

BOBBY “ABEL” AVELINO Y BULAWAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 181444. July 17, 2013

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal are the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02297 which affirmed petitioner’s conviction for murder in Criminal Case No. 01-189130,[2] and the CA’s Resolution[3] denying his motion for reconsideration.

Petitioner Bobby “Abel” Avelino y Bulawan, together with Ricardo Tolentino, Alias Sonny Muslim, Farouk Musa a.k.a. Boy Muslim, Alias Bubut Tuwad, Alias Angkol, Alias Mon, Renato Meneses a.k.a. Nato, Benjamin Elbona a.k.a. Toto Mata, and Dominic Apan a.k.a. Domeng Bakukang, was charged with murder[4] before the Regional Trial Court (RTC) of Manila with the qualifying circumstances of treachery and evident premeditation.

Upon arraignment, petitioner and his co-accused Renato Meneses, Benjamin Elbona, and Farouk Musa entered a plea of not guilty. The other accused remain at-large.

At the trial, the prosecution presented eight witnesses: Delia Hispano, the wife of the victim; Diana Espinosa; Alfredo Manalangsang (Manalangsang); Mary Ann Cañada (Cañada); Renato Sosas; Dr. Romeo T. Salen; P/Insp. Mario Prado; and National Bureau of Investigation (NBI) agent Rizaldi Jaymalin.[5]

The facts, as culled from the CA Decision which cited the brief of the Office of the Solicitor General, are as follows:

Around 2:00 o’clock in the afternoon of September 2000, Renato Sosas y Verzosa, an employee of appellant Bobby Avelino y Bulawan in his wood business, was directed by appellant to summon Toto Mata, Nato, Domeng Bakukang, Bobot Tuwad, Boy Muslim, Angkol, Charlie, Sonny Muslim and Mon (TSN, January 29, 2002, pp. 5-6). An hour later, the group called by Renato Sosas met at appellant’s warehouse in Tagaytay, Baseco Compound, Tondo, Manila. Renato Sosas, who was just a step away from the group, was astounded when he heard appellant utter “Papatayin si Chairman.” Bobot Tuwad reacted by asking appellant “Sino pong chairman?”, to which appellant Avelino replied “Sino pa, Ninong Chairman Gener.” Terrified, Sosas kept mum about what he discovered (TSN, January 29, 2002, pp.10-12).

On October 5, 2000, around 9:00 o’clock in the evening, Alfredo Manalangsang was riding on a tricycle going to Baseco Compound, Tondo, Manila. Since Manalangsang was the last passenger to board the tricycle, he sat behind the driver. Upon reaching a certain point between Muelle Del Rio and 2nd Street, Port Area, Manila, the tricycle which Manalangsang was riding on passed at the left lane instead of the right lane of the road to give way to the owner-type (sic) jeep owned by the barangay and driven by its Chairman[,] Generoso Hispano, herein victim (TSN, September 26, 2001, pp. 11-17, Exhs. “R-1” and “4”).

While Chairman Hispano was entering the nearest route near the center island, a man suddenly emerged and blocked Chairman Hispano’s vehicle. Instantaneously, Manalangsang heard bursts of gunshot which prompted

him to jump from the tricycle. Manalangsang instinctively hid behind the center island of the road (TSN, September 26, 2001, pp. 17-21).

At this juncture, Manalangsang peeped at the direction of Chairman Hispano's jeep and saw three (3) men wearing bonnets, two of whom were strategically blocking the jeep of Chairman Hispano. The third man, who was wearing a green jacket and positioned himself near the gutter, fired successive shots at Chairman Hispano and thereafter approached the jeep of Chairman Hispano. He pulled down from the jeep the almost lifeless body of Chairman Hispano. Since Manalangsang was situated near the third assailant, he failed to identify the other two assailants. However, Manalangsang positively identified the third assailant as appellant Bobby "Abel" Avelino, whom he saw stooping down at the Chairman's body and pulling the opening of his bonnet down to his chin to ascertain if the Chairman was still alive. Sensing that it was safe for him to leave the scene, Manalangsang boarded a tricycle again and went home (TSN, September 26, 2001, pp. 22-26).

Thereafter, appellant and the other assailants drove away using the owner-type jeep of Chairman Hispano. However, on their way towards Divisoria, the jeep was incidentally blocked by a tricycle and a white car which prompted the companion of appellant to shout "tabi-tabi." At that moment, Mary Ann Cañada saw appellant, who was wearing a green jacket and a bonnet rolled up to his forehead, driving the owner-type (sic) jeep of Chairman Hispano. Cañada readily recognized appellant as she was familiar with the face of appellant having seen him driving the jeep of the Chairman on several occasions before (TSN, November 19, 2001, pp. 17-28).

When the police arrived at the crime scene, Chairman Hispano was already dead. The owner-type (sic) jeep of Chairman Hispano was recovered in front of house No. 440, Orbizondo Street, Binondo, Manila, with several pieces of empty shells of 9 mm caliber gun scattered on its floor (TSN, May 7, 2003, pp. 6-7) (Rollo, pages 120-123).[6]

Denying the accusation, the defense presented as evidence the testimonies of petitioner, PO2 Anthony P. Galang, Adonis T. Bantiling and Scene of the Crime Operative (SOCO) PSI Lito D. Cabamongan (Cabamongan).[7]

Petitioner advanced the defense of denial and alibi. He testified that on October 5, 2000, he and his wife went to the Land Transportation Office in Pasay City to renew his license as they planned to go to Baguio that day. But as he was issued a temporary license late in the afternoon, instead of going home, he and his wife checked in at the Pharaoh Hotel in Sta. Cruz, Manila to spend the night. He parked his car along Dasmariñas Bridge and slept. Later, he woke up to transfer his car but his car was gone. Thus, he and his wife went to the police station in Sta. Cruz, Manila then to the Anti-Carnapping Unit along U.N. Avenue to report the incident. At the latter location, they learned from a certain Tata Randy, an acquaintance and former police officer, that the victim had been gunned down. Around 1:00 a.m., he and his wife returned to the hotel. On October 23, 2000, he was arrested by agents of the NBI.[8]

After trial, the RTC, on April 28, 2006, found petitioner guilty beyond reasonable doubt of the crime of murder qualified by treachery, and imposed upon him the penalty of reclusion perpetua. The RTC likewise ordered him to indemnify the heirs of the victim Generoso Hispano (Hispano) the sum of P50,000 and to pay them an additional sum of P50,000 as moral damages, the sum of P158,471.75 as actual damages, and costs.[9]

For failure of the prosecution to prove their guilt beyond reasonable doubt, accused Farouk Musa, Benjamin Elbona, and Renato Meneses were acquitted of the crime charged.[10]

As aforesaid, the CA, in its assailed decision, denied petitioner's appeal and upheld the RTC decision with modification by increasing the award of actual damages to P171,128.75.[11] Petitioner's motion for reconsideration was likewise denied by the appellate court on January 25, 2008.[12]

Aggrieved, petitioner now seeks to reverse his conviction, arguing that the CA erred in relying on the testimonies of the prosecution witnesses Manalangsang and Cañada and disregarding the inconsistencies between the

statements of Manalangsang and the findings of the medico-legal and SOCO PSI Cabamongan as to the position of the gunman. He also reiterated his defense of denial and alibi.

We have carefully studied the records of this case and find no cogent reason to overturn the ruling of the CA which is in accord with law and jurisprudence.

As for the defense of the petitioner which is grounded, firstly, upon denial and alibi, basic is the rule that the defense of denial and alibi cannot prevail over the witness' positive identification of the accused-appellants.[13] Moreover, as oft-repeated in jurisprudence

For alibi to prosper, it is not enough to prove that appellant was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. Denial, like alibi, as an exonerating justification[,] is inherently weak and if uncorroborated regresses to blatant impotence. Like alibi, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[14]

In this case, the defense failed to establish that it was physically impossible for the petitioner to have been at the scene of the crime at the time of its commission. Pharaoh Hotel, where petitioner claims to have stayed with his wife at the time of the commission of the crime, is in Sta. Cruz, Manila.[15] The said hotel is not so far from the scene of the crime, which is in Baseco Compound in Tondo, Manila, so as not to afford the petitioner an opportunity to easily go to the place of the shooting at the time Hispano was killed. Indeed, for the defense of alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime. These, the defense failed to do.

The defense of the petitioner is based, secondly, on his allegations that prosecution witnesses Manalangsang and Cañada failed to positively identify him as the gunman who mortally wounded Hispano, and that Manalangsang's testimony as to the locations and number of gunshot wounds, as well as the position of the gunman, is inconsistent with the physical evidence as provided by the medico-legal officer and the testimony of SOCO PSI Cabamongan.

These allegations cannot exculpate the petitioner from criminal liability.

Manalangsang unequivocally identified the petitioner as the gunman. Manalangsang was able to identify the petitioner because the latter revealed his face when he pulled down the bonnet he was wearing, thereby exposing his eyes, nose, mouth, and chin.[16] Moreover, the certainty of Manalangsang in identifying the petitioner as the one who shot Hispano is bolstered by the fact that he and petitioner were neighbors for five years in Baseco.[17] The RTC cites the following statement by Manalangsang as an added indication of his certainty – “Si Avelino, kahit ubod ng layo, kahit naglalakad lang, kilala ko na. Dahil unang-una, matagal ko na siyang kilala, dahil ako hindi niya ako gaanong kilala, pero sila kilala ko, kahit nakatagili[d], kilala ko siya.”[18] It cannot be denied that once a person gains familiarity of another, identification becomes quite an easy task even from a considerable distance.[19]

Even the theory of the defense that identification of the petitioner by Manalangsang and Cañada is unlikely due allegedly to the lack of sufficient illumination at the scene of the crime, has been overcome by the fact that there are lampposts and signboards in the subject area which can provide illumination despite the black of night. Indeed, even assuming arguendo that the lampposts were not functioning at the time, the headlights of passing vehicles provided sufficient illumination at the crime scene.[20] “The Court has previously held that the light from the stars or the moon, an oven, or a wick lamp or gasera can give ample illumination to enable a person to

identify or recognize another.”[21] Similarly, the headlights of vehicles are sufficient to enable eyewitnesses to identify individuals at a distance of four to ten meters,[22] and it should be noted that the distance between Manalangsang and the jeep where Hispano was felled was only 31 feet[23] or a little over nine meters.[24]

The identification made by Manalangsang was likewise sufficiently corroborated by the testimony of Cañada, that she saw the petitioner, with whom she was familiar, drive away in Hispano’s owner-type jeep, wearing a green jacket and black bonnet rolled up to his forehead.[25]

Further, as can be gleaned from the excerpt below, the petitioner’s defense that Manalangsang’s testimony contradicts with the medical findings, and should then be disregarded, must fail. Petitioner claims that Manalangsang’s statements that Hispano was shot in a downward direction conflict with the findings of the medico-legal that the trajectory of the bullets is in an upward direction. The testimony of Dr. Salen is pertinent and enlightening:

Q:

[T]he trajectory of the bullet is upward?

A:

Yes, sir.

Q:

[S]o the gunman must be at a lower level from the deceased[d]?

A:

We can not [sic] say that, sir.

Q:

But the trajectory of the bullet is upward?

A:

It depends on the matter of the position of the head when the head was hit. It could be when the trajectory is upward it [sic] could be lying down with his back and the gunman and the barrel of the gun is here and if we will put the normal position of the body it is still upward but the normal position is like that so...

COURT:

Make of record that the witness is demonstrating a slightly incline position of the head and the body.

WITNESS:

A:

So we can not [sic] determine the position of the gunman when it was related [sic] the gunshot wound of the entry and the victim it will depend on the position of the gunman but likewise the position of the victim during the infliction [sic] of the gun.

ATTY. VARGAS:

Q:

Mr. Witness[,] if the gunman is standing on an elevated floor of about three feet do you think that the trajectory of a bullet is upward?

A:

It is possible also.[26]

Clearly, the fact that the trajectory of the bullets is in an upward direction does not negate the veracity of Manalangsang's statement that Hispano was shot by the gunman from an elevated plane.

The CA was also correct in not giving credence to the opinion of SOCO PSI Cabamongan as regards the position of the gunman when the latter shot Hispano. Cabamongan asserted that the gunman was on board the owner-type jeep when Hispano was shot, which is opposed to Manalangsang's testimony. However, case records reveal that Cabamongan was presented as an ordinary witness. Hence, his opinion regarding the location of the gunman in relation to the place where the empty shells were found is immaterial.

Expert evidence is admissible only if: (a) the matter to be testified to is one that requires expertise, and (b) the witness has been qualified as an expert.[27] In this case, counsel for the petitioner failed to make the necessary qualification upon presenting Cabamongan during trial.

Jurisprudence further provides that minor inconsistencies in immaterial details do not destroy the probative value of the testimony of a witness regarding the very act of the accused. The case of *Madali v. People*[28] elucidates thus:

Given the natural frailties of the human mind and its incapacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. (Emphasis and underscoring supplied.)

Thus, the positive identification of the petitioner as the gunman by Manalangsang, as corroborated by Cañada, must stand. Indeed, it has been consistently held by this Court that in criminal cases the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight and respect because the judge has the direct opportunity to observe said witnesses on the stand and ascertain if they are telling the truth or not. Absent any showing that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case, this Court gives deference to the trial court's appreciation of the facts and of the credibility of witnesses, especially since Manalangsang and Cañada's testimony meets the test of credibility.[29] The Court also notes that other than his claim of denial, petitioner failed to show how the prosecution failed to overcome the presumption of innocence.

The qualifying circumstance of treachery or alevosia was additionally properly appreciated in this case.

The two elements that must be proven to establish treachery are: (a) the employment of means of execution which would ensure the safety of the offender from defensive and retaliatory acts of the victim, giving the victim no opportunity to defend himself; and (b) the means, method and manner of execution were deliberately and consciously adopted by the offender.[30] The two elements are present in this case.

These elements are established by the testimony of Manalangsang showing the unexpected attack by the petitioner on the unsuspecting Hispano whose vehicle was suddenly blocked by three men, at least one of whom was armed with a firearm.[31] The victim was then unarmed and had no opportunity to defend himself.

Thus, considering all the above-mentioned facts, we uphold the conviction of the petitioner for the crime of murder.

Regarding the award of damages, we affirm the trial court and CA in ordering the petitioner to pay the heirs of Generoso Hispano the amount of P50,000 as moral damages. In cases of murder and homicide, the award of moral damages is mandatory, without need of allegation and proof other than the death of the victim.[32] Similarly, the CA correctly awarded his heirs the amount of P171,128.75 as actual damages, as said amount which was spent for funeral and burial expenses was duly supported by receipts. However, as regards the award of civil indemnity, the same should be increased to P75,000 to conform with recent jurisprudence.[33] Also, the heirs of the victim are entitled to exemplary damages which recent jurisprudence pegs at P30,000[34] considering the presence of the aggravating circumstance of treachery. Lastly, we impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid, consistent with current policy.

WHEREFORE, the petition is DENIED. The October 22, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02297 is AFFIRMED. Petitioner BOBBY “ABEL” AVELINO y BULAWAN is found GUILTY beyond reasonable doubt of MURDER and is sentenced to suffer the penalty of reclusion perpetua. He is further ordered to pay the heirs of Generoso Hispano the amounts of P171,128.75 as actual damages, P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

With costs against the petitioner.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Reyes, JJ., concur.

[1] Rollo, pp. 61-71. The assailed decision was promulgated on October 22, 2007 and was penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Vicente S. E. Veloso and Marlene Gonzales-Sison concurring.

[2] Id. at 42-59. Penned by Judge Teresa P. Soriaso.

[3] Id. at 74-75. The Resolution was promulgated on January 25, 2008.

[4] Id. at 62-63; records, Vol. I, p. 28.

[5] Id. at 63.

[6] Id. at 63-65.

[7] Id. at 65.

[8] Id.

[9] Id. at 59.

[10] Id.

[11] Id. at 71.

[12] Supra note 3.

[13] People v. Adviento, G.R. No. 175781, March 20, 2012, 668 SCRA 486, 499, citing Lumanog v. People, G.R. Nos. 182555, 185123 & 187745, September 7, 2010, 630 SCRA 42, 130.

[14] *People v. Benjamin Peteluna and Abundio Binondo*, G.R. No. 187048, January 23, 2013, p. 10, citing *People v. Barde*, G.R. No. 183094, September 22, 2010, 631 SCRA 187, 211.

[15] Rollo, p. 31.

[16] TSN, October 2, 2001, pp. 17, 20, and 38.

[17] Rollo, p. 55.

[18] TSN, October 2, 2001, pp. 30-31.

[19] *People v. Magtibay*, 435 Phil. 353, 369 (2002).

[20] *People v. Sabalones*, G.R. No. 123485, August 31, 1998, 294 SCRA 751, 789.

[21] *Id.*

[22] *Id.*

[23] TSN, October 25, 2001, p. 15.

[24] One foot is equivalent to 0.3048 meter.

[25] TSN, November 19, 2001, pp. 22-23, 27-28.

[26] TSN, March 4, 2002, pp. 31-32.

[27] F.D. Regalado, *Remedial Law Compendium*, Vol. II, 2004 edition, p. 760.

[28] G.R. No. 180380, August 4, 2009, 595 SCRA 274, 294.

[29] See *People v. Obina*, G.R. No. 186540, April 14, 2010, 618 SCRA 276, 280-281.

[30] *People v. Gonzales*, G.R. No. 195534, June 13, 2012, 672 SCRA 590, 600, citing *People v. Malabago*, 333 Phil. 20, 34 (1996).

[31] TSN, October 2, 2001, p. 11.

[32] *People v. Laog*, G.R. No. 178321, October 5, 2011, 658 SCRA 654, 683, citing *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 457.

[33] *Id.*, citing *People v. Nazareno*, G.R. No. 180915, August 9, 2010, 627 SCRA 383, 393.

[34] *People v. Malicdem*, G.R. No. 184601, November 12, 2012, 685 SCRA 193, 207.

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