

EDGAR MERCADO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 161902. September 11, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This resolves the Petition for Review on Certiorari under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated December 23, 2003, be reversed and set aside.

Petitioner was charged under the following Amended Informations in Criminal Case No. 97-18386 with Frustrated Homicide and Criminal Case No. 97-18387 with Homicide.

The Amended Information for Criminal Case No. 97-18386 reads as follows:

The undersigned Assistant City Prosecutor accuses ROMULO CABILES and EDGAR MERCADO alias "TOMING" of the crime of FRUSTRATED HOMICIDE (Under Article 249, in relation to Article 6 of the Revised Penal Code), committed as follows:

That on or about the 24[th] day of December 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, conspiring, confederating and acting in concert, without any justifiable cause or motive, being then armed and provided with a bladed weapon (knife), with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with said weapon one JOHN B. GONZALES, thereby inflicting upon his person the following injuries, to wit:

- Incised Wound 3 cm., Base of Thumb, Left with Transection of Extensor Pollices Longus & Brevis Tendons;
- Incised Wound, 6 cm., Wrist, Right;
- Incised Wound 7 cm., Forehead
- Incised Wound 5 cm., Axilla, Left

Operation/Procedure Done: Tendon Repair;
Ligation of Bleeders & Suturing of Wounds

thus performing all the acts of execution which could have produced the crime of homicide, as a consequence directly by overt acts, but nevertheless, did not produce it by reason of cause independent of the will of the perpetrators, that is, due to the timely and able medical assistance which saved the life of the victim.

Act contrary to law.[2]

The Amended Information for Criminal Case No. 97-18387 reads, thus:

The undersigned Assistant City Prosecutor accuses ROMULO CABILES and EDGAR MERCADO alias "TOMING" of the crime of HOMICIDE (Under Article 249 of the Revised Penal Code), committed as follows:

That on or about the 24[th] day of December 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, conspiring, confederating and acting in concert, without any justifiable cause or motive, being then armed and provided with an ice pick, with intent to kill, did, then and there wilfully, unlawfully and feloniously assault, attack and stab with said weapon one NELSON DOCTO, thereby inflicting upon the person of the latter wounds, which directly caused his death, to wit:

- Wound, stab, .02 cm. in diameter, 7 inches deep at the 5[th] intercost space directed medially downward hitting the right lung and liver.

- Wound, stab, 0.3 cm. in diameter, 7 inches deep at the left lower hypochondriac region directed medially forward rupturing the abdominal aorta.

- Wound, stab, 0.2 cm in diameter, 7 inches at the upper left buttock directed forward medially involving the intestines.

- Wound, stab, 0.3 cm. in diameter, 7 inches deep at the lower left buttock involving the intestines.

Cause of Death: Cardio-respiratory arrest, hypovolemic shock ruptured abdominal aorta due to multiple stab wounds.

Act contrary to law.[3]

Petitioner pleaded not guilty to the Amended Informations and the cases were tried jointly.

The prosecution evidence presents the following scenario:

Around 9 o'clock in the evening of December 23, 1996, brothers Nelson and Agaton Docto, together with John Gonzales, were drinking beer in front of the sari-sari store owned by Sheila Realista located at St. Francis Subdivision, Taculing, Bacolod City. Also drinking beer at the store was another group comprised of Morito Piansay, Jose Ramos, and a certain Jesse and Monding. After a while, an altercation broke out between Nelson Docto and Morito Piansay when the former belittled the latter's "magic" card tricks. Irked, Piansay left in a huff saying, "You just wait for me here, I cannot fight back because I am old." Piansay's companions also left with him. Nelson and Agaton Docto, as well as John Gonzales, remained at the store and continued drinking.

Around 12 o'clock midnight of December 24, 1996, Nelson Docto sang "Bayang Magiliw." Soon thereafter, Romulo Cabiles alias "Small" arrived at the store to buy beer. Sheila Realista initially refused to sell beer to Cabiles but relented upon the insistence of Nelson Docto. After getting his beer, Cabiles stood near the barbecue stand about one-and-a-half arms length away from Agaton Docto. Agaton Docto [should be Nelson Docto] and John Gonzales continued their conversation while Nelson Docto [should be Agaton Docto], who was by then heavily drunk, was almost dozing.

At this point, petitioner Edgar Mercado alias "Taming" arrived and also bought a bottle of beer. Petitioner sat on the stool near John Gonzales. Engaging petitioner in a conversation, Gonzales asked the former where he was from. Petitioner replied that he was from Barangay 29. Petitioner then asked for his bill and paid it. After receiving his change, petitioner suddenly broke the beer bottle he was holding in front of Realista, who cried out "Linti!" in surprise. Almost simultaneously, Cabiles struck Agaton Docto with a wooden stool. At the time, Agaton Docto was almost asleep and sitting with his head bowed. He slumped down on the table, unconscious, after being hit.

Cabiles then turned his attention to John Gonzales and repeatedly stabbed him with a stainless knife. Gonzales tried to defend himself but was nevertheless hit on his forehead, hands and left armpit. When Cabiles stabbed Gonzales in the armpit, Cabiles was sitting on top of Gonzales who was lying supine on the ground. Witnessing the attack, Realista threw a stone at Cabiles in an effort to stop him. The stone hit Cabiles on the neck, momentarily stunning him and affording Gonzales a chance to escape. Cabiles, however, soon recovered

and pursued the fleeing Gonzales.

While Gonzales was being attacked by Cabiles, petitioner, after breaking the beer bottle, pulled out a weapon called "tres cantos" and repeatedly stabbed Nelson Docto. Petitioner then joined Cabiles in pursuing the fleeing Gonzales. Realista followed, but was unable to catch up with the group.

John Gonzales and Nelson Docto were rushed to the Bacolod Sanitarium Hospital. Dr. Alan Nodal, the attending physician, treated John Gonzales for the following injuries:

Incised wound 3 cm. base of thumb, left with Transection of Exterior Pollices Longus and Brevis Tendons;

Incised wound, 6 cm., wrist, right;

Incised wound, 7 cm., forehead;

Incised wound, 5 cm., maxilla, left.

Nelson Docto died as a result of the injuries he sustained. His Certificate of Death states the cause of his death as "Cardiopulmonary Arrest, Hypovolemic Shock due to multiple stab wounds on the abdomen and chest."

The autopsy on the cadaver of Nelson Docto conducted by Dr. Johnnie V. Raito, Jr., City Health Officer of Bacolod City, showed the following Post Mortem findings:

- Wound, stab 0.2 cm. in diameter, 7 inches deep at the intercostal space, directed medially downward hitting the right lung and liver;
- Wound, stab, 0.3 cm. in diameter, 7 inches deep at the left lower hypochondriac region directed medially forward rupturing the abdominal aorta;
- Wound, stab, 0.3 cm. in diameter, 7 inches at the upper left buttocks directed forward medially involving the intestines;
- Wound, stab, 0.3 cm. in diameter, 7 inches deep at the lower left buttock involving the intestines.[4]

On the other hand, petitioner maintains that he could not have been the malefactor because he resides in Iloilo and only arrived in Bacolod between 7 and 8 o'clock in the morning of December 24, 1996. Petitioner presented his testimony and those of his aunt Milagros Vasquez, his sister-in-law Catherine Mercado and his friend Rey Diorama. They all testified that petitioner, who resides in Iloilo, only arrived in Bacolod City on the morning of December 24, 1996. Petitioner said he, together with his wife and child, and a secretary of his wife, left Iloilo at 5:30 in the morning of December 24, 1996 and they arrived at Banago wharf at around 7 o'clock in the morning of the same day. It was already 8 o'clock in the morning of that day when they arrived in Bacolod. Catherine Mercado stated that petitioner's party arrived at their house in Bacolod between 7 and 8 o'clock in the morning of December 24, 1996; and that the ferry trip from Iloilo to Bacolod only takes one hour. Rey Diorama testified that he only saw petitioner in Bacolod around 9 o'clock in the morning of that day. Milagros Vasquez also said that at around 8:30 to 9 o'clock in the morning of December 24, 1996, petitioner called her on the phone, informing her that they had just arrived in Bacolod and they were bringing salad to the family reunion. Witness for the accused SPO4 Ismail Tan only stated that he accompanied SPO3 Amador Versos to the Bacolod Sanitarium and Hospital. It was the latter who interviewed the victim John Gonzales and the available witnesses, so he could not say with certainty whether Versos asked questions about the identity of the assailants. He, however, identified the Police Blotter Report where it was stated that the attackers were "2 unidentified persons."

After the parties rested their case, the Regional Trial Court (RTC) of Bacolod City, Branch 52 promulgated its Joint Decision[5] on May 30, 2000. The dispositive portion thereof reads, thus:

WHEREFORE, in view of all the foregoing premises, the Court hereby finds both accused EDGAR

MERCADO alias "TOMING" and ROMULO CABILES alias "SMALL" GUILTY beyond reasonable doubt:

1. In Criminal Case No. 97-18387 for Homicide, and hereby sentences each accused to suffer the indeterminate penalty of eight (8) years and seven (7) months of prison mayor, as minimum, to sixteen (16) years of reclusion temporal, as maximum; to jointly and severally pay the amount of P50,000.00 for the death of Nelson Docto, Jr. and to pay the cost of suit; and

2. In Criminal Case No. 97-18386 for Frustrated Homicide, each accused is hereby sentenced to suffer the indeterminate penalty of two (2) years and six (6) months of prison correctional, as minimum, to eight (8) years and six (6) months of prison mayor, as maximum, and also to pay for the cost of suit.

The two accused are entitled to the full credit of their preventive detention.

SO ORDERED.[6]

On appeal with the CA, said conviction was affirmed in toto.

Only petitioner Edgar Mercado availed of the remedy of the present petition for review on certiorari under Rule 45 of the Rules of Court, hence, as to Romulo Cabiles, the CA Decision has become final and executory.

In the present petition, petitioner alleges that:

A. THE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE DECISION OF THE LOWER COURT SUSTAINING THE FINDINGS OF CONVICTION OF THE ACCUSED BASED ON THE ALLEGED POSITIVE IDENTIFICATION BY THE PROSECUTORS' TWO WITNESSES, NAMELY: JOHN GONZALES AND SHEILA REALISTA;

B. THE COURT OF APPEALS ERRED WHEN IT SUSTAINED THE FACTUAL FINDINGS OF THE LOWER COURT ON THE TESTIMONY OF THE TWO PROSECUTION WITNESSES, NOTWITHSTANDING THE FACT THAT IT OVERLOOKED CERTAIN MATERIAL FACTS LIKE THE CONFLICTING AND MATERIAL DISCREPANCIES IN THE TESTIMONIES OF THE TWO (2) WITNESSES WHICH IF DULY CONSIDERED WOULD AFFECT THE RESULT OF THE JUDGMENT;

C. THE COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER THE DEFENSE OF ALIBI BY THE ACCUSED NOTWITHSTANDING THE DOUBTFUL AND UNRELIABLE IDENTIFICATION OF THE ACCUSED BY THE TWO (2) PROSECUTION WITNESSES.[7]

The meat of petitioner's argument is that the identification of petitioner made by prosecution witnesses John Gonzales and Sheila Realista is fraught with defects, thus, unreliable and insufficient to warrant a finding of guilt beyond reasonable doubt. He further points out that there are inconsistencies between the witnesses' statements in their affidavits and their testimony.

Petitioner's arguments are baseless.

The Court, in a long line of cases,[8] has reiterated the totality of circumstance test set forth in *People v. Teehankee, Jr.*,[9] which dictates that the following factors be considered in determining the reliability of the out-of-court identification made by a witness, i.e., (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at the time of the crime; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.

To prevent any undue suggestiveness in the identification process, it was held that the correct way is to: first, present a series of photographs to the witness, not solely the photograph of the suspect; and second, when showing a group of pictures to the witness, the arrangement and display of said photographs should give no

suggestion whatsoever which one of the pictures belongs to the suspect. The photographic identification must be free from any impermissible suggestions that would single out a person to the attention of the witness making the identification.[10] However, as held in Teehankee, Jr.,[11] the burden to prove that the out-of-court identification was unduly suggestive rests on the accused.

Applying the totality of circumstance test in this case, the Court finds the out-of-court identification made by Gonzales to be very reliable, thus, admissible. Gonzales had ample opportunity to view petitioner at the time of the crime. From the time petitioner arrived at the store where Gonzales' group was drinking, petitioner stood very near Gonzales, about one-and-a-half arm's length away, and Gonzales even tried to start a conversation with him and Cabiles. The latter had been able to observe petitioner buy a bottle of beer, pay for it, break said bottle then draw his weapon and stab Nelson Docto. Gonzales' unwavering testimony, even while being grilled on cross-examination, reveals that petitioner's startling attack on Nelson Docto had his full attention. Even if Gonzales was also attacked and wounded, Cabiles' attack on him only began after petitioner had already stabbed Nelson Docto. Thus, Gonzales' attention on petitioner was unhampered.[12] The Court acknowledged in Teehankee, Jr.,[13] that:

Experience shows that precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, can remember with a high degree of reliability the identity of criminals. We have ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. Most often, the face and body movements of the assailant create an impression which cannot be easily erased from their memory.[14]

Moreover, Gonzales also said that petitioner's face had become familiar to him even before the stabbing incident because he used to be a CVO of Barangay Mansilingan, and when he was on duty, he often saw petitioner around said barangay. The identification was also done around December 26, 1996 to December 31, 1996, still near the date of the incident.[15]

On the other hand, petitioner had been unable to show any circumstance that would point to any impermissible suggestion given to Gonzales during the identification of petitioner as one of the assailants. Instead, Gonzales' answers during cross-examination reveal that investigators complied with the guidelines when Gonzales, one of the victims, was asked to identify the suspects from several pictures, to wit:

ATTY. NATU-EL:

Q You said you identified specifically Toming Mercado by his picture shown to you by the Police Investigator after you were released from the hospital, is that correct?

WITNESS:

A Yes, Sir.

ATTY. NATU-EL:

Q And that was still December 1996 when the picture was shown to you?

WITNESS:

A Yes, Sir.

ATTY. NATU-EL:

Q By the way Mr. Witness, how many pictures were shown to you by the Police Investigator of the person for you to identify the suspect or assailant?

WITNESS:

A Many Sir

x x x x

ATTY. NATU-EL:

Q Mr. Witness, you said there were several pictures shown to you by the police. Could you roughly estimate how many pictures were shown to you?

WITNESS:

A Nearly one hundred (100).[16]

Verily, with nearly a hundred photographs from which Gonzales may pick out and identify who his assailant is, it is highly improbable for the witness to have been given impermissible suggestions. Thus, Gonzales' identification of petitioner as one of the assailants is highly reliable and should be accorded great credence.

Gonzales' identification of petitioner is already sufficient to prove that petitioner is the author of the crime, justifying his conviction. Sheila Realista's identification of the malefactors is merely corroborating. Therefore, although the process through which Realista identified petitioner and the other accused do not exactly comply with the aforementioned guidelines, i.e., only their pictures were shown to Realista and the widow of Nelson Docto pointed out to her the two accused before she testified in court, these defects are not enough to negatively affect in any way the identification made by Gonzales.

Next, petitioner points out the supposed inconsistencies in Gonzales' affidavit and his testimony in court. Petitioner harps on the fact that in Gonzales' Affidavit[17] dated February 1, 1997, he said that "two unidentified men arrived" while he testified in court that even before that fateful night, he had seen petitioner around Barangay Mansilingan, and he used to see accused Cabiles everytime his passenger jeepney passed by the road junction.[18] An examination of the records reveal that the alleged inconsistencies are more apparent than real. The statement in Gonzales' affidavit calling the two accused as "two unidentified men" does not foreclose the fact that the affiant is familiar with the faces of the assailants but cannot identify them by their names. In fact, in his affidavit, Gonzales already mentioned that he remembered seeing accused Cabiles before as the latter had a scar on his face. As stated in *Decasa v. Court of Appeals*,[19] to wit:

x x x [T]his Court had consistently ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects to justify a reversal of judgment. Such discrepancies do not necessarily discredit the witness since ex parte affidavits are almost always incomplete. A sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken ex parte are generally considered to be inferior to the testimony given in open court.

x x x x

The discrepancies in [the witness]'s testimony do not damage the essential integrity of the prosecution's evidence in its material whole. Instead, the discrepancies only erase suspicion that the testimony was rehearsed or concocted. These honest inconsistencies serve to strengthen rather than destroy [the witness]'s credibility.[20]

Here, Gonzales' statement in his affidavit that "two unidentified men arrived" cannot be taken to mean that he cannot identify the assailants from mug shots or if he comes face to face with said persons again. His candid, though, imprecise language in his affidavit merely bolsters his credibility.

In the face of the credible and reliable positive identification made by Gonzales, petitioner's defense of alibi is absolutely unavailing. As held in *People v. Tormis*,^[21] "the defense of alibi, being inherently weak, cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime." Indeed, petitioner's bare allegation that he arrived in Bacolod only on the morning of December 24, 1996 cannot be given much credence since it is unsupported by evidence of the time of his travel or the time he left Iloilo, such as a ticket from the ferry he boarded. There is no evidence presented showing that petitioner was actually in Iloilo as of the time of the commission of the crime. The witnesses petitioner presented only proved that they saw him only on the morning of December 24, 1996, but this does not prove that petitioner could not have been in Bacolod at an earlier time before they saw him.

In sum, petitioner failed to show any reason for the Court to overturn the findings of the RTC and the CA.

IN VIEW OF THE FOREGOING, the petition is DENIED. The Decision of the Court of Appeals dated December 23, 2003 is hereby AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Eloy R. Bello, Jr. and Noel G. Tijam, concurring; rollo, pp. 27-45.

[2] Records (Crim. Case No. 97-18386), p. 40.

[3] Records (Crim. Case No. 97-18387), p. 23.

[4] Rollo, pp. 156-160.

[5] Rollo, pp. 46-69.

[6] Id. at 69.

[7] Rollo, pp. 11-12

[8] *People of the Philippines v. Samuel Algarme y Bond and Rizaldy Gelle y Biscocho*, G.R. No. 175978, February 12, 2009; *People v. Rodrigo*, G.R. No. 176159, September 11, 2008; *People v. Rivera*, 458 Phil. 856 (2003).

[9] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 96.

[10] *People v. Rodrigo*, supra note 8, citing *People v. Pineda*, 429 SCRA 478, 497-498 (2004); and *People v. Villena*, G.R. No.140066, October 14, 2002, 390 SCRA 637, 650.

[11] Supra note 9, at 95.

[12] TSN, September 29, 1998, pp. 12-24.

[13] *People v. Teehankee, Jr.*, supra note 9.

[14] Id. at 97-98

[15] TSN, September 29, 1998, pp. 35-48.

[16] TSN, September 29, 1998, pp. 47, 48, 74. (Emphasis supplied.)

[17] Record, p. 8.

[18] TSN, September 29, 1998, pp. 37-44.

[19] G.R. No. 172184, July 10, 2007, 527 SCRA 267.

[20] Id. at 280-282. (Emphasis supplied.)

[21] G.R. No. 183456, December 18, 2008, 574 SCRA 903, 916.

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