, what happened of (sic) Louie Boy Borja?

A: Loue Boy Borja was bumped and because of the force of the impact he was thrown away.

Q: What happened next Salmero?

A: I ran towards him and I embraced him and I was full of blood and after that his only words were ‘Salmero

help me’.

Q: Now, did you still see the vehicle after that?

A: Yes, distance (sic).

x x x x x x x x

COURT:

To the witness.

Q: After Louie Boy Borja was hit did you observe anything else about the vehicle?

A: Yes, Your Honor.

COURT:

Proceed.

x x x x x x x x

Q: Please tell the Court what happened after the vehicle had stopped with a distance from the scene of the incident?

A: The sakbayan was made to move backward and then I saw the driver at a distance between 5 to 6 meters. (Witness pointing to the portion in the courtroom which is about 5 to 6 meters).

Q: Now, what else did you observe after that?

A: There was a woman who rode on that vehicle with a child and he proceeded towards the direction to (sic) Cagayan de Oro City.

Q: And did you recognize the driver of that vehicle?

A: Yes, sir.

Q: Now, please look around and tell the Honorable Court whether the driver is here?

A: There. (Witness is pointing to the accused).

Q: What was the color of that vehicle, Salmero?

A: Color red.

Q: And what was its plate number?

A: MAA-237.

(TSN, pp. 7-10, August 31, 1993)”[10]

The light emanating from the headlights of the passing vehicle was sufficient illumination to enable Payla to identify petitioner. Wicklamps, flashlights and even moonlight or starlights may in a proper situation be considered sufficient illumination.[11] There is thus no reason to doubt the identification of petitioner by Payla through the light from the headlights of the passing vehicle.

It bears stressing that when he testified in the trial court, Payla was merely thirteen years old. We ruled that the testimony of children of sound mind is likewise to be more correct and truthful than that of older persons so that once established that they have fully understood the character and nature of an oath, their testimony should be

given full credence.[12] There is no evidence on record to prove any ill motive on the part of Payla to muddle the truth and pillory petitioner by ascribing a criminal act to him for which he could be sentenced to a prison term. Hence, the testimony of Payla should be accorded credence and full probative weight.[13]

In this case, the trial court gave credence and full probative weight to the testimony of Payla. Indeed, the trial court found petitioner guilty beyond cavil of doubt for the crime charged principally on Payla's testimony. The legal aphorism is that findings of facts of the trial court, its calibration of the evidence of the parties, assessment of the credibility of witnesses and conclusions anchored on its findings are accorded high respect and conclusive effect of the appellate courts because of the unique advantage of observing and monitoring at close range the conduct and demeanor of the witnesses as they regale the court with their collective testimonies.[14]

The Court is aware that the appellate court is not bound by the findings and conclusions of the trial court; and its conclusions anchored on said findings if the trial court misinterpreted, misunderstood or overlooked cogent facts and circumstances of substance which, if considered, would change the outcome of the case. However, petitioner failed to preponderantly show that the trial court committed any such miscues. As a matter of fact, the Court of Appeals affirmed the findings and conclusions of the trial court and gave credence and full probative weight to the testimony of Payla. We agree with the succinct disquisitions of the said court, thus:

“First, appellant argues in his brief that witness Salmero Payla could not have seen the accident and identify both the ‘sakbayan’ vehicle and its driver because he was then busy ‘looking at his injured friend.’ The argument lacks merit. The records reveal that the young Salmero was only about two (2) meters away from Loue Boy when the latter was hit by the speeding ‘sakbayan’. Both were then walking along the left shoulder of the national highway towards Iligan City, while the speeding ‘sakbayan’ came from Iligan towards Cagayan De Oro City. With this scenario, Salmero was at the best possible position to witness the incident from start to finish. While he approached and helped the victim, this fact alone could not have deprived Salmero of his faculties to observe how the ‘sakbayan’ stopped and came near the scene of the incident as it backed-up to a distance of four (4) to five (5) meters from where it was. And from this distance, it would not have been difficult for Salmero to take a good look at the ‘sakbayan’ vehicle and its driver. In fact, he even saw appellant’s passengers, a man and a woman holding a child, and described their reaction.”[15]

Petitioner failed to show that Payla indulged in “selective amnesia” or that he was instructed and rehearsed precisely to identify petitioner as the offender. Payla may not have noticed the clothes of petitioner that day, or could not recall what day it was when he reported the mishap to the police authorities or how many days passed after the said incident before he reported the same, and yet could identify petitioner and recall the plate number of the vehicle driven by petitioner which hit Louie Boy Borja. However, the same does not prove that Payla indulged in selective amnesia or that he was rehearsed and programmed to identify petitioner as the offender.

Case law has it that a witness is not expected to remember an occurrence with perfect recollection of minor and minute details.[16] The testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein.[17] A truth-telling witness is not always expected to give an error-free testimony considering the lapse of time and the treachery of human memory.[18] Failure of the witness to recall each and every detail of an occurrence may even serve to strengthen rather than weaken the credibility of a witness because they erase any suspicion of coached or rehearsed testimony.[19] The failure of Payla to recall the precise date when he was investigated by the police investigators, or when he made the report of the incident to the police authorities, or specify the clothes worn by petitioner at the time of the incident is inconsequential and does not detract from or lessen the verisimilitude of his identification of petitioner as the offender and the particulars of the offending vehicle.

Petitioner’s twin defenses of denial and alibi cannot prevail over the positive identification of petitioner by Payla

who had no motive to falsely testify against petitioner.[20] It bears stressing that alibi is inherently weak and is considered with suspicion and always received with caution. Such a defense can easily be fabricated. For the Court to consider such defense in favor of petitioner, he must adduce clear and convincing evidence that it was physically impossible for him at the situs criminis at the precise time it was committed.[21] In this case, the trial court found petitioner's testimony to prove his defenses incredible with the following disquisitions, with which we are in full accord:

"Here, it has been established that Lugait, Misamis Oriental, where accused claims he was, is sixteen (16) kilometers away from Iligan City. Taguibo, Iligan City where the incident took place is about mid-way between Lugait and Iligan. It has also been proved that it took accused 30 minutes to negotiate Iligan from Lugait. Such being the case, it is not physically impossible for accused to have been at the scene of the crime at 6:30 p.m. of December 5, 1992.

What is more is that accused has made two accounts as to the time he left Lugait for Iligan City on December 5, 1992 and as to when he arrived at Iligan City and two accounts as to when he left Iligan City for Lugait. Thus, he testified:

ATTY. WILKOM:

Q - What time did you come to Iligan?

A - 7:00 evening

Q - What time did you arrive at Iligan City?

A - 7:30 (Tsn, Oct. 6, 1993, Tapdasan, p. 42.)

And, he corrected the foregoing testimony in the following manner in cross-examination, to wit:

ATTY. ULINDANG:

Q - Now, what time did you leave Lugait during the evening of December 5, 1992?

A - 7:30

Q - And what time did you arrive in Iligan City?

A - 7:30

Q - You cannot arrive and leave at the same time, is that not correct?

A - I left 7:00. (supra, p. 50.)

He again testified that he arrived at Iligan City at 7:00 p.m. of December 5, 1992 and left Lugait at 7:00.

ATTY. ULINDANG:

Q - You arrived at Iligan City on December 5, 1992 at what time?

A - 7:00.

Q - You left Lugait at 6:00?

A - 7:00.

Q - You cannot leave Lugait at 7:00 and arrive at Iligan at 7:00?

ATTY. ULINDANG:

Your Honor, may I ask the stenographer the answer of the witness what is the time?

COURT:

He arrived at 7:00 and he left at 7:00 (supra, pp. 51-52.)

This flip-flapping testimony of accused convinces the Court that he is not credible (People vs. Ignacio, 211 SCRA 796)."[22]

Anent the penalty imposed on petitioner, the Solicitor General avers that the trial court committed an error, and insists that the appropriate penalty for the crime, applying the indeterminate penalty law, should be two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to six (6) years of prision correccional, as maximum. The Solicitor General explains that this is so because the penalty for the crime is prision correccional in its medium and maximum periods. The trial court, on the other hand, imposed on petitioner an indeterminate penalty of from four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to seven (7) years, four (4) months and one (1) day of prision mayor, as maximum, on its finding that under the last paragraph of Article 365 of the Revised Penal Code, the penalty for the crime is prision mayor in its minimum and medium periods.

We do not agree with the Solicitor General. Under Article 365 of the Revised Penal Code, the penalty for the crime of reckless imprudence resulting in homicide is prision correccional in its medium and maximum periods which has a range of from two (2) years, four (4) months and one (1) day to six (6) years. However, if the offender fails to lend on the spot such help as may be in his hands to give to the injured parties, the penalty for the crime is prision mayor in its minimum and medium periods which has a range of six (6) years and one (1) day to ten (10) years.[23] In this case, petitioner failed to render help to the victim. Petitioner simply abandoned the victim at the situs criminis and left posthaste. Hence, the penalty for the crime is prision mayor in its minimum and medium periods. To fix the minimum of the indeterminate penalty, prision mayor in its minimum and medium periods shall be reduced by one degree, that is, to prision correccional in its medium and maximum periods. The minimum period of the indeterminate penalty shall be taken from the full range of the penalty of prision correccional in its medium and maximum periods. The maximum of the indeterminate penalty shall be taken from the penalty imposed by law for the crime, that is, prision mayor in its minimum and medium periods. There being no modifying circumstances in the commission of the crime, the maximum of the indeterminate penalty shall be taken from the medium period of prision mayor in its minimum and medium periods with a range of from seven (7) years, four (4) months and one (1) day to eight (8) years and eight (8) months. Hence, the penalty imposed by the trial court is correct.

Anent the awards in the amount of P100,000.00 by way of moral damages, the amount of P50,000.00 by way of exemplary damages, and the amount of P10,000.00 by way of attorney's fees, we find the same proper and reasonable.[24] The evidence on record shows that after the mishap, petitioner simply abandoned the helpless victim on the highway without giving him immediate help.[25] The award of P50,000.00 by way of indemnity ex delicto is in keeping with current jurisprudence.[26]

WHEREFORE, the petition is DISMISSED. Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Austria-Martinez, JJ., concur.

[1] Justice Angelina S. Gutierrez (now Associate Justice of Supreme Court), ponente, with Associate Justice

Romeo A. Brawner and Associate Justice Martin S. Villarama, Jr., concurring.

[2] Judge Amir PD. Pundogar.

[3] Rollo, pp. 30-31.

[4] Ibid., p. 32.

[5] Ibid., p. 29.

[6] Ibid., p. 15.

[7] Ibid., p. 16.

[8] Ibid., p. 24.

[9] People of the Philippines vs. Jury Magdamit, et al., 279 SCRA 423 (1997).

[10] Rollo, pp. 60-62.

[11] People of the Philippines vs. Pablo Adoviso, 309 SCRA 1 (1999).

[12] People of the Philippines vs. Vicente Vitor, 245 SCRA 392 (1995); Julio Marco vs. Court of Appeals, et al., 273 SCRA 276 (1997).

[13] People of the Philippines vs. Marjorie Castillo, 273 SCRA 22 (1997).

[14] People of the Philippines vs. Aurelio Delovino, 247 SCRA 637 (1995).

[15] Rollo, pp. 34-35.

[16] People of the Philippines vs. Ruben Tidula, et al., 292 SCRA 596 (1998).

[17] People of the Philippines vs. David Garcia, 281 SCRA 463, 477 (1997).

[18] People of the Philippines vs. Reynaldo Paule, 261 SCRA 649 (1996).

[19] People of the Philippines vs. Sotero Garigadi, 317 SCRA 399 (1999).

[20] People of the Philippines vs. Nestor Matubis, et al., 288 SCRA 210 (1998).

[21] People of the Philippines vs. Buenaventura Batidor, 303 SCRA 335 (1999).

[22] Records, pp. 196-198.

[23] Article 365 (2) of the Revised Penal Code provides:

‘Art. 365. Imprudence and negligence.-

xxx xxx xxx

2. When, by imprudence or negligence and with violation of the Automobile Law, the death of a person shall be caused, in which case the defendant shall be punished by prision correccional in its medium and the maximum periods.

xxx xxx xxx

‘The penalty next higher in degree to those provided for in this article shall be imposed upon the offender who fails to lend on the spot to the injured parties such help as may be in his hands to give.’

[24] Metro Manila Transit Corporation, et al. vs. Court of Appeals, et al., 298 SCRA 495 (1998).

[25] Note 24.

[26] Gregorio Pestaño, et al. vs. Teotimo Sumayang, et al., 346 SCRA 870 (2000).

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