SPO1 LORETO NERPIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 155153. July 24, 2007

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

As a defense, an alibi derives its strength from the fact that it involves the physical impossibility of the accused to commit the crime. Once established, it constitutes a complete, legitimate, and effective defense.[1]

The Case

This is a Petition for Review on Certiorari[2] under Rule 45 assailing the December 3, 2001 Decision[3] of the Court of Appeals (CA) and its September 5, 2002 Resolution[4] which denied petitioner's Motion for Reconsideration in CA-G.R. CR No. 21493 entitled People of the Philippines v. SPO1 Loreto Nerpio. The CA affirmed the October 20, 1997 Decision[5] of the Caloocan City Regional Trial Court (RTC), Branch 122, convicting petitioner of homicide in Criminal Case No. C-46871.

The Facts

On March 24, 1994, an Information for homicide was filed against petitioner, thus:

> That on or about the 3[rd] day of October 1993 in Kalookan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, without justifiable cause and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously shoot with a firearm one MARIO SALAZAR, hitting the latter on the different parts of his body, thereby inflicting upon the victim Mario Salazar serious physical injuries which injuries caused his death.[6]

During arraignment on June 29, 1994, petitioner, assisted by his counsel,[7] pleaded not guilty to the charge.[8] Thereafter, trial ensued.

The records bear out the following facts regarding the crime:

On October 3, 1993, petitioner SPO1 Loreto Nerpio, a member of SWAT-Intelligence Investigation Division in Sangandaan, Caloocan City, held a children's birthday party for his son at his residence at No. 13 Milagrosa Street, Bagong Barrio, Caloocan City. At about eleven (11) o'clock in the morning to twelve (12) noon, Mario Salazar and Kid Espiritu passed by petitioner's house. Petitioner then invited Salazar and Espiritu to join him and his other guests in their drinking session. Salazar left petitioner's house at around two (2) o'clock in the afternoon.

Thereafter, Nelly Villanueva, who was then waiting for a friend along Pita Street, saw Salazar walking along Tindalo Street. She also saw a man emerge from the same street who called Salazar twice. Salazar looked back, waived his right hand, and approached the man who called his name. When Salazar reached the man, the latter placed his arm over Salazar's shoulder, poked a gun at the right side of Salazar's neck, and fired it. Salazar

slumped on a wall at the side of Tindalo Street. Salazar then attempted to escape but four men appeared and mauled him. Upon reaching the corner of Pita and Tindalo Streets, Salazar was shot several times and died.

The autopsy report of Dr. Florante Baltazar revealed that Salazar died of multiple gunshot wounds. He found five (5) gunshot wounds--three (3) on the head area and two (2) on the body. He also discovered one hematoma on the victim's right eye and multiple abrasions on the right side of his body.

During trial, Villanueva identified petitioner as the malefactor. However, petitioner denied the imputation and claimed alibi as defense. He maintained that on the day of the crime, he never left his house until after he heard about a shooting incident involving his cousin and Salazar. When he rushed to the scene of the crime, he saw that Salazar was already dead.

On October 20, 1997, the trial court rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered CONVICTING the accused, SPO1 LORETO NERPIO of the crime of Homicide under Art. 249 of the Revised Penal Code, as amended and hereby sentences him to suffer the penalty of TWELVE (12) YEARS as minimum to TWENTY (20) YEARS as maximum, with accessory penalties prescribed by law and to pay the heirs of the victim Mario Salazar the sum of [PhP] 50,000 as indemnity for the death of the said victim and to pay the amount of [PhP] 40,000 as actual and compensatory damages and to pay the costs.
>
> SO ORDERED.[9]

Petitioner appealed to the CA. However, as earlier stated, the CA dismissed the appeal.

The Ruling of the Court of Appeals

Affirming the trial court's Decision, the CA upheld the credibility of Nelly Villanueva as eyewitness to the shooting incident. It observed that Villanueva's "frank and consistent manner of testifying bears the mark of a credible witness especially on the face of an intense and lengthy interrogation made by the defense."[10] It also held that the discrepancies in Villanueva's affidavit and testimony in court are inconsequential. It ruled that statements in affidavits are "subordinated in importance to open court declarations."[11]

Hence, we have this petition.

The Issues

Petitioner submits the following issues for the Court's consideration:

I

> Whether or not the Honorable Court of Appeals seriously erred in affirming the conviction of petitioner on the basis of the lone testimony of prosecution witness Nely Villanueva.
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> II
>
> Whether or not the Honorable Court of Appeals seriously erred in disregarding the accused's defense of alibi despite the patent weakness of the prosecution's evidence.[12]

The Court's Ruling

The petition has no merit.

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Credibility of the Prosecution Eyewitness

In assessing the credibility of witnesses, we are guided by the following principles: (1) the reviewing court will not disturb the findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that could affect the results of the case; (2) the findings of the trial court respecting the credibility of witnesses are entitled to great respect and even finality as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive, and convincing manner and remains consistent on cross-examination is a credible witness.[13]

Applying the foregoing guidelines in this case, we find no reason to overturn the factual findings of the trial and appellate courts. A careful review of the records and the transcripts shows that the RTC correctly gave credence to Villanueva's testimony.

Petitioner faults Villanueva for her inconsistent statements regarding the profession of the assailant,[14] the address of the victim,[15] the time of the incident,[16] and the length of time that she has known the victim.[17] However, these alleged inconsistencies are trivial and bear no materiality to the commission of the crime of homicide of which petitioner was convicted. It must be noted that discrepancies should refer to significant facts which are crucial to the guilt or innocence of an accused. Thus, inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal.[18]

The same is true regarding the alleged discrepancies between Villanueva's Sinumpaang Salaysay and her testimony. Petitioner discredits Villanueva for her varying statements regarding her address and educational background. These matters are not material to Villanueva's positive identification of petitioner as the malefactor. Moreover, it must be stressed that affidavits taken ex parte are inferior to testimony given in court, the former being invariably incomplete and oftentimes inaccurate due to partial suggestions or want of specific inquiries.[19]

We also find reliable Villanueva's manner of identifying petitioner as the offender. As correctly held by the appellate court:

> [Petitioner] gives too much importance to Villanueva's description on his physique, which according to him fits a thousand person[s], hence insufficient. x x x
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> x x x x
>
> With [Villanueva's] long testimony on record, [she] did not waver when asked by the public prosecutor, the defense counsel and the court, in pointing to [petitioner] as the malefactor of the crime charged. Her testimony is categorical, frank and in a straightforward manner. Such frank and consistent manner of testifying bears the mark of a credible witness especially on the face of an intense and lengthy interrogation made by the defense. x x x In trying to discredit Villanueva, [petitioner] argues that he was identified by Villanueva only upon prodding made by the prosecution and the trial court. However, [petitioner] failed to point out how the prosecution and the trial judge pressured Villanueva in identifying him in open court. Such argument, therefore, is baseless for being speculative and conjectural.[20]

Sufficiency of the Prosecution Evidence

To sustain a conviction for the crime of homicide, it is essential that the following elements be proven beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed him without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[21]

In the present case, absent any allegation of any justifying and qualifying circumstances, the prosecution had the

burden of proving the death of the victim and the responsibility of the person who caused such death. Dr. Baltazar testified to the fact of Salazar's death. However, petitioner contends that the prosecution failed to establish that he was the malefactor. He argues that testimony of the prosecution's lone witness to the crime is not credible.

We disagree. Petitioner's conviction was based on the positive and direct testimony of the prosecution eyewitness, Villanueva. Absent any evidence of improper motive on her part to testify as principal witness, her testimony deserves full credit.[22]

On the other hand, petitioner offers alibi and denial as his defense. It is a settled doctrine that for alibi to prosper, it is not enough to prove that the accused was at some other place when the crime was committed; but the defense must likewise demonstrate that the accused could not have been physically present at the place of the crime, or in its immediate vicinity, during its commission.[23] In considering the physical distance of the accused from the crime scene, the Court has rejected alibi where the two places are in the same municipality,[24] where they are easily accessible by any mode of public transportation,[25] where the distance can be covered by walking for thirty minutes or by riding a vehicle for twenty minutes,[26] or even when it could be reached after approximately an hour.[27]

In the present case, the geographical proximity of petitioner to the scene of the crime at the time of its commission was clearly established by the prosecution. Petitioner claims that at the time of the alleged killing, he was at home hosting a party. However, he also testified that it was only 150 meters away from the crime scene. He even admitted that he went to the crime scene but only after the shooting took place. Apparently, petitioner failed to show, by clear and convincing proof, that it was physically impossible for him to have been at the locus criminis.

Also, denial is a negative, self-serving evidence that cannot prevail over the positive and categorical assertion of a credible witness that accused perpetrated the crime.[28] In this case, petitioner has not given strong evidence of his inculpability.

To stress, the positive assertions of the prosecution witness deserve more credence and evidentiary weight than the negative averments of the accused. Certainly, the testimony of a single eyewitness, if positive and credible, is sufficient to support a conviction[29] for homicide.

WHEREFORE, the instant petition is DENIED for failure to show that a reversible error had been committed by the appellate court. The December 3, 2001 Decision and September 5, 2002 Resolution of the CA in CA-G.R. CR No. 21493 and the October 20, 1997 Decision of the Caloocan City RTC, Branch 122 in Criminal Case No. C-46871 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Tinga, JJ., concur.

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[1] 21 Am Jur 2d, Alibi, - 136, pp. 205-206 (2nd ed., 1965).

[2] Rollo, pp. 10-46.

[3] Id. at 47-63. The Decision was penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Ramon A. Barcelona and Bernardo P. Abesamis.

[4] Id. at 64.

[5] Id. at 65-69.

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[6] Records, p. 1.

[7] Atty. Froilan Siobal.

[8] Supra note 6, at 15.

[9] Id. at 69.

[10] Supra note 2, at 60.

[11] Id. at 61.

[12] Supra note 2, at 33; original in capital letters.

[13] People v. Galido, G.R. Nos. 148689-92, March 30, 2004, 426 SCRA 502, 513; People v. Penaso, G.R. No. 121980, February 23, 2000, 326 SCRA 311, 319.

[14] Rollo, p. 34.

[15] Id.

[16] Id. at 35.

[17] Id. at 35-36.

[18] People v. Sancha, G.R. Nos. 131818-19, February 3, 2000, 324 SCRA 646, 654.

[19] People v. dela Cruz, G.R. No. 131035, February 28, 2003, 398 SCRA 415, 431; citing People v. Estorco, G.R. No. 111941, April 27, 2000, 331 SCRA 38, 51.

[20] Supra note 2, at 50-60.

[21] L. Reyes, THE REVISED PENAL CODE BOOK II 431 (13th ed., 1993).

[22] People v. Malejana, G.R. No. 145002, January 24, 2006, 479 SCRA 610, 624.

[23] People v. Werba, G.R. No. 144599, June 9, 2004, 431 SCRA 481, 495; People v. Malones, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 339.

[24] People v. Agomo-o, G.R. No. 131829, June 23, 2000, 334 SCRA 279, 301.

[25] People v. Abendan, G.R. No. 131813, September 29, 2000, 341 SCRA 404, 413; People v. Fabro, G.R. No. 109578, August 27, 1997, 278 SCRA 304, 310.

[26] People v. Valdez, G.R. No. 127753, December 11, 2000, 347 SCRA 594, 602.

[27] People v. Manzano, G.R. No. 138303, November 26, 2001, 370 SCRA 515, 528.

[28] People v. Bulan, G.R. No. 143404, June 8, 2005, 459 SCRA 550, 576; People v. Espinosa, G.R. No. 138742, June 15, 2004, 432 SCRA 86, 100; People v. Layugan, G.R. Nos. 130493-98, April 28, 2004, 428 SCRA 98, 115.

[29] People v. Pascual, G.R. No. 127761, April 28, 2000, 331 SCRA 252, 262; People v. Pirame, G.R. No. 121998, March 9, 2000, 327 SCRA 552, 563.

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