

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO TUVILLA Y MAGAYO, ACCUSED, NELSON ALUNAN Y
ASTURIAS, ACCUSED-APPELLANT, ELY NICOLAS AND TEMOTIA
JAVIER, AT LARGE.**

G.R. No. 88822. July 15, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Seeking a reversal of the decision dated December 19, 1988 of the Regional Trial Court of Bacolod City, Branch 51, appellant Nelson Alunan interposes the present appeal.

Appellant was charged with the crime of murder under an amended information which provides:

"That on or about the 25th day of April, 1982, in the City of Bacolod, Philippines and within the jurisdiction of this Honorable Court, the herein accused Alejandro Tuvilla y Magayo and Nelson Alunan y Asturias as principals by direct participation and the accused Ely Nicolas, Temotia Javier y Catubig and Larry Tillo y Brizano, as principals by inducement, without any justifiable cause or motive, being then armed with a three bladed weapon, with intent to kill and by means of treachery and with evident premeditation, did then and there, willfully, unlawfully and feloniously assault, attack and stab with said weapon one Ronaldo Javier y Guillen, thereby causing upon the person of the latter the following wounds, to wit:

x x x x x x x x

which were the direct and immediate cause of his death to the damage and prejudice of his heirs. x x x"[1]

Upon arraignment, appellant pleaded not guilty, hence, trial ensued. On December 19, 1988, the lower court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, accused Alejandro Tuvilla and Nelson Alunan are found guilty beyond reasonable doubt of the crime of murder for which they are sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim, RONALDO JAVIER, the sum of Thirty Thousand (P30,000.00) Pesos.

"While accused LARRY TILLO, for insufficiency of evidence, his guilt was not proved beyond reasonable doubts (sic), is hereby ACQUITTED.

"SO ORDERED."[2]

The antecedent facts, as correctly summarized in the People's Brief, and which we adopt, are as follows:

"On April 25, 1982, at around 6:00 p.m. inside the Orig Restaurant located at the Golden Field Commercial Complex in Singang, Bacolod City, Ronaldo Javier, the restaurant's owner, was drinking with Larry Tillo, Agring, Marlon and others whom waitress Angelita Noquera Flores did not know (TSN, February 11, 1985, p. 16). They were seated at the table located in the open air or roofless portion of the restaurant (pp. 29-30, tsn, September 18, 1984) with Ronaldo's back towards the door of the covered portion of the eatery. Two hours

later or at around 8:00 p.m., Angelita, who was standing near the door of the covered portion attending to the group's order, saw two men, whom she later identified as Nelson Alunan (appellant herein) and Alejandro Tuvilla, enter and sit at the table located inside the enclosed or roofed portion of the restaurant (pp. 22-24, id, p. 6 Decision). The restaurant manager, Temotia Javier or Nang Matti, who was seated at a nearby table, approached the appellant and Tuvilla and asked for their order. Appellant and Tuvilla ordered two bottles of beer (pp. 26-27, id) which Nang Matti served them while Angelita remained standing near the door of said restaurant (pp. 22, 28-30, id). After consuming their beer, appellant and Tuvilla transferred to one of the four tables located in the roofless portion of the restaurant about four arms length away from Ronaldo and his group (p. 31, tsn, September 18, 1984; p. 13, tsn, August 20, 1984; p. 6 Decision). Appellant and Tuvilla ordered two more bottles of beer this time from Angelita Flores (pp. 31-32, id.)

"When Angelita served the beer, appellant and Tuvilla wanted to get acquainted with her so Angelita told them that her name was "Angel". Appellant in turn introduced himself as "Jojo" and his companion as "Ali" (pp. 60-61, id.). Conversation and exchange of pleasantries ensued which lasted for about twenty minutes (pp. 61-62, id) after which, Angelita went to the counter located inside the enclosed portion of the restaurant where Nang Matti and Delencia were checking the chits (pp. 56-57, tsn, September 15, 1984).

"She observed that appellant and Tuvilla, after consuming their beer, left their table and proceeded to the comfort room located inside the enclosed portion of the restaurant and adjacent to the counter (pp. 33-34, tsn, September 18, 1984). Shortly after, Tuvilla came out followed by appellant (tsn, September 18, 1984, pp. 36-37).

"Appellant went straight to the entrance while Tuvilla approached Angelita at the counter and told her just to stay there before he followed appellant to the entrance (Exh. 1-A) of the restaurant (pp. 23, 33, 35, id).

"Angelita, concerned about the bill of the two, inquired from Nang Matti if appellant and Tuvilla had already paid their bill to which Nang Matti replied "Never mind them" (p. 39, id.). Worried that the unpaid bill of the appellant and Tuvilla might be charged to her account, Angelita followed the appellant and Tuvilla (pp. 39-40, id).

"But as she emerged from the door, she saw that appellant and Tuvilla went straight to the table of Ronaldo Javier (Exh. "6") and once behind Ronaldo, Tuvilla held Ronaldo by the neck and right shoulder with his left hand, and with his right hand repeatedly stabbed Ronaldo in the chest (p. 5, tsn, February 11, 1985; pp. 41-43, tsn, September 18, 1992 [sic]; p. 7 Decision). There was a commotion as the companions of Ronaldo Javier scampered away prompting Angelita to tell her Nang Matti to call the police but the latter shouted at her to come inside (tsn, September 18, 1984, p. 46). Shocked, Angelita stayed rooted near the door and saw Ronaldo fall to the ground (pp. 45-46, tsn, September 18, 1988 [sic]).

"Thereafter, appellant and Tuvilla lifted Ronaldo, appellant holding the left hand and left shoulder of Ronaldo while Tuvilla held Rolando's (sic) right shoulder. As soon as Ronaldo was in a standing position, appellant and Tuvilla again repeatedly stabbed Ronaldo (pp. 43, 45, 76, tsn, September 18, 1984) who fell to the ground the second time. At this point, Angelita shouted again that somebody call the police. Attracted by her shouts, Tuvilla and appellant looked at her and ran away towards the ricefield passing by the door of the restaurant (p. 45, tsn, September 18, 1984).

"Angelita ran inside the restaurant and continued shouting for a police. She went inside the kitchen where Alfredo Javier, brother of Ronaldo, was eating and told him that Ronaldo had been stabbed. Immediately, Alfredo closed the door of the restaurant, ran to the open portion of the restaurant and saw his brother lying on the ground, face up (pp. 46-47, tsn, December 2, 1986). With the aid of Danilo Dulman, Alfredo lifted Ronaldo and brought him to the Sanitarium Hospital but he was pronounced "dead on arrival" at the hospital's emergency room (pp. 8-9, tsn, June 30, 1986).[3]

Aggrieved, Alejandro Tuvilla and Nelson Alunan filed a notice of appeal with the lower court, which thereafter

forwarded the records of the case to us. As Alejandro Tuvilla withdrew his appeal[4], we shall solely address the appeal of Nelson Alunan on the following assignment of errors:

"THE LOWER COURT ERRED IN HOLDING THAT THE TESTIMONY OF THE ONLY ALLEGED EYEWITNESS ANGELITA N. FLORES WAS UNEQUIVOCAL AND UNWAVERING.

"THE LOWER COURT ERRED IN HOLDING THAT THE TESTIMONIES OF BOTH ACCUSED TUVILLA AND ALUNAN WERE INTRIGUING AND AMAZING THAT WITH THEIR LOWLY OCCUPATION, THEY WOULD PREFER THE ORIG RESTAURANT WHEN LIBERTAD MARKET WHERE EATERIES ABOUND WAS A MORE ACCESSIBLE AND PRACTICAL PLACE TO SPEND THE NIGHT.

"THE LOWER COURT COMMITTED GROSS INCONSISTENCIES IN ITS FINDINGS AS TO THE EXISTENCE OF CONSPIRACY AND IN ACQUITTING ACCUSED LARRY TILLO AND CONVICTING BOTH ACCUSED TUVILLA AND ALUNAN."[5]

Being interrelated, the first and second assigned errors will be discussed jointly.

At the outset, appellant seeks to discredit the lower court for having erroneously given weight to the testimony of the prosecution's main witness, Angelita Flores on the ground that the judge-designate was not able to hear and try the case in its entirety. Appellant argues that the judge-designate only presided over the case after the demise of Judge Marianito Militar, to whom the case was originally assigned, and had no opportunity to observe the demeanor of the witnesses whose testimonies are replete with improbabilities and inconsistencies.

The general rule is that the assessment of the trial judge on the credibility of witnesses is binding on the Supreme Court because of his opportunity to directly observe their conduct on the stand.[6] However, in the case at bench, although the judge-designate had no opportunity to observe the demeanor of the witnesses during the trial, the records will bear out that the assailed decision was fully supported by evidence.

While the trial judge who presided over the trial of the case would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not follow that a judge who was not present during the trial cannot render a valid and just decision.[7] The full record was available to him. It is evident from the knowledgeable and analytical decision he has written that he thoroughly examined the testimonial and documentary evidence before him and carefully assessed the credibility of the witnesses with the seasoned perceptiveness he has developed as a trial judge.[8]

Indeed, appellant's contention that the lower court failed to see the inconsistencies and improbabilities in the testimony of the prosecution's main witness, Angelita Flores does not hold. The records will manifest that, as correctly found by the lower court, the testimony of Angelita Flores was clear, unequivocal and unwavering.[9] The following reasons are in support of this observation:

Firstly, appellant was not known to the witness prior to the incident.[10] Their acquaintance consisted of a brief conversation which lasted for about twenty minutes. No evidence whatsoever was adduced to show that the witness for the prosecution had ulterior motive to testify falsely against appellant or mendaciously implicate him if indeed he was not involved in the killing.[11]

Secondly, during the course of the assault, Angelita Flores sought the assistance of some people and instructed that the police be called.[12] Her statement, having been given shortly after a startling occurrence took place before she had an opportunity to concoct or contrive a story, has all the earmarks of truth. This clearly evinces that the witness has indeed seen the crime being committed and strengthens her credibility to positively identify herein appellant as the perpetrator of the same.

Finally, appellant's contention that Angelita's testimony is replete with inconsistencies and improbabilities is belied by the transcript of stenographic notes. She thus testified:

x x x x x x x x

"ATTY. GEROCHE:

Now you said that this Orig Restaurant was owned by Rolando Javier, can you please tell us if this Rolando (sic) is still living?

WITNESS:

Yes sir.

ATTY. GEROCHE:

Can you please tell us if this Rolando (sic) Javier is still alive?

WITNESS:

He is already dead.

ATTY. GEROCHE:

Do you know when did he died (sic)?

WITNESS:

Yes, sir.

ATTY. GEROCHE:

When?

WITNESS:

April 25, 1982.

ATTY. GEROCHE:

And do you know in your own personal knowledge why this Ronaldo Javier died?

WITNESS:

Yes Sir.

ATTY. GEROCHE:

What was the reason?

WITNESS:

He was stabbed by two (2) men.

x x x x x x x x

ATTY. GEROCHE:

And did you know these two persons who stabbed Ronaldo Javier?

WITNESS:

Yes Sir.

ATTY. GEROCHE:

What are there (sic) names?

WITNESS:

Nelson Alunan alias "Jojo" and Alejandro Tuvilla alias "Ally".

ATTY. GEROCHE:

If this Nelson Alunan is in court, can you point him?

WITNESS:

Yes sir.

ATTY. GEROCHE:

Will you please point him?

WITNESS:

Yes sir, he is there.

INTERPRETER:

The witness pointed to a person who when ask (sic) answered by the name of Nelson Alunan.

ATTY. GEROCHE:

Is this "Jojo" also the Nelson Alunan you are referring?

WITNESS:

Yes sir.

ATTY. GEROCHE:

And if this person by the name of Alejandro Tuvilla alias "Ally" here in Court, can you point him?

WITNESS:

Yes, sir.

ATTY. GEROCHE:

Will you please point him?

WITNESS:

He is there.

INTERPRETER:

The witness pointed to a person who when asked answered by the name of Alejandro Tuvilla."[13]

x x x x x x x x

"ATTY. GEROCHE:

And what happened afterwards, if any?

WITNESS:

Alejandro Tuvilla held Rolando (sic) Javier here by the neck, the right shoulder of Rolando (sic) Javier with his left hand and then stabbed Rolando (sic) Javier at the chest with his right hand."

x x x x x x x x

"ATTY. GEROCHE:

You said that the accused Alejandro Tuvilla stabbed Rolando (sic) Javier at that moment several times, how many times if you can remember?

WITNESS:

Many times.

ATTY. GEROCHE:

Could that be four (4) times?

WITNESS:

Only many times.

ATTY. GEROCHE:

And was he able to hit Rolando (sic) Javier?

WITNESS:

Yes, on the chest.

ATTY. GEROCHE:

Now, while Alejandro Tuvilla was stabbing at that moment Rolando (sic) Javier, what was Nelson Alunan doing, if you have seen?

WITNESS:

He was standing.

ATTY. GEROCHE:

How far from Alejandro Tuvilla?

WITNESS:

They were near each other.

ATTY. GEROCHE:

And what happened to Ronaldo Javier immediately after that stabbing action of Alejandro Tuvilla?

WITNESS:

He fell on the grass.

ATTY. GEROCHE:

And what happened after that?

WITNESS?

Nelson Alunan held Ronaldo Javier by the right hand and Alejandro Tuvilla held Ronaldo Javier by the left hand and caused him to stand up.

ATTY. GEROCHE:

Were they able to make him stand?

WITNESS:

Yes, sir.

ATTY. GEROCHE:

And what did they do after that?

WITNESS:

Nelson Alunan stabbed Ronaldo Javier at the back."[14]

x x x x x x x x

The above testimony is worthy of belief. During the course of the trial, Angelita Flores remained grounded on her stand that the appellant was the perpetrator of the crime. The fact that no further evidence was offered by the prosecution is not material to the case. Truth is established not by the quantity of witnesses but by the quality of their testimonies.[15] The testimony of a single witness, if positive and credible, is sufficient to support a conviction even in a charge for murder.[16] Corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation has been inaccurate.[17] Besides, it has been sufficiently explained by the prosecution that because of the suddenness of the incident, the companions of Ronaldo Javier scampered away to safety. Except for Angelita Flores, no one else has witnessed the crime.

This brings us now to a determination of whether the lower court erred in not giving credit to the testimony of herein appellant.

During the trial, appellant denied participation in the crime and testified that his purpose for being at the Orig Restaurant was to eat. It is contended that the lower court erred in finding that the testimony of appellant was intriguing and amazing that with his lowly occupation, he would choose to eat at the Orig Restaurant when eateries abound in Libertad market. The contention is untenable.

The lower court did not categorically declare that appellant's version of the story was unbelievable. Contrarily, the lower court merely stated in its decision that the testimony of the defense is intriguing as the stories narrated are not in accordance with human experience. Be that as it may, the decision of the lower court was not affected by this conclusion as the main factor was the positive testimony given by Angelita Flores.

Thus, the lower court pronounced:

"x x x Intriguing as this may be, the solid evidence against the accused Nelson Alunan and Alejandro Tuvilla is the positive identification made by the eyewitness Angelita Flores, that they were the perpetrators of the crime."[18]

Denial, like alibi, is a weak defense which becomes even weaker in the face of the positive identification of the accused by prosecution witnesses.[19] The accused's denial constituted self-serving negative evidence which can hardly be considered as overcoming a straightforward and credit-worthy eyewitness account.[20] As between positive and categorical testimony which has a ring of truth on one hand and a bare denial on the other, the former is generally held to prevail.[21]

Anent the third assignment of error, appellant's allegation that the lower court committed gross inconsistencies in finding for the existence of conspiracy, has no support in the questioned decision. In fact, the acquittal of accused Larry Tillo proves that the lower court ruled out the existence of conspiracy among all the accused. But this does not necessarily justify an acquittal of even herein appellant Alunan who has been positively identified as one of the assailants. Whether appellant has been motivated by another in committing the crime is of no moment. It is a common doctrine that proof of motive is immaterial when the identity of the appellant has been clearly established.[22]

WHEREFORE, premises considered, the appealed decision is hereby affirmed with the modification that the death indemnity be increased to P50,000.00 in keeping with recent jurisprudential rules.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

- [1] Amended information dated May 28, 1984; Records, pp. 141-143.
- [2] Decision, pp. 22-23; Rollo, pp. 95-96.
- [3] Appellee's Brief dated November 21, 1994; pp. 8-12.
- [4] Resolution dated July 18, 1994; Rollo, p. 153.
- [5] Brief for Appellant Nelson Alunan, p. 2; Rollo, p. 208.
- [6] *People vs. Davatos*, 229 SCRA 647.
- [7] *People vs. Peralta*, 237 SCRA 218.
- [8] *People vs. Abaya*, 185 SCRA 424.
- [9] Decision dated December 19, 1988; Rollo, p. 89.
- [10] TSN dated September 18, 1984; records, p. 81.
- [11] *People vs. Retuta*, 234 SCRA 645.
- [12] TSN dated September 14, 1984, p. 41; Records, p. 95.
- [13] TSN dated September 18, 1984, pp. 12-16.
- [14] TSN dated September 18, 1984, pp. 38-41.
- [15] *People vs. Manalo*, 229 SCRA 479.
- [16] *People vs. Villa*, 221 SCRA 661.
- [17] *People vs. Magpayo*, 226 SCRA 13.
- [18] Decision, p. 17; Rollo, p. 90.
- [19] *People vs. Ompad, Jr.* 233 SCRA 62.
- [20] *People vs. Orehuela*, 232 SCRA 82.
- [21] *People vs. Waggay*, 218 SCRA 743; *People vs. Caballes*, 199 SCRA 87.
- [22] *People vs. Balatucan*, 206 SCRA 81.

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