

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL HAROVILLA AND CAROLINO HAROVILLA (AT LARGE), ACCUSED, RAUL HAROVILLA, ACCUSED-APPELLANT.

G.R. No. 145719. August 20, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Raul Harovilla appeals from the judgment^[1] of conviction rendered by the Regional Trial Court of Palawan and Puerto Princesa City, Branch 49, in an information charging him and his co-accused of the crime of murder, committed as follows:

That on or about the 2nd day of January, 1994, in the early morning, at Barangay Iraray, in the Municipality of Brooke's Point, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping each other, with evident premeditation and treachery, while armed with a firearm of unknown caliber and with intent to kill, did then and there willfully, unlawfully and feloniously shoot with the said firearm, one JONA REBUSQUILLO, hitting him in the vital part of his body and inflicting upon him a gunshot wound on his chest which was the direct and immediate cause of his instantaneous death.

CONTRARY TO LAW.^[2]

Upon arraignment on December 6, 1994, accused-appellant Raul Harovilla pleaded not guilty.^[3] His brother and co-accused, Carolino Harovilla, remained at large.

The facts, established by the prosecution, disclose that on the night of January 1, 1994, Franco Cuyos, Jona Rebusquillo and a certain Linda Zulueta were at the dance hall of Iraray, Brooke's Point, Palawan. At around 2:00 in the early morning of January 2, 1994, Franco saw the victim, Jona Rebusquillo, leave the dance hall together with Linda. Franco followed them. While they were walking along the highway, with Franco about 5 meters behind the two, accused-appellant and Carolino suddenly accosted the victim. The moon was then shining bright enabling Franco to easily recognize the assailants, whom he had known even before the incident. Accused Carolino held the victim's hands from behind as accused-appellant poked and fired a gun on the victim's chest, causing his death.^[4]

Dr. Renee A. Argubano, Medical Health Officer of Brooke's Point, Palawan, who conducted the autopsy, testified that the victim was shot on the chest at close range, as shown by the presence of contusion collar on the gunshot wound, as well as of powder burns on the clothes of the victim.^[5]

Accused-appellant interposed the defenses of denial and alibi, and claimed that he learned of the shooting incident only in the morning of January 2, 1994 when he was arrested. He testified that on the night of January 1, 1994, he was at home and never left their house until the next day. He insisted that though he was aware of the festivities in Iraray, Brooke's Point, Palawan, which is about 3 kilometers away from their house, he never attended the same as he was taking care of his sick father. He added that his brother, accused Carolino Harovilla, could not have

committed the crime because he was in Negros since 1992 and never set foot in their Barangay, particularly at the time of the alleged incident.[6]

Luijie Teves corroborated accused-appellant's story. He declared that he slept in the house of accused-appellant on the night of January 1, 1994 and left the following morning. He stressed that accused-appellant never left the house during said period because he was attending to his sick father.[7]

On June 30, 2000, the trial court rendered the assailed judgment of conviction. The dispositive portion thereof reads:

In view of the foregoing consideration, the Court finds Raul Harovilla guilty of the crime of Murder beyond reasonable doubt in the killing of Jona Rebusquillo and hereby imposes upon him, there being neither mitigating nor aggravating circumstances in the commission of the said crime, the penalty of reclusion perpetua and to indemnify the heirs of Jona Rebusquillo by way of civil indemnity, the amount of Fifty Thousand Pesos (P50,000.00).

SO ORDERED.[8]

Hence, this appeal where accused-appellant contends that:

I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER ON THE BASIS OF THE INCREDIBLE, INCONSISTENT AND UNCORROBORATED TESTIMONY OF THE PROSECUTION WITNESS FRANCO CUYOS.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT RAUL HAROVILLA FOR THE CRIME OF MURDER WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS NOT PROVEN BY CONVINCING EVIDENCE.[9]

The appeal is without merit.

The alleged inconsistencies and improbabilities in the testimony of Franco Cuyos are too trivial to be worthy of consideration. Specifically, the failure of Franco to state the name of his partner at the dance, as well as the place where the victim and Linda Zulueta went, are too insignificant to lessen the probative value of his positive testimony. His statement that he followed Linda and the victim after they went out of the dance hall is sufficient, though he had no knowledge where the couple planned to proceed. What matters is that he was consistent and certain as to who shot the victim and the circumstances surrounding the execution thereof. Likewise, the inability of Franco to account for the precise whereabouts of the victim from the time he entered the dance hall at 6:00 in the evening of January 1, 1994 up to and before 2:00 a.m. of January 2, 1994, does not have any significant impact on the categorical, straightforward, and positive identification of accused-appellant as one of the culprits. It bears stressing that inconsistencies in the testimony of witnesses with respect to minor details and collateral matters do not affect the substance of their testimonies, as they even serve to strengthen rather than destroy one's credibility.[10]

Clearly, the thrust of the instant appeal is essentially on the issue of credibility. The settled rule is that assignment of values to the testimony of a witness is virtually left, almost entirely, to the trial court which has the opportunity to observe the demeanor of the witness on the stand. Unless there are substantial matters that might have been overlooked or discarded, the findings of credibility by the trial court will not generally be disturbed on appeal.[11] In the case at bar, a careful and thorough review of the records reveals that the trial court was correct in convicting

accused-appellant on the basis of the testimony of Franco Cuyos, who was not shown to have been impelled by ill motive to testify falsely against accused-appellant.[12] Not only was his testimony convincing and unequivocal, the same was also backed up by physical evidence, a mute but eloquent manifestation of truth[13] that the victim was indeed shot on the chest and at close range.

Accused-appellant's defenses of denial and alibi were correctly disregarded by the trial court. Time and again, we have said that denial and alibi are the weakest defenses and cannot prevail over positive identification.[14] For alibi to prosper as a defense, the accused must show that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission, and that his presence elsewhere renders it impossible for him to be the guilty party.[15] In the case at bar, the unwavering identification of accused-appellant by the prosecution eyewitness, not to mention the possibility of his presence at the scene of the crime which is only 3 kilometers away from his house, made accused-appellant's defenses unavailing. What is more, his alibi is contradicted by his own counter-affidavit executed on January 11, 1994 wherein he stated that: 1) he attended the dance held at Iraray, Brooke's Point, Palawan and saw therein the victim and Linda Zulueta; and that 2) the victim was probably shot by his brother, Carolino Harovilla, who had a grudge against said victim.[16] Hence, his defenses must undoubtedly fail.

The trial court correctly appreciated the circumstance of treachery, which qualified the killing to murder. The essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor.[17] As vividly narrated by the prosecution eye-witness, the attack on the unarmed victim was sudden. Accused-appellant poked and fired the gun on the victim's chest while the latter's hands were being held behind his back by accused-appellant's brother. Evidently, accused-appellant and his companion executed the attack in a manner that posed no risk to themselves and absolutely afforded the victim no chance to defend himself.

Under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659, murder is punishable by reclusion perpetua to death. Pursuant to Article 63 of the same Code, if the penalty prescribed by law is composed of two indivisible penalties, the lesser penalty shall be imposed if neither mitigating nor aggravating circumstances are present in the commission of the crime. Considering that no modifying circumstance is attendant in the case at bar, the lesser penalty of reclusion perpetua should be imposed on accused-appellant.

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Palawan and Puerto Princesa City, Branch 49, convicting accused-appellant Raul Harovilla of the crime of murder; sentencing him to suffer the penalty of reclusion perpetua; and ordering him to pay the heirs of the deceased the amount of P50,000.00 as civil indemnity, is AFFIRMED, in toto.

SO ORDERED.

Vitug, and Austria-Martinez, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

[1] Penned by Judge Panfilo S. Salva (Rollo, p. 13).

[2] Rollo, p. 7.

[3] Records, p. 26.

[4] TSN, November 16, 1995, pp. 2-5.

[5] TSN, November 9, 1995, pp. 7-8; Autopsy Report, Records, p. 105.

[6] TSN, March 27, 2000, pp. 3-9.

[7] TSN, August 3, 1998, pp. 4-11.

[8] Rollo, p. 16.

[9] Rollo, p. 27.

[10] *People v. Baroy, et al.*, G.R. Nos. 137520-22, May 9, 2002, citing *People v. Sanchez*, 302 SCRA 21 1999; *People v. Sesbreño*, 314 SCRA 87 1999; *People v. Patalin, Jr.*, 311 SCRA 186 1999 .

[11] *People v. Quinson*, G.R. No. 139753, May 7, 2002, citing *People v. Navarette*, G.R. No. 138640, September 13, 2001.

[12] *Tecson v. Court of Appeals, et al.*, G.R. No. 113218, November 22, 2001, citing *Garcia v. Court of Appeals*, 254 SCRA 542 1996; *People v. Abelita*, 210 SCRA 497 1992.

[13] *People v. Bonifacio, et al.*, G.R. No. 133799, February 5, 2002, citing *People v. Roche, et al.*, 330 SCRA 91 2000.

[14] *People v. Gelin, et al.*, G.R. No. 135693, April 1, 2002.

[15] *People v. Punsalan*, G.R. No. 145475, November 22, 2001, citing *People v. Baring*, 354 SCRA 371 2001 .

[16] Records, p. 12.

[17] *People v. Tejero, et al.*, G.R. No. 135050, April 19, 2002.

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