

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE
TEMBLOR ALIAS "RONALD";
DEFENDANT-APPELLANT.**

G.R. No. 66884. May 28, 1988

Ponente: GRIÑO-AQUINO. J.

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GRIÑO-AQUINO. J.

The accused-appellant Vicente Temblor alias "Ronald" was charged with the crime of murder in Criminal Case No. 1890 of the Court of First Instance (now Regional Trial Court) of Agusan del Norte and Butuan City for shooting to death Julius Cagampang. The information alleged:

"That on or about the evening of December 30, 1980 at Talo-ao, Buenavista, Agusan del Norte, Philippines and within the jurisdiction of this Honorable Court, the said accused conspiring, and confederating with one another with Anecito Ellevera who is at large, did then and there wilfully, unlawfully and feloniously, with treachery and with intent to kill, attack, assault and shoot with firearms one Julius Cagampang, hitting the latter on the vital parts of the body thereby inflicting mortal wounds, causing the direct and instantaneous death of the said Julius Cagampang.

"CONTRARY TO LAW: Article 248 of the Revised Penal Code."

Upon arraignment on June 8, 1982, he entered a plea of not guilty. After trial, he was convicted and sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties thereof under Articles 41 and 42 of the Revised Penal Code, and to indemnify the heirs of the victim in the amount of P12,000 without subsidiary imprisonment in case of insolvency. He appealed.

The evidence of the prosecution showed that at about 7:30 in the evening of December 30, 1980, while Cagampang, his wife and their two children, were conversing in the store adjacent to their house in Barangay Talo-ao, Buenavista, Province of Agusan del Norte, the accused Vicente Temblor alias Ronald, arrived and asked to buy a half pack of Hope cigarettes. While Cagampang was opening a pack of cigarettes, there was a sudden burst of gunfire and Cagampang instantly fell on the floor, wounded and bleeding on the head. His wife Victorina, upon seeing that her husband had been shot, shouted her husband's name "Jul." Two persons, one of whom she later identified as the accused, barged into the interior of the store through the main door and demanded that she bring out her husband's firearm. Igawas mo ang iyang armas ("You let out his firearm!") they shouted. The accused fired two or more shots at the fallen victim. Terrified, Victorina hurried to get the maleta (suitcase) where her husband's firearm was hidden. She gave the suitcase to the accused who, after inspecting its contents, took her husband's .38 caliber revolver, and fled.

In 1981, some months after the incident, Victorina was summoned to the Buenavista police station by the Station Commander Milan, where she saw the identified accused as the man who killed her husband.

The accused's defense was alibi. He alleged that from 4:00 o'clock in the afternoon of December 30, 1980, he and

his father had been in the house of Silverio Perol in Barangay in Camagong, Nasipit, Agusan del Norte, where they spent the night drinking over a slaughtered dog as "pulutan," until 8:00 o'clock in the morning of the following day, December 31, 1980.

The accused and his companion, admittedly members of the dreaded NPA (New People's Army) were not apprehended earlier because they hid in the mountains of Malapong with other members-followers of the New People's Army. Temblor surrendered to Mayor Dick Carmona of Nasipit during the mass surrendered of dissidents in August, 1981. He was arrested by the Buenavista Police at the Buenavista public market on November 26, 1981 and detained at the Buenavista municipal jail.

The accused capitalized the fact that the victim's widow, Victorina, did not know him by name. That circumstance allegedly renders the identification of the accused, as the perpetrator of her husband's killing, insufficient. However, during the trial, the accused was positively identified by the widow who recognized him because she was less than a meter away from him inside the store which was well lighted inside by a 40-watt fluorescent lamp and by an incandescent lamp outside. Her testimony was corroborated by another prosecution witness — a tricycle driver, Claudio Sabanal — who was a long-time acquaintance of the accused and who knew him as "Ronald." He saw the accused in the store of Cagampang at about 7:30 o'clock in the evening of December 30, 1980. He heard the gunshots coming from inside the store, and saw the people scampering away.

Dr. Alfredo Salanga who issued the post-mortem examination report certified that the victim sustained three (3) gunshot wounds.

Rebutting the accused's alibi, the prosecution presented a Certification of the Nasipit Lumber Company's Personnel Officer, Jose F. Tinga (Exh. D), and the NALCO Daily Time Record of Silverio Perol (Exh. D), showing that Perol was not at home drinking with the accused and his father, but was at work on December 31, 1980. The accused did not bother to overcome this piece of rebuttal evidence.

In this appeal, the appellant alleges that the court a quo erred:

- in the finding that he was positively identified by the prosecution witness as the killer of the deceased Julius Cagampang; and
- in rejecting his defense of alibi.

The appeal deserves no merit. Was the accused positively identified as the killer of Cagampang? The settled rule is that the trial court's assessment of the credibility of witnesses while testifying is generally binding on the appellate court because of its superior advantage in observing their conduct and demeanor and its findings, when supported by convincingly credible evidence as in the case at bar, shall not be disturbed on appeal (People vs. Dava. 149 SCRA. 582).

The minor inconsistencies in the testimony of the eyewitness Victoria Vda. de Cagampang did not diminish her credibility, especially because she had positively identified the accused as her husband's assailant, and her testimony is corroborated by the other witnesses. Her testimony is credible, probable and entirely in accord with human experience.

Appellant's self serving and uncorroborated alibi cannot prevail over the positive identification made by the prosecution witnesses who had no base motives to falsely accuse him of the crime. Furthermore, the rule is that in order for an alibi to be acceptable as a defense, it is not enough that the appellant was somewhere else when the crime was committed; it must be demonstrated beyond doubt that it was physically impossible for him to be at the scene of the crime. Here it was admitted that Perol's house in barrio Camagong, Nasipit is accessible to barrio Talo-ao in Buenavista by jeep or tricycle via a well-paved witnesses who had positively identified him could not

be overcome by the defendant's alibi. (People vs. Mercado, 97 SCRA 232; People vs. Venancio Ramilo, 146 SCRA 258.)

Appellant's alleged lack of motive for killing Cagampang was rejected by the trial court which opined that the defendant's knowledge that Cagampang possessed a firearm was motive enough to kill him as killings perpetrated by members of the New People's Army for the sole purpose of acquiring more arms and ammunition for their group are prevalent not only in Agusan del Norte but elsewhere in the country. It is known as the NPA's "agaw armas" campaign. Moreover, proof of motive is not essential when the culprit has been positively identified (People vs. Tan, Jr., 145 SCRA 615).

The records further show that the accused and his companion fled after killing Cagampang and taking his firearm. They hid in the mountains of Agusan del Norte. their flight was an implied admission of guilt (People vs. Dante Astor, 149 SCRA 325; People vs. Realon, 99 SCRA 422).

WHEREFORE, the judge merit appealed from is affirmed in all respects, except as to the civil indemnity payable to the heirs of the deceased Julius Cagampang which is increased to P30,000.00.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Medialdea, JJ., concur.

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