

RUBEN LASCANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 166241. September 07, 2007

Ponente: TINGA, J.

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TINGA, J.:

In this Petition for Review under Rule 45 of the Rules of Court, petitioner Ruben Lascano seeks the reversal of the decision[1] of the Court of Appeals that affirmed the decision[2] of the Regional Trial Court (RTC), Caloocan City, Branch 128 finding him guilty of the crime of homicide.

Petitioner was initially charged[3] as a co-conspirator, together with Eduardo Altabano (Eduardo), Benjamin Caro (Benjamin), Cynthia Caro (Cynthia) and Corazon Lascano (Corazon), with the crime of murder perpetrated against Arnold Fernandez (Fernandez).[4] He absconded and remained at large while his co-accused were on trial. But when the case was submitted for decision, he surfaced[5] and forthwith underwent a separate trial for the same charge[6] after his arrest.

Meanwhile, Eduardo and Benjamin were found guilty of murder as co-conspirators and meted out the penalty of reclusion perpetua, while the rest were acquitted for lack of the requisite evidence against them.[7] On automatic review to this Court, Eduardo and Benjamin were found guilty of homicide only.[8]

In view of the decision of the Supreme Court in *People v. Altabano, et al.*,[9] the charge in the present case was downgraded to homicide[10] on petitioner's motion.[11] He pleaded not guilty to the charge.[12] As stipulated by the prosecution and the defense at the pre-trial conference, the testimonial and documentary evidence in the previous case were deemed introduced in the present case, subject to cross-examination of the witnesses and without prejudice to the presentation of additional evidence.[13]

Twelve witnesses testified for the prosecution, among whom were Ofelia Ibacuado (Ibacuado), Estrellita Mallari (Mallari), SPO3 Eduardo Roderno, SPO1 Antonio Peñaranda and Dr. Antonio Vertido (Dr. Vertido) who had already testified in the previous case.[14]

The eyewitness account of Ibacuado of the operative facts follow. At around 9:00 in the evening of 31 August 1994, Fernandez, drinking beer by himself, was sitting on the two-step cement stairs in front of a sari-sari store situated in L. Lupa Street.[15] Ibacuado had gone to the sari-sari store to use the telephone and saw Fernandez there with a beer in hand. She was busy making a call when suddenly, petitioner arrived, uttered the words, "Walanghiya ka, oras mo na!" and then proceeded to kick Fernandez who instantly fell to the ground. Eduardo, Benjamin, Corazon, and Cynthia then arrived and simultaneously shouted, "Sige, barilin mo na!" Petitioner then pulled out a gun from his waist and shot the victim. Thereafter, he casually walked away while his companions went back to their houses.[16]

Mallari, the other eyewitness at the scene, basically had the same recollection of the events. Fernandez was drinking beer by himself when petitioner arrived and kicked him down. Benjamin and Eduardo followed suit in

mauling the victim. A moment later, Corazon and Cynthia entered the scene. Corazon said, "Sige, barilin mo na, Ben!" Fernandez was struggling to stand when petitioner shot him.[17]

Fernandez was immediately rushed to the Ospital ng Caloocan but was unfortunately declared dead on arrival. Dr. Vertido, the medico-legal officer who administered the post-mortem examination on the victim's body, identified the cause of death to be the gunshot wound on the left breast that hit the lower portion of the heart and penetrated the middle lobe of the right lung.[18]

At the trial, both Ibacuado and Mallari positively identified in open court petitioner as the gun-wielder. Being long-time neighbors of both Fernandez and petitioner,[19] with Ibacuado only a meter away from petitioner at the scene and the place illuminated by a lamp post, the two were able to see and recognize him.[20]

For his defense, petitioner relied on denial and alibi. He testified that coming home from work at 6:00 in the evening on the date in question, he was informed by his wife, Corazon, that she had had an altercation with Fernandez. They proceeded to the police station to have the incident recorded in the police blotter, after which he went back to his house, packed his belongings, and drove to the residence of his employer, Renato Alipio. At the time of the incident, he and Alipio, were already on board a Nelbusco bus en route to Solano, Nueva Vizcaya from which place they would proceed to Isabela to verify the registration of a certain car. The bus, according to petitioner, departed from the terminal at 7:45 in the evening and arrived at the place of destination at 3:00 the following morning. The two then located the residence of one T/Sgt. Jean Dela Cruz who would accompany them to Isabela.[21] Petitioner produced in court two (2) bus tickets[22] issued by Nelbusco.

Dela Cruz testified that between 3:00 and 4:00 in the morning of 1 September 1994, he was roused from his sleep when appellant and Alipio arrived at his residence. After a short interval over coffee, he, together with the two, headed to the Land Transportation Office in Ilagan, Isabela to verify the registration of a certain motor vehicle.[23]

After weighing the evidence, on 11 March 2003, the RTC rendered its decision finding petitioner guilty as charged and sentencing him accordingly. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing considerations, finding accused Ruben Lascano guilty beyond reasonable doubt of the crime of Homicide, he is hereby sentenced to suffer the indeterminate penalty of Six (6) years and One (1) day of prision mayor as minimum to Twelve (12) years and One (1) day of reclusion temporal as maximum. He is likewise ordered to indemnify the heirs of the offended party the amount of P50,000.00 by way of moral damages. The period of his preventive detention during trial shall be credited in his favor.

The City Warden of Caloocan City is hereby ordered to bring the accused Ruben Lascano to the New Bilibid Prisons, Muntinlupa City for the Service of his sentence.

SO ORDERED.[24]

On appeal, the Court of Appeals promulgated on 8 July 2004 its decision affirming the trial court's decision, except for the prison sentence which it modified. The dispositive portion reads:

WHEREFORE, the appealed decision is hereby affirmed with modification. Applying the indeterminate sentence law, the appellant Ruben Lascano is hereby sentenced to suffer an indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight months and one day of reclusion temporal, as maximum. The period of his preventive detention during trial is credited in his favor.

Accused is likewise ordered to indemnify the heirs of the offended party in the amount of Fifty Thousand (P50,000.00) Pesos.

SO ORDERED.[25]

Undaunted, petitioner filed the present petition for review with this Court, attributing error to the Court of Appeals in relying on the alleged conflicting testimonies of prosecution witnesses Ibacuado and Mallari and in not sustaining his defense of alibi.[26]

As found by the courts below, the evidence for the prosecution more than meets the requisite evidence beyond reasonable doubt. Petitioner's challenge of the decisions a quo is starkly puerile.

It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction.[27] In fact, in some instances, such findings are even accorded finality.[28] This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand which opportunity provides him unique facility in determining whether or not to accord credence to the testimony[29] or whether the witness is telling the truth or not.[30]

This Court is not the proper forum from which to secure a re-evaluation of factual issues, except only where the factual findings of the trial court do not find support in the evidence on record or where the judgment appealed from was based on a misapprehension of facts.[31] None of the exceptions obtains in this case, thus; we find no compelling reason to depart from the rule.

Petitioner points to certain alleged inconsistencies in the testimonies of Ibacuado and Mallari. He notes that when Ibacuado testified in court in the previous case, she stated that she was facing the victim when the latter was shot but at the trial of the present case, the same witness recounted that she was on the left side of the victim when petitioner delivered the shot.[32] At another hearing, petitioner points out, the same witness stated that Fernandez was standing when he was shot,[33] contrary to the statement offered in the previous case by another eyewitness, Mallari, who positively stated that Fernandez was lying down on the ground when the gun was fired at him.[34]

We are not persuaded.

As correctly stated by the Solicitor General, the supposed inconsistent and inaccurate details are relatively trivial and minor[35] and do not go into the substance of Ibacuado's and Mallari's testimonies. The important portions thereof—which the alleged disparities cannot override—are that which coherently narrated the principal occurrence and established with certainty the identity of petitioner as the one who opened fire at Fernandez. Indeed, inconsistencies and inaccuracies in the testimony of a witness which refer to minor and insignificant details do not destroy credibility.[36] On the contrary, they are in fact taken as badges of truth which bolster the probative value of the testimony.[37]

Regarding alibi, nothing is more settled in criminal law jurisprudence than that it is the weakest of all defenses and must be received with much suspicion and with extreme caution, not only because of its intrinsic weakness and unreliability but also because of the facility available to the accused in fabricating and concocting such defense.[38] In order that alibi may be accorded credibility, the accused himself must positively demonstrate his presence at another place at the time of the commission of the offense as well as the physical impossibility for him to be at the locus criminis at that same time.[39] And by "physical impossibility" we refer to the distance and the facility of access between the locus criminis and the place where the accused says he was when the crime was committed.[40]

The defense of alibi all the more loses credibility, if it had any, and crumbles when weighed against the positive

identification of the accused by credible witnesses to the crime. The rule is that the positive identification of the accused, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over both alibi and denial.[41]

The testimonies of Ibacuado and Mallari in open court identifying petitioner as the one who fired the gun at Fernandez were categorical, coherent, and consistent, devoid of any suspicious implausibility of a character likely to discredit the same. Notably, it was not shown that the said witnesses were harboring ill motives against petitioner that might have urged them to hurl false accusations against the latter. This only serves to strengthen the presumption that they were not so moved to testify falsely and thereby entitles their testimonies to full weight and credit. The unavoidable conclusion is that the identification made of petitioner by Ibacuado and Mallari—an affirmative testimonies no doubt—must prevail over the negative and self-serving alibi of the defense. Suffice it to say that the strength of an affirmative testimony is far greater than a negative one, especially when it proceeds from a credible witness.[42] Thus, no reversible error was committed by both the trial court and the Court of Appeals in rejecting the defense of alibi advanced by petitioner when the latter's identity has already been sufficiently established.

In fact, another prosecution witness, Jonathan Siluran, credibly refuted petitioner's alibi. He testified that while he was waiting for a passenger jeep at around 8:30 that night, he saw petitioner in his owner-type jeep cruising L. Lupa Street. He was about a meter away from him and the place was heavily illuminated by the headlights of the vehicles caught in traffic which, according to him, gave facility in identifying petitioner.[43]

The bus tickets which petitioner presented to prove his trip on the night of the incident do not even corroborate his alibi. Assuming he did purchase the tickets for himself and his alleged companion, there is nothing on the face thereof which evinces for what particular trip they were purchased or at what exact time the bus they allegedly boarded left the terminal. Moreover, as correctly found by the trial court and affirmed by the Court of Appeals, it rouses reasonable suspicion in our mind why he had kept intact the said tickets for a considerable length of time since 1994 when it is customary practice for public transport passengers to throw away or otherwise dispose of their tickets after having made use of them.[44]

WHEREFORE, the petition is DENIED. The decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Ynares-Santiago,[**] Carpio, (Acting Chairperson), Carpio Morales, and Velasco, Jr., JJ., concur. Quisumbing, J., (Chairperson), on official leave.

[**]Designated pursuant to Adm. Circular No. 75-2007, par. 7.

[1]CA rollo, pp. 152-157. Promulgated on 8 July 2004 and penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Rodrigo V. Cosico and Danilo B. Pine concurring.

[2]Records, Vol. I, pp. 512-521. Dated 11 March 2003 and penned by Judge Silvestre H. Bello, Jr.

[3]The criminal information was filed with the RTC of Caloocan City, Branch 121 presided by Judge Adoracion Angeles.

[4]See *People v. Eduardo Altabano, Benjamin Caro, Cynthia Altabano, Corazon Lascano and Ruben Lascano*, G.R. No. 121344, 29 October 1999, 317 SCRA 708.

[5]Records, Vol. I, p. 513.

[6]The information was filed with the same RTC Branch (Caloocan City, Branch 121), but in view of the judgment of conviction rendered by the said court in the previous case of *People v. Altabano*, petitioner filed a petition for inhibition against the judge. The petition was granted and Judge Angeles ordered that the records of the present case be forwarded to the Office of the Executive Judge for re-raffle. Accordingly, the case was re-raffled to Branch 126 but petitioner moved for another raffle in view of the retirement of Presiding Judge Oscar Payawal of Branch 126. The case was then re-raffled to Branch 122, presided by Judge Modesto Juanson. Finally, in view of Supreme Court Circular No. 96 dated 3 May 1996, the case was raffled to Branch 128, presided by Judge Silvestre Bello, Jr. It was docketed as Criminal Case No. C-47820.

[7]Records, Vol. I, p. 348.

[8]Id. at 355.

The prosecution in that case had established that Lascano was the person who shot the victim. The defense of Eduardo and Benjamin was that they could not be held liable for the shooting inasmuch as they did not agree to kill the victim, and the most that they could be liable for was physical injuries only. However, on account of the finding of conspiracy that attended the commission of the crime, Eduardo and Benjamin were found guilty of homicide. See *People v. Altabano, et al.*, supra note 4.

[9]Supra note 4.

[10]Records, Vol. I, p. 371. The second amended information reads:

The undersigned Assistant City Prosecutor accuses EDUARDO ALTABANO Y ELLORIN, BENJAMIN CARO Y YU, CYNTHIA ALTABANO-CARO, CORAZON CARO-LASCANO AND RUBEN LASCANO @ BENTOT of the crime of HOMICIDE, committed as follows:

That on or about the 31st day of August 1994, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to kill, did then and there wil[l]fully, unlawfully and feloniously attack, assault and shoot one ARNOLD FERNANDEZ Y MCOLL, with the use of a gun, hitting the latter on the left breast, thereby inflicting upon the latter serious physical injuries, which injuries ultimately caused his death.

CONTRARY TO LAW.

[11]Id. at 341-343.

[12]Id. at 400.

[13]Id. at 392.

[14]CA rollo, p. 164.

[15]TSN, 8 June 1995, pp. 6, 22.

[16]Id. at 5-21.

[17]Id. at 22-26; TSN, 8 September 1997, pp. 6-9.

[18]TSN, 26 May 1998, pp. 8-15.

[19]TSN, 8 June 1995, pp. 5, 22-23.

[20]Id. at 22-23.

[21]TSN, 25 October 2001, pp. 9-18.

[22]Records, Vol. I, p. 494. Ticket Nos. 016171 and 016172.

[23]TSN, 13 February 2001, pp. 11-13.

[24]Records, Vol. I, p. 521.

[25]Rollo, pp. 33-34.

[26]Id. at 19-26.

[27]People v. De Leon, 428 Phil. 556, 572 (2002); People v. Sanidad, 450 Phil. 449, 458 (2003); People v. Espero, 400 Phil. 461, 624 (2000).

[28]People v. Penaso, 383 Phil. 200, 208 (2000).

[29]Asuncion v. Court of Appeals, 460 Phil. 290, 296-297 (2003); People v. Orcula, Sr., 390 Phil. 427, 444-445 (2000).

[30]People v. Manalili, 355 Phil. 652, 670 (1998).

[31]Siccuan v. People, G.R. No. 133709, 28 April 2005, 457 SCRA 458, 463.

[32]TSN, 19 January 1998, pp. 10-11.

[33]Id. at 6.

[34]TSN, 6 December 1994, p. 4.

[35]Rollo, p. 56.

[36]People v. Sanidad, *supra* note 27.

[37]People v. Cirilo, 400 Phil. 495, 506 (2000).

[38]People v. Emoy, 395 Phil. 371, 383 (2000); People v. De Leon, 428 Phil. 556, 575 (2000); People v. Penaso, *supra* note 28, at 210.

[39]People v. Sanidad, *supra* note 27, at 461; People v. De Leon, *supra*; People v. Emoy, *supra*; People v. Manguera, 446 Phil. 808, 820-821 (2003); People v. Drew, 422 Phil. 614, 624-625 (2001).

[40]People v. Visperas, Jr., 443 Phil. 164, 175 (2003).

[41]People v. Cirilo, *supra* note 37, at 508.

[42]People v. Daraman, 355 Phil. 454, 473 (1998).

[43]TSN, 5 December 1994, pp. 3-5.

[44]CA rollo, p. 155.

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