

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO MANIMTIM Y MANIMTIM, ACCUSED-APPELLANT.

G.R. No. 56261. January 27, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is an appeal from the Decision of the Court of First Instance of Batangas, Eighth Judicial District, sitting in Lipa City, in Criminal Case No. V-168, convicting Reynaldo Manimtim of the crime of Murder, and sentencing him to reclusion perpetua, to indemnify the heirs of the deceased Willy Lu in the sum of P12,000.00, to pay the costs, and to suffer all the accessories of the law.

The Information filed against the accused alleged:

"That on or about the 3rd day of December, 1977, at about 4:05 o'clock in the afternoon, at Rizal Street, Lipa City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm, with intent to kill, with treachery and evident premeditation did then and there, wilfully, unlawfully and feloniously attack, assault, and shoot with the said firearm, suddenly and without warning one Willy Lu y Tan, thereby inflicting on the latter gunshot wound on the head, hemorrhage, intracranial severe, secondary to gunshot wound on the head, which directly caused his instantaneous death."

The accused, assisted by counsel de parte, pleaded not guilty upon his arraignment.

The victim, Willy Lu y Tan, and the accused, Reynaldo Manimtim, are half-brothers, the former being the elder of the two. Both are sons of complainant Dy Cheng Suy, the former with his legal wife, and the latter with his common-law wife, Elena Manimtim. At the time of his death, Willy was managing the DCS Lumber, his father's lumber company in Lipa City, and was receiving a monthly salary of P400.00.

The evidence for the prosecution, based principally on the testimony of complainant, Dy Cheng Suy, has been summarized in the People's brief as follows:

"At about 4 p.m. on December 3, 1977, as complainant was writing on his desk inside his store in Lipa City, with a lady employee and a laborer of the company by the name of Ben Tan, he saw the deceased in front of the store at a distance of 8 to 9 meters squatting beside their parked car testing the left front tire of the car with an air gauge. Soon, he noticed appellant approaching the deceased from behind, at the same time giving him (complainant) a glance. When appellant was about half a foot away from the deceased, complainant heard gunshots. Ben Tan, the laborer with complainant, went out to investigate. Returning immediately, he told complainant that his son Willy has been shot. Complainant rushed out of the store and found Willy lying on the street face downwards mortally wounded. Complainant also saw his other son, Reynaldo, running away while tucking a pistol in his waist. (t.s.n., pp. 6-14, June 20, 1978; sworn statement of Dy Cheng Suy, Exh. 'E', the contents of which he affirmed in open court and adopted as his direct testimony, Vide, pp. 5-6, June 25, 1978).

The victim was taken to the nearby Jimenez clinic for emergency treatment and later rushed to Manila where he expired on the evening of the same day. While at the said clinic, complainant saw appellant standing by the

side of the road about three meters away from him. (t.s.n., pp. 16-19, June 20, 1978; sworn statement, Exh. 'E').

Meanwhile, upon being informed of the shooting, Patrolman Francisco Olave of the Batangas PC Command, together with two other peace officers, repaired to the crime scene and prepared a sketch of the premises indicating, among others, the spot where 3 empty shells and 2 slugs were recovered. When Pat. Olave learned from complainant that the victim, his son Willy, was shot by his other son Boy (Reynaldo), who was pointed out to him while the latter was approaching them, he (Pat. Olave) forthwith arrested Reynaldo some thirty meters from the scene of the shooting incident.

The following day, December 4, 1977, complainant appeared before the police authorities of Lipa City and executed a sworn statement before Police Investigator Raymundo Guevarra. (Exhibit 'E'). Appellant was also present but chose to remain silent.

A postmortem examination of the body of the victim was performed by Dr. Tomas P. Refe, a medico-legal officer of the NBI, who set forth his findings in an Autopsy Report, Exh. 'A', with 6 photographs (Exhs.'B' to 'B-5') of various positions showing the injuries inflicted and described in his Necropsy Report, Exh. 'C'. Dr. Refe found two gunshot wounds on the victim, both caused by a .45 cal. or .38 cal. pistol fired at very close range of not more than two feet because of the absence of tattooing and signs of burning of the wounds. According to him, the assailant must have been behind the victim at his left side and at a higher elevation than the latter when he fired the shots.

The record further disclosed that on November 28, 1977, or barely a week before the shooting incident in question, two criminal cases were filed against appellant, one for malicious mischief and the other for attempted murder, when the truck he was driving bumped and destroyed the gate of the lumberyard of his father's company, nearly killing the guard. The information for malicious mischief was filed with the Lipa City Court, Exh. 'G', with bail of P3,000.00 as a consequence, a warrant of arrest was issued against Reynaldo Manimtim, and he was incarcerated until December 1, 1977 when his uncle, Dy Pang, posted bail for his temporary release. Reynaldo blamed his father for his incarceration and told him a day before the shooting incident: 'Tatay Huag Kayong Magsisi' (Father, do not yet have any regrets). When complainant was warned by one of his guards that his son Reynaldo was seen carrying a gun, he sought police protection. (t.s.n., pp. 23-31, April 25, 1978; sworn statement of Dy Cheng Suy, Exh. 'E')."

The defense, on the other hand, maintains that the assailant was not the accused, but a stranger.

Thus, Alberto de la Cruz, age 48, married, welder, residing at the corner of Rizal and Mabini Streets, Lipa City, testified that at around 4:00 in the afternoon of December 3, 1977 he was at the first floor of his house sitting near a window listening to the radio and watching his two welders near the door repairing a radiator. When he heard a gunburst; he turned a little to his left to the direction of the blast, looking through an open jalousie.[1] Some 40 meters away he saw a man aim at close range a short firearm at the back of Willy Lu's neck. A few seconds later, a second shot caused the victim to fall backwards. The assailant fired once more and ran with the gun in his hand, towards the corner of Rizal and Mabini Streets.[2] The assailant came as close as 5 meters from the witness who was still inside his house. He then saw the victim's father coming out of his store. From the corner, the assailant turned east, walking.

This witness observed that the assailant was around 5 feet 3 inches tall, with dark complexion, wearing a brown jacket but could not recall the lower garment of the assailant. According to the witness there was no similarity with the accused whom he had known for more than 10 years. He did not tell the victim's father that the accused was not responsible, instead, he informed the mother of the accused about what he had witnessed. He narrated the events to the police who investigated him and to Sgt. Marilla of the Philippine Constabulary. He also met with the lawyer of the accused and executed an affidavit on February 25, 1978.[3]

The accused himself, Reynaldo Manimtim, age 25, married, laborer, residing at Guadalupe Subdivision, Lipa

City, testified that at about 4:00 p.m. of 3 December 1977, he was in his mother's lumber bodega near their residence at Guadalupe Subdivision, Lipa City, to give a delivery receipt to the overseer. He left the place on his motorcycle to go to his mother's establishment in town, but stopped by a store for his snack. It took him about 17 minutes to negotiate the trip due to heavy traffic. At the store, Fe Maun, the owner, arrived and told him that something happened in front of his father's store, as she noticed blood beside a car and a bullet hole in the car. He rode on his motorcycle, proceeding to his mother's store—Elena Lumber, at Rizal Street, about two electric posts from his father's store. He parked his motorcycle in front of Elena Lumber at around 4:25 p.m. He saw many people in front of his father's store. A passer-by told him that his half-brother was shot and then taken to Jimenez Hospital, which was just across from where he was standing. He did not go to his father's store, but walked to the hospital. He saw his father park his car in front of the hospital, and he was approaching his father to tell him to transfer the victim to a better hospital. Policemen were also approaching his father. When they asked the latter who shot the victim, his father pointed to him (accused). He denied shooting the victim, but notwithstanding his protestations of innocence, he was apprehended. They allegedly found no incriminating evidence on him. They then dragged him to a jeep and took him to the Lipa City Police Headquarters. He requested that his hands be examined for gunpowder burns, but the police told him it was not necessary. Since the time of his arrest he was detained in jail. The records show that his petition for bail was denied by the lower Court.

The accused further testified that he has not possessed any firearm nor has he fired one. He has no enmity against his half-brother, the victim. He admitted that he was charged by the victim with Malicious Mischief and Attempted Murder about a week before the incident, but declared that it was because the truck he was driving had defective brakes that he accidentally bumped the gate of his father's lumberyard, and nearly ran over the guard, Fidel Panopio. His half-brother, the victim, lodged the complaint upon instructions of his father. He was arrested on December 1, 1977 and released on bail posted by his uncle in the afternoon. The next day he confronted his father. He claims that his father had a grudge against him because he told his father not to spend all his money on his paramour at the expense of his (accused's) younger brothers and sisters; that the allowance they received from their father of P400.00 monthly was insufficient, and that his father resented his repeated requests for money. He admitted that his father owns their residence in Guadalupe Subdivision and shouldered the electric and water bills and tuition fees of his brothers and sisters; and that he was receiving from his father twenty pesos monthly plus additional sums every now and then, until it was stopped a few weeks before the incident.[4]

The lower Court lent more credence to the version of the prosecution and convicted the accused of Murder as heretofore stated.

The errors assigned in this appeal center on the issue of credibility as between complainant Dy Cheng Suy, father of the accused, on the one hand, and defense witness Alberto de la Cruz, on the other, and the matter of the assailant's identity.

Upon a review of the evidence, we uphold the findings of the Trial Court. It is significant to note that complainant Dy Cheng Suy and defense witness de la Cruz had almost identical testimonies regarding the occurrence except for the identity of the assailant. The former testified that he saw the accused run away after having seen him standing half a foot away from the victim and saw him (accused) tucking a gun on his waist. De la Cruz, on the other hand, declared that there was no similarity between the man whom he saw run away, with gun in hand, and the accused.

We find the declarations of complainant credible for he had an unobstructed view from his store about 8 to 9 meters from the crime scene compared to defense witness, de la Cruz, who viewed the occurrence only through wooden jalousies about 40 meters away. As observed by the Court a quo which had made an ocular inspection of the crime scene:

"The next decisive circumstance tending to affect the accuracy or inaccuracy of the assailant's identification by the respectively alleged opposing witnesses, are the photographic evidence portrayed by the pictures-exhibits taken by order of, and verified upon ocular inspection conducted by the Court of the crime scene and surrounding premises, as well as those presented by the parties to show their respective viewing positions and circumstances thereof, to wit-

1. As to the ascertained distance respectively claimed and verified by the Court from their viewing positions to the spot where the victim was shot—

A - Court's picture-exhibit attached on p. 104 of the Record, vividly discloses a manifestly clear and unobstructed viewing distance from the DCS Lumber office-table where the accused's father allegedly saw the accused son as the assailant. Such distance indeed appears as claimed to be about 8 to 9 meters;

B - Picture-Exhibit '3-A' & '3-B', also attached on p. 124 of the Record, likewise clearly shows the indicated window of the house and repair-shop where defense's witness Alberto de la Cruz, allegedly saw the shooting incident and flight of his unidentified, unknown and above-cited described assailant who appears to him and definitely not the accused. Such distance also indeed appears as claimed to be about 40 meters to the spot of such shooting to death of Willy Lu. As to visibility, however, the indicated jalousie—window of his house repairshop when verified is the wooden type jalousie, reinforced at the back inside portion with protective iron grills. Although opened to its fullest extent, naturally the edge of such more closer position of the wooden as compared with the glass type jalousies, inevitably offers partial obstruction to viewing. . . "[5]

Further, complainant revealed to the police the identity of the accused as the assailant immediately after the incident and confirmed it the next day in a sworn statement. Complainant does not claim that he saw the accused shoot the victim but it was a logical conclusion to the sequence of events when he saw the accused approach the victim, who was squatting at the side of the car, saw the accused beside the victim, heard shots, and saw the accused running away, tucking a gun in his waist. In contrast, defense witness de la Cruz had to be approached by the accused's mother, who asked him to be a defense witness, and who had to think it over before acceding. De la Cruz did not inform complainant that the "accused was not the assailant".[6] He claimed that he told the police about this when he was investigated[7], which, however, was belied by Sgt. Raymundo Guevarra, police investigator.[8] Besides, de la Cruz gave his affidavit only more than two months afterwards, or on February 25, 1978, thereby showing lack of spontaneity.

The physical facts also corroborate the testimony of complainant. He stated that the accused was standing not too far from the victim, about half a foot away and to his left and that the latter was in a squatting position when he was approached by the accused. The medico-legal officer of the NBI also declared that the location of the gunshot wounds show that the assailant "could have been behind on the left side and in higher position than the victim"[9] and that the absence of tatooing and signs of burning of the gunshot wounds show that the victim was shot at close range.

Evidence also shows that the shots were fired by a lone gunman, since the 3 empty shells and 2 bullet slugs recovered from the scene of the crime came from the same gun.[10] In his sworn statement, complainant stated that he only saw Reynaldo Manimtim in the scene of the crime.[11] And Alberto de la Cruz testified that the intervals of the gun fire were more or less 3 seconds, successively.[12]

The defense calls complainant an immoral alien with several mistresses. Even if true, it would not, however, impair his credibility, nor the veracity of his testimony. As the father of the accused, he would not falsely incriminate the latter, any alleged grudge against his son notwithstanding. The latter had strong reasons to feel revengeful because the victim was favored by the father as manager of the lumber business in addition to the fact that the deceased had lodged complaints against the accused for Malicious Mischief and Attempted Murder.

The alleged inconsistencies between complainant's sworn statement, Exhibit "E", and his testimony in open court are more apparent than real. 1) In his statement, complainant stated that he saw the accused approach the victim before the shooting and that the accused even looked at him (complainant); while in his testimony he declared that he saw the accused standing beside the deceased after he heard the shot. As pointed out by the Solicitor General, "the two statements cover distinct aspects of the incident and complement rather than contradict each other, for if appellant was seen approaching the deceased before the shooting he (appellant) would naturally be beside him at the time of the shooting".[13] Similarly, neither does complainant's testimony that he saw the accused standing beside the victim contradict his statement that he saw the accused running southward. The fleeing of the accused was later in point of time.

2) The defense also alleges that complainant, in open Court, mentioned nothing about having seen the accused tuck a gun into his waist although he did so in Exhibit "E". It is noteworthy, however, that defense witness de la Cruz also testified that he saw the assailant running towards the corner carrying a short firearm after shooting the victim. Besides, a careful reading of complainant's testimony shows that complainant stated:

"COURT:

Q Did you see the gun of the accused when he shot your deceased son?

A When the shooting took place I did not see the gun. I only saw the gun when he ran away, sir.

Q Who ran away?

A The accused, sir.

Q Where did you see the gun when the accused ran away?

A When I saw the accused running away from the scene, he was inserting the gun unto his right waist.[14]

3) The defense contends that complainant's testimony that he continued writing on his table inside his store upon hearing the shots is incredible. It is not necessarily so. Complainant merely saw the accused approach the victim while the latter was squatting beside his parked car testing the air of one of its tires. Complainant did not see the accused in the act of shooting the victim. Besides, it must have been farthest from complainant's thoughts that the accused would shoot his own half-brother. It was only when complainant was told by his employee, Ben Tan, that his son was shot that complainant rushed out of his store and saw the victim prostrate on the street.

4) In not presenting Ben Tan, who so informed complainant, and the other lady employee, Helen Lumbera, who were inside the store with complainant at the time of the shooting, the prosecution cannot be charged with willful suppression of evidence. It should be recalled that neither of them witnessed the shooting. Complainant testified that Helen Lumbera was at her table at his right, nearer the door of the store, but a little hidden.[15] Nothing is shown that Helen Lumbera saw the shooting incident. Considering that her place was a little hidden by the door, she would not be in a better position than complainant to witness the incident. As to Ben Tan, he was inside the store getting steel materials when he heard the first shot and then went out and informed complainant that his son was shot and lying on the pavement.[16] When complainant stated that Ben Tan saw the victim shot, it was Ben Tan's inference from the gunburst he heard and seeing the victim lying on the pavement in his blood. Nothing establishes that he actually saw the act of shooting. Had Ben Tan testified, his testimony would be merely corroborating. When the witness' testimony would be merely corroborating, his non-presentation as a witness does not mean suppression of a testimony that is adverse to the prosecution.[17]

The alibi of the accused that he was at a store taking a snack when he learned of the shooting of his half-brother cannot exculpate him considering that he was within the near vicinity of the shooting scene and, with his motorcycle, it was not physically impossible for him to have been at the crime scene either before or after he was at the store taking a snack. Besides, his identity has been established by complainant's clear and positive testimony.

The crime committed is Murder qualified by treachery. The victim was shot from behind while he was squatting and stooping by the left tire of the car measuring the air pressure.[18] The victim was unarmed, completely unaware of the impending attack. The shooting was so sudden that the victim had no way of defending himself. The accused had employed means that insured the execution of the offense with no risk to himself arising from the defense that the victim might have made.[19] In the absence of other modifying circumstances, the penalty should be imposed in its medium period, or, reclusion perpetua.[20]

WHEREFORE, the judgment appealed from is hereby affirmed. Costs against the accused-appellant, Reynaldo Manimtim.

SO ORDERED.

Teehankee (Chairman), Vasquez, Relova and Gutierrez, Jr., JJ., concur.
Plana, J., on official leave.

[1] Exh. "3-A", Original Record, p. 124.

[2] Exh. "3-B", Original Record, p. 124.

[3] Exh. "4", Original Record, p. 129; t.s.n., November 27, 1978, pp. 4-101.

[4] T.s.n., December 13, 1978, pp. 4-38; t.s.n., January 10, 1979, pp. 3-76; t.s.n., March 14, 1979, pp. 3-30.

[5] pp. 25 & 26, Rollo.

[6] T.s.n., November 27, 1978, p. 77.

[7] Ibid., pp. 78 & 79.

[8] T.s.n., March 13, 1978, p. 79.

[9] T.s.n., March 6, 1978, p. 56.

[10] T.s.n., April 28, 1978, p. 16.

[11] No. 12 of Exh. "E", Original Record, p. 51.

[12] T.s.n., November 27, 1978, p. 46.

[13] Appellee's Brief, p. 6.

[14] T.s.n., May 2, 1978, p. 26.

[15] T.s.n., June 20, 1978, pp. 7 & 8.

[16] Ibid., pp. 8 & 11.

[17] People vs. Extra, 72 SCRA 199 (1976).

[18] T.s.n., March 6, 1978, p. 39; T.s.n., May 2, 1978, pp. 24 & 25; T.s.n., November 27, 1978, p. 8.

[19] Art. 14 (16), Revised Penal Code.

[20] Art. 64 in relation to Art. 248, Revised Penal Code.

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