

REGORE BALDEO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 152205. February 05, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

The instant petition for review seeks to set aside the August 14, 2001 decision[1] and the February 20, 2002 resolution[2] of the Court of Appeals in CA-G.R. CR No. 24138, which affirmed the decision[3] of the Regional Trial Court of Lucena City, Branch 60, dated March 10, 2000 in Criminal Case No. 96-429.

On July 16, 1996, an information for murder was filed against petitioner, Regore Baldeo, before the Regional Trial Court of Lucena City.

The information alleged:

That on or about the 16th day of February 1996 at Poblacion, Municipality of Tiaong, Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with evident premeditation and treachery, armed with a firearm of undetermined caliber, did then and there willfully, unlawfully and feloniously attack, assault and sho(o)t with the said firearm one Luisito Caparas y Lector, thereby inflicting upon the latter multiple gunshot wounds on different parts of his body which directly caused his death.

That the accused attacked and shot said Luisito Caparas y Lector suddenly and unexpectedly without giving the latter any opportunity to defend himself or to escape.

Contrary to law.[4]

During the trial, the prosecution presented the following witnesses: (1) Lourdes Basilan; (2) Dr. Celso Exconde; (3) Dr. Wilma Castillo-Laroza; (4) Romeo Exconde; (5) Crisente Exconde; and (6) Lolita Caparas-Tiongco. Tiongco was also presented as rebuttal witness together with Arlita Medrano. Their testimonies may be summed up as follows:

Lourdes Basilan, who was placed under the Witness Protection Program of the Department of Justice, was the lone eyewitness to the killing of Luisito Caparas. She testified that in the early morning of February 16, 1996, she went to the Tiaong Public Market to buy tamarinds. On her way home at around 6:30 a.m., she passed through Masangkay Street and saw petitioner Baldeo and the victim, Luisito Caparas, talking by the gate of the residence and clinic of Dr. Celso Exconde. When Basilan was about two arms length away, she saw petitioner shoot Caparas several times with a short firearm. She heard three to five successive gunshots, the first of which hit Luisito's forehead. As he was falling down, Luisito was also hit in different parts of the body until he finally landed face up on the pavement with his back to the ground. Petitioner then casually walked towards a parked car and sped off.[5]

For his part, Dr. Exconde testified that he saw petitioner walk by twice at 6:30 a.m. and 6:45 a.m. while he was

drinking coffee that same morning in his clinic at the ground floor of his house in Masangkay Street. After finishing his coffee, he went to the upper floor of the house to take a bath when he heard a series of gunshots. He hurriedly ran down the stairs and saw his brother, Romeo Exconde, and his nephew, Ryan Exconde, in hysterics over a bloodied person sprawled on the ground. He examined the body, which turned out to be that of Luisito, and declared that the latter was already dead. He further explained that Luisito, who was his cousin, went to his house every morning to run errands for an ailing aunt.[6]

Dr. Wilma Castillo-Laroza, rural health physician of the Municipality of Tiaong, Quezon, conducted the post-mortem examination of the victim, who was found to have five (5) gunshot wounds described as follows:

X X X X X X X X

Head and Neck: Examination of the head reveals that at the frontal area just above the right eyebrow a (1) gunshot wound entry with evidence of powder burn measuring .6 cm circular in shape traced to have exited at slightly to the right aspect of the occipital area and this is described as having irregular shape with everted edges measuring 2 cm. at its widest diameter; (2) gunshot wound entry at the right parietal area measuring 1 cm with inverted edges, no exit wound evident but contusion noted at the right anterior neck from which a bullet had been palpated and extracted.

X X X X X X X X

Thorax and Abdomen: external examination of the victim shows a (3) gunshot wound entry at the left lumbar region of the abdomen measuring 1 cm, oval shape and with powder burns on its edges, no exit wound found.

X X X X X X X X

Back: (4) gunshot wound entry at the level of the left scapular area, oval in shape measuring 1 cm. with powder burn was noted and closer examination on a contusion below the said entry reveals a lodged bullet which was later extracted: another contusion had been found above the medial to the right iliac crest where a third bullet extracted.

X X X X X X X X

Extremities: (5) .8 cm gunshot wound entry with slight tattooing on extensor surface of the right forearm; lacerated wound measuring 7 cm. at the extensor surface of the right forearm.

X X X X X X X X

Cause of Death: severe hemorrhage due to multiple gunshot wounds on the head and body.[7]

The victim's siblings, Lolita Tiongco and Crisente Caparas, testified that Luisito and petitioner's wife, Atty. Expectacion Baldeo, had a dispute over a legal transaction for which the latter's services were retained by Crisente, who permanently resides in Canada. In the course of their transaction, Luisito suspected that Atty. Baldeo was misappropriating the money given by Crisente. He also discovered that Atty. Baldeo did not pay the fees to the proper government agencies despite her saying so.[8]

The prosecution presented a letter[9] written by Atty. Baldeo to Crisente, in which she stated that Luisito was saying unsavory things about her. Crisente supposedly warned Luisito to stay away from the Baldeos.[10]

Romeo Exconde, a cousin of the victim, related that on the night before the killing, he, Luisito and the latter's brother, Ernesto, talked about an incident which transpired earlier that day during a barangay council meeting headed by barangay captain Edring Mendoza. Apparently, Ernesto complained about a video machine operated by the petitioner in his billiard hall located along Masangkay Street which was within Mendoza's jurisdiction. Referring to the trouble Ernesto caused at the said meeting, Luisito supposedly uttered, "Kuya, sa pang-gugulo

mong yan, ako ang unang mamatay (Brother, for the trouble you caused, I will be the first one to die).”

The following morning, Mendoza went to Romeo’s store along Doña Tating Street and told the latter to tell Ernesto not to repeat what he did during the barangay council meeting. Fifteen to twenty minutes later, Romeo heard gunshots coming from behind his store in Masangkay Street and he found Luisito lifeless and lying in a pool of blood. However, he did not see who shot him.[11]

On the other hand, petitioner’s defense was denial and alibi. Petitioner stated that at the time of the incident, he was the barangay captain of Bgy. Lumington, Tiaong, Quezon and also president of the Association of Barangay Captains of Tiaong and a member of the Quezon Provincial Board. He claimed that at around 6:00 a.m. of February 16, 1996, he drove his green Nissan car to his billiard hall along Masangkay Street with his five children. It was his routine to collect the daily income earned by the billiard hall and there he met his billiard hall boy, Tino Buenaventura, who informed him that Ernesto Caparas, the victim’s brother, had caused trouble the previous day. The latter supposedly raised a commotion over a video game operated by petitioner and which was being patronized by Ernesto’s son.

Petitioner reported the matter to Barangay Captain Edring Mendoza, whom he saw crossing Doña Tating Street. Mendoza told him that Ernesto also caused trouble at the barangay council meeting the day before. Petitioner spoke to Mendoza near the store of Romeo Exconde and promptly went on his way to bring his children to school at around 6:05 a.m. He reached the school thirty minutes later, after which he dropped by the house of Vicente Lauro at San Pablo City to drink coffee where he stayed until 7:30 a.m.

Petitioner stated that upon reaching his house at 9:00 a.m., he was informed by a nephew that five armed men were looking for him. He became alarmed because there was a previous attempt on his life. He thus hurriedly left and decided to proceed to Camp Nakar to report the matter to the military. Along the way, however, he changed his mind and went instead to the office of his lawyer, Atty. Rey Alejandrino, a second degree cousin of his wife. It was in Atty. Alejandrino’s office that he got in touch with his wife who advised him not to go home since he was being implicated in the killing of Luisito. He nevertheless went home at 8:00 p.m. of the same day.[12]

Vicente Lauro confirmed that he saw petitioner in San Pablo City in the early morning of February 16, 1996. After Lauro testified, the presentation of defense evidence was interrupted when the designation of Branch 53 as special criminal court was revoked in a Supreme Court En Banc resolution dated March 24, 1998. Judge Andaya thus ordered the cancellation of previously scheduled hearings until further orders.[13] The prosecution likewise filed a motion for inhibition of Judge Andaya on the grounds of alleged bias and partiality.[14]

On February 18, 1999, Judge Andaya issued an order[15] voluntarily inhibiting himself from hearing the case. The case was transferred to the newly-designated special criminal court, Branch 60, where Judge Virgilio Alpajora was the pairing judge.

Trial was resumed with the presentation of defense witness Rafael Lector, who averred that he saw petitioner pass by the billiard hall at around 6:00 a.m. and noticed him leave the area in a green car five minutes later. After thirty minutes, Kapitan Edring and a male companion approached Luisito by the gate of Dr. Exconde’s clinic. He overheard Kapitan Edring ask Luisito about Ernesto’s whereabouts. Luisito answered in an angry tone, “Anong pakialam ko dun? (What do I care about him?).” Suddenly, Kapitan Edring’s male companion drew out a gun and fired at Luisito.

Lector did not know who the male companion was, but maintained that he could recognize the assailant if he sees him again.[16] The man who shot Luisito purportedly had a two-inch scar on the right cheek.[17]

Rodelo Atienza, a councilor of Bgy. Lalig, Tiaong, Quezon, testified that Lourdes Basilan, the prosecution’s lone

eyewitness, went to his house in the early morning of February 16, 1996 and confided to him that it was petitioner who shot Luisito and described the assailant as one who had a big scar on the right cheek. A month later, she came back to his house and told him that she was bothered by her conscience. She asked him if petitioner had the distinctive scar, and he told her that petitioner had no scar. Atienza consequently advised Basilan to execute another statement and, for this purpose, accompanied her to San Pablo City.[18]

The defense presented Basilan as its witness who declared that the assailant was mestizo type, tall, with fair-complexion and a scar on the right cheek; that she only knew petitioner by name but not by face; that it was Lolita Tiongco who told her that the person who killed Luisito was named Baldeo; that she saw petitioner for the first time on the first day of the hearing. It was only on the second hearing that she was able to verify that petitioner did not have a scar; and that she pointed to petitioner as Luisito's killer upon the dictates of Tiongco.[19]

The prosecution presented Tiongco on rebuttal. The latter insisted that Basilan lied when she claimed that she saw petitioner only during the first hearing of the case. Basilan was present during the clarificatory hearing held in the prosecutor's office on May 13, 1996 where the former had every opportunity to observe whether petitioner had the alleged scar. Moreover, it was Basilan who volunteered information about petitioner's identity when Arlita Medrano brought Basilan to her house. When Basilan expressed fear for her life, Tiongco encouraged her to avail of the Witness Protection Program.[20]

Arlita Medrano corroborated Tiongco's rebuttal testimony. She added that on the day of the clarificatory hearing, she accompanied Basilan to the prosecutor's office. While waiting in the building corridor for the proceedings to begin, they saw petitioner alight from a car. Upon seeing petitioner, Basilan exclaimed, "Iyan, iyan na nga! (That's him!)."[21]

On March 10, 2000, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds accused Regore Baldeo guilty beyond reasonable doubt of the crime of Homicide and hereby sentences him to suffer the penalty of imprisonment of TEN (10) years of prison mayor in its medium period as minimum to SEVENTEEN (17) years of reclusion temporal in its medium period as maximum, to indemnify the heirs of Luisito Caparas in the sum of P50,000 as civil indemnity; P63,850.00 in actual expenses and P50,000 as attorney's fees, to suffer all the accessory penalties and to pay the costs.

SO ORDERED.[22]

On appeal, the decision was affirmed in toto. Hence, this petition for review.

Contending that his guilt was not proved beyond reasonable doubt, petitioner poses the following questions:

1. SHOULD NOT THE TESTIMONY(IES) OF THE LONE EYEWITNESS FOR THE PROSECUTION BE DISREGARDED/EXCLUDED FOR BEING CONTRADICTORY?
2. SHOULD NOT THE EVIDENCE FOR THE PROSECUTION BE HELD INCONCLUSIVE TO ESTABLISH THE GUILT OF HEREIN PETITIONER IN VIEW OF THE RECANTATION OF THE LONE EYEWITNESS FOR THE PROSECUTION?
3. IS NOT AN ACCUSED ENTITLED TO AN ACQUITTAL IF HIS GUILT IS NOT SHOWN BEYOND A REASONABLE DOUBT?[23]

After a review of the arguments raised by the petitioner, we find no cogent reason to set aside the assailed decision and the resolution of the Court of Appeals.

Petitioner argues that the testimony of the lone eyewitness for the prosecution, Lourdes Basilan, should be disregarded or excluded for being contradictory. Petitioner claims that prosecution witness Lourdes Basilan, who positively identified him as the perpetrator of the crime, recanted her earlier statement.

The issue of disregarding Lourdes Basilan's two testimonies has been squarely passed upon by the Court of Appeals when it declared, to wit:

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We find no reason to reverse the evaluation of the trial court on the evidence presented, including the recantation of Lourdes Basilan. Indeed we find, from a review of Lourdes' original testimony on January 10, 1997, barely a year after the incident, that the same was spontaneous and replete with details that could not have been fabricated. She was only an arm's length away from the accused when she saw him fire at Caparas (TSN, January 10, 1997, p. 12) who was first hit on the forehead (Id., page 14) and then fell on his back (tumihaya) from the successive shots after which the accused calmly walked past her to his car (Id., p. 17). . .

X X X X X X X X

Per Lourdes' testimony, the distance from the gun to the forehead of the victim was about 8 inches (Id., p.36). This is corroborated by the physical evidence that there were gunpowder burns on the victim indicating that he was shot at close range. As for the identity of the killer, she said that "I really know him" because he was the head of the barangay captains of Tiaong, Quezon. (TSN, January 14, 1997, p. 48).

As a rule, the findings of facts of the Court of Appeals are final and conclusive and cannot be reviewed on appeal to the Supreme Court[24] provided they are borne out by the record or are based on substantial evidence.[25]

In the case at bar, the quoted ruling of the appellate court were culled from the records of the case. Lourdes Basilan's positive identification of the petitioner as the perpetrator of the crime, not only during the trial proper but also, during the clarificatory hearing, when upon seeing the petitioner, she exclaimed, "Iyan, iyan na nga! (That's him)!", coupled with her testimony which was replete with details. The positive identification of the accused, where categorical and consistent without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial[26] which, if not substantiated by clear and convincing proof, are negative and self serving evidence undeserving of weight in law.[27]

Moreover, in criminal jurisprudence, when the issue is one of credibility of witness(es), appellate courts will not disturb the findings of the trial court.[28] The conclusions of the trial judge on the credibility of witnesses command great respect and consideration, especially when such conclusions are supported by the evidence on record.[29]

Petitioner's contention that the prosecution's evidence is inconclusive due to the recantation of its lone eyewitness has no merit. The mere fact that a witness says that what he has declared is false and what he now says is true is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility.[30] Furthermore, testimony solemnly given in court should not be set aside and disregarded lightly, and, before this can be done, both the previous testimony and the subsequent one should be carefully compared, the circumstances under each was made be carefully and keenly scrutinized, and the reasons or motives for the change discriminately analyzed.[31]

We agree with the observations made by the trial court vis-à-vis the two testimonies of Lourdes Basilan:

Realizing their failure to destroy the credibility of Lourdes Basilan when she testified for the prosecution by trying to prove that she was not present at the scene of the incident, the defense changed its stance midway by confirming that Basilan was there, indeed, but made up its scar-on-the-cheek tale to shore up its defense of

alibi and denial.

Likewise, while Rafael Lector professes to be an eyewitness, nowhere in the length and breadth of his testimony on direct and cross examination did he ever mention this scar on the right cheek of the assailant. Surprisingly, on redirect examination after more than one (1) month from his previous testimony he testified, seemingly on cue, that after the shooting when he was about to run away, he (the assailant faced me and I saw that he has a big scar on the right cheek) (TSN, July 29, 1999, page 33). This, clearly, is an after-thought intended to lay the basis for and to bolster Basilan's desperate effort to undo her previous testimony on the identity of the assailant.[32]

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Faced with two (2) conflicting testimonies of the lone eyewitness to the shooting of Luisito Caparas as to the identity of the assailant the court finds Basilan's testimony for the prosecution more credible — that she told the truth when she took the witness stand on January 10 and 14, 1997. What happened between these dates and October 8, 1999 when she came up with the scar in the cheek version is anybody's guess.[33]

The positive identification of the petitioner by Lourdes Basilan, and the corroboration of her testimony by Dr. Celso Exconde as to the presence of the petitioner at the scene of the crime very shortly before its commission, clearly established his guilt beyond reasonable doubt for the killing of Luisito Caparas. Where the prosecution eyewitness was familiar with both victim and accused,[34] and where the locus criminis afforded good visibility, and where no improper motive can be attributed to the witness for testifying against the accused, her version of the story deserves much weight.[35] In the face of such positive identification of the petitioner, his defense of alibi and denial must necessarily fail. Defense of alibi cannot prevail over the positive testimony of the prosecution witness and her clear identification of accused-appellant as the perpetrator of the crime.[36]

Moreover, petitioner's alibi that he was in San Pablo City at the time of the commission of the crime failed to establish the physical impossibility of his being at the scene of the crime at the same time because, as the trial court correctly observed, San Pablo City is barely half an hour away from Tiang, Quezon.[37]

The trial court and the Court of Appeals correctly found petitioner guilty beyond reasonable doubt of the crime of homicide, punishable under Article 249 of the Revised Penal Code with reclusion temporal. There being no mitigating or aggravating circumstance, the same shall be imposed in its medium period. Applying the Indeterminate Sentence Law, petitioner shall be entitled to a minimum term to be taken from the penalty next lower in degree, namely, prision mayor. Thus, the trial court was correct in sentencing petitioner to suffer the indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years of reclusion temporal, as maximum.

The Court affirms the award of P50,000.00 as, and by way of, civil indemnity to the heirs of the deceased Luisito Caparas. Such an award for civil indemnity is in full accord with prevailing jurisprudence.[38] On the matter of the award for actual damages, the Court modifies the grant of the same and increases it from the amount of P63,850.00, the amount originally awarded by the trial court,[39] to P129,700.00,[40] representing the damages duly receipted and borne by the records. The award for attorney's fees is hereby deleted for lack of basis.

WHEREFORE, the petition for review is DENIED. The decision of the Court of Appeals dated August 14, 2001 and its Resolution dated February 20, 2002 in CA-G.R. CR No. 24138, are AFFIRMED with MODIFICATION. Petitioner is found guilty beyond reasonable doubt of the crime of Homicide and is sentenced to suffer the indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years of reclusion temporal, as maximum. Further, he is ordered to pay the heirs of the victim the amounts of P50,000.00 as civil indemnity and P129,700.00 as actual damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, and Carpio, JJ., concur.

Azcuna, J., on official leave.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Ma. Alicia Austria-Martinez and Mercedes Gozo-Dadole; Petition, Annex “A”; Rollo, pp. 29-41.

[2] Rollo, pp. 43-44.

[3] Penned by Judge Virgilio C. Alpajora; Rollo, pp. 45-55.

[4] Original Record, Vol. I, pp. 2-3.

[5] TSN, January 10, 1997, pp. 6-17.

[6] Id., pp. 67-77.

[7] Original Record, Vol. I, pp. 18-19.

[8] TSN, January 24, 1997, pp. 110-114; TSN, February 12, 1997, pp. 156-157 and pp. 177-178.

[9] Original Record, pp. 219-220.

[10] TSN, February 26, 1997, pp. 4-6.

[11] TSN, June 13, 1997, pp. 8-31.

[12] TSN, October 28, 1997, pp. 3-24.

[13] Original Record, Vol. I, p. 382.

[14] Id., Volume II, pp. 34-35.

[15] Id., Vol. II, pp. 112-113.

[16] TSN, June 15 1999, pp. 5-7, 10-13; and TSN, July 29, 1999, p. 15.

[17] TSN, July 29, 2003, pp. 24, 26 & 33.

[18] TSN, September 3, 1999, pp. 6-11.

[19] TSN, October 8, 1999, pp. 8-10 and 13-20.

[20] TSN, November 5, 1999, pp. 15-17.

[21] TSN, November 18, 1999, p. 20.

[22] Rollo, p. 55; penned by Judge Virgilio C. Alpajora.

[23] Rollo, pp. 11-12.

[24] Amigo, et al. v. Teves, 96 Phil. 252 (1954).

[25] Alsua-Betts v. Court of Appeals, G.R. Nos. L-46430-31, 30 July 1979, 92 SCRA 332.

- [26] *People v. Cortez*, G.R. No. 131924, 26 December 2000, 348 SCRA 663.
- [27] *People v. Jose*, G.R. No. 130666, 31 January 2000, 324 SCRA 196.
- [28] *People v. Mendoza*, G.R. No. 128890, 31 May 2000, 332 SCRA 485.
- [29] *People v. Dela Cruz*, G.R. No. 118967, 14 July 2000, 335 SCRA 620.
- [30] *Molina v. People*, G.R. Nos. 70168-69, 24 July 1996, 259 SCRA 138; citing *U.S. v. Magtibay*, 17 Phil. 417 (1910); *U.S. v. Briones*, 28 Phil. 362 (1914); *U.S. v. Lazaro*, 34 Phil. 871 (1916).
- [31] *People v. Ubina*, 97 Phil. 515 (1955).
- [32] *Rollo*, pp. 51-52.
- [33] *Rollo*, p. 52.
- [34] As in this case where Lourdes Basilan, in her testimony for the prosecution, categorically stated that she knew both the accused (herein petitioner) and the deceased, Luisito Caparas; TSN, January 10, 1997, pp. 11-12.
- [35] *People v. Talibas*, G.R. No. 103506, 15 February 2000, 325 SCRA 453.
- [36] *People v. Cortes*, G.R. No. 129693, 24 January 2000, 323 SCRA 131.
- [37] *Rollo*, p. 53.
- [38] *People v. Delim*, G.R. No. 142773, 28 January 2003.
- [39] *Rollo*, p. 55.
- [40] Original Record, Volume 1, pp. 236, 238-239, 241-242.

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