

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO OSIAS Y MALLARI, AND FERNANDO SANCHEZ Y DE LA CRUZ, ACCUSED. VIRGILIO OSIAS Y MALLARI, APPELLANT.

G.R. No. 88872. July 25, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

In this appeal interposed by Virgilio Osias y Mallari who was convicted in Criminal Case No. 22478, entitled, "People vs. Virgilio Osias y. Mallari, et al.", of the Regional Trial Court (RTC) Branch 124, Kalookan City, he submits that the trial court committed a reversible error in finding him guilty beyond reasonable doubt of the crime of robbery with homicide. He claims that the trial court failed to consider the attendant circumstances, to wit:

I. Ricardo Durana's testimony is weak and full of inconsistencies thereby making his testimony not credible.

II. Ricardo Durana is a paid witness, as such his testimony should not be believed.

III. Ricardo Durana has not positively identified appellant as one of the perpetrators of the criminal act.[1]

He argues that if the foregoing circumstances are taken either singly or collectively, reasonable doubt of his guilt would be created. Moreover, his defense of alibi would be brought to sharper focus. In either case, he should be then absolved of the accusation.

The case had its beginnings at 10 o'clock in the morning of April 25, 1984. Romeo Cuaderno y de la Cruz was riding an easy rider butterfly-type bicycle along J.P. Rizal Street, Kalookan City when suddenly, accused Fernando Sanchez y de la Cruz, nicknamed "Dodo," appeared and tried to grab the bicycle from him. Romeo fell but stood up immediately to prevent his assailant from getting his bicycle. While the two were grappling, the other accused and sole appellant Virgilio Osias y Mallari, nicknamed "Benjie," who was positioned at the back of Romeo, stabbed the latter on the left side of the neck "by making a sway of his right hand upward going downward" with a 6-inch double-bladed knife.

Gaining possession of the bicycle, Dodo and Benjie carried it with them as they ran in the direction of Manila. Meanwhile, Romeo walked towards the Martinez Hospital which was about ten meters away, but collapsed near the gate of the said hospital.

The incident was seen by Ricardo Durana, the sole eyewitness presented by the prosecution, who was standing in front of St. Joseph's Pharmacy on the other side of J.P. Rizal Street, which was about six meters away from the scene of the crime. He had just come out of the pharmacy where he bought a drug called prosteclin; from where he stood he had a full view of the stabbing incident as there was no motor vehicle that passed by at that particular time when it happened.

Romeo Cuaderno, who sustained one wound, died at 10:30 in the morning of April 25, 1984 from shock,

traumatic, due to "a stab wound at the right side of the neck, measuring 5 x 3.5 x 12 cm. deep, lacerating the right jugular vessel, trachea, and the left lung." [2]

On May 24, 1984, an information for robbery with homicide was filed against herein appellant Virgilio Osias and his co-accused Fernando Sanchez y de la Cruz. [3]

It was only on January 1, 1987 that the appellant was arrested. His co-accused, Fernando Sanchez y de la Cruz, was not apprehended, and remains at large up to now as far as the records show.

On January 26, 1987, Virgilio Osias y Mallari entered a plea of not guilty. [4] Thereafter, trial was commenced by Judge Cancio C. Garcia, now Justice of the Court of Appeals, who heard the testimonies of the witnesses for both the prosecution and the defense. Judge Garcia, however, was replaced by Judge Rene Victorino who penned the decision, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, this Court finds the accused VIRGILIO OSIAS y MALLARI guilty beyond reasonable doubt, as principal, of Robbery with Homicide as defined and penalized under paragraph 1 of Article 294 of the Revised Penal Code, as amended, and hereby sentences him to suffer imprisonment of Reclusion Perpetua; to indemnify the heirs of the victim in the amount of P30,000.00 as consequential damages; to return the bicycle, subject-matter of the robbery, and if unable to do so, to pay the value thereof in the amount of P1,000.00, to the legal heirs of the victim and to pay the costs.

The accused shall be credited in the service of his sentence with the full time he has undergone preventive imprisonment pursuant to Article 29 of the Revised Penal Code, as amended, provided the conditions prescribed therein have been complied with.

The case as against accused FERNANDO SANCHEZ y DELA CRUZ is to be archived as he has not yet been apprehended.

SO ORDERED.[5]

The appellant denies having committed such a crime. He sets up the defense of alibi.

The appellant narrated at the trial that on April 25, 1984, he was with his sisters, Patricia, Metring, and Paring, at the family residence at No. 111 B. Santos Street, Isla de San Juan, Kalookan City. They were all busy preparing and cooking coconut jam, for sale, their means of livelihood, from about 6:00 o'clock in the morning up to around 3:00 o'clock in the afternoon. The appellant's role was to remove the coconut meat from the shells. He also helped in the cooking. At around 3:00 o'clock in the afternoon, he went to the public market to buy sweet peanuts to be mixed with the coconut meat. He stayed home the rest of the day.

Luisa Osias, a sister of the appellant, substantially corroborated her brother's testimony.

In this review, we shall resolve the errors allegedly committed by the trial court in the order enumerated above.

I. Ricardo Durana's testimony is weak and full of inconsistencies, thereby making his testimony not credible.

The appellant claims that inasmuch as Durana reported the alleged stabbing incident to the police authorities only six (6) days later--i.e. on May 3, 1984 when he gave a sworn statement to the Kalookan City police--and testified only upon the insistence of the father of the victim who is a neighbor and a family friend, the crime imputed against the appellant is a fabricated one. For this reason, Durana should not be relied upon at all, the appellant contends.

There is no correlation between the credibility of a witness and his belated reporting to the authorities of a crime

he had witnessed. In this case, we see nothing wrong in the behaviour of Durana. As a matter of fact he immediately informed the relatives of the victim of the stabbing incident.[6] The initial reluctance of an eyewitness to a crime to come to the open and get himself involved in a criminal investigation and prosecution is common and understandable, and has been judicially declared as not affecting credibility.[7] Besides, Durana explained satisfactorily that he waited until after the burial of the victim before reporting the incident to the authorities.[8]

Per se a witness who is a neighbor and a family friend of the victim does not inescapably make one a biased witness unworthy of belief. In order to be denigrated as such, there must be extant other factors. For example, motive must be established why the witness falsely testified against the accused. Or the witness has a special interest in the accused's conviction. In this case, the evidence confirms the absence of motive or special interest. In fact, the appellant does not know of any reason why Durana testified against him.[9]

Likewise, the appellant submits that Durana should not be believed at all, especially in his detailed description of the milieu of the incident, where, in the words of the appellant, "everything seemed to be suspended in time and motion, the busy street gave way to allow Durana to vividly witness the commission of the heinous act." [10] We do not agree. Other than this bare assertion, the appellant did not present any evidence demonstrating that the milieu at the time of the incident was otherwise. On the other hand, Durana is categorical and unwavering in his positive eyewitness testimony.

ATTY. PACIS: And there were many passenger jeepneys passing along the road?

WITNESS DURANA: Yes, sir. There were many passenger jeepneys passing by.

Q: And there were also many persons passing to and from along that road?

A: There were, sir.

Q: And there were many customers buying from the said pharmacy?

A: There were about six persons, sir.

Q: So that the traffic was stopped because of this struggling or grappling for the possession of the bicycle between Romeo Cuaderno and Dodo?

A: No, sir, because it happened at the other side of the road.

Q: And so between you, you were located in front of the pharmacy and the two persons grappling for the possession of the bicycle there were passing vehicles?

A: There were, sir.

Q: So that you could not see all the things that happened between these two because your line of vision of your eyes was obstructed by the passing transportation vehicles?

A: No, sir, because when the grappling for the possession of the bicycle occurred I saw it exactly because no vehicle passed by.[11]

We are convinced that the detailed narration of Durana on the milieu of the crime attests to the clarity of his observation and the truthfulness of his account.

Another alleged inconsistency in the testimony of Durana is his account of seeing the appellant standing at the back of the victim and stabbing him only once with a six-inch long double-bladed knife at the left side of the neck by swaying his right hand upward then downward,[12] as against the victim still able to negotiate the 10-meter

distance to the Martinez Hospital.[13] The appellant contends that the physical evidence revealed that the victim sustained one stab wound on the right side of the neck[14] and that according to Dr. Abelardo Lucero, the physician at the Martinez Hospital who had attended to the victim, the assailant was facing the victim with a knife, stabbed him on the neck, and put the knife downward,[15] and that the victim died on the spot.[16]

We are not impressed. We consider such contradictions minor and collateral and as such do not impair the credibility of Durana. We subscribe to the observations of the Solicitor General that it is understandable if the witness is unable to pinpoint exactly where the fatal blow was inflicted, whether on the right or left side of the neck, and not know the relative positions of the malefactors with respect to the victim, considering that the assailants and the victim were grappling for the possession of the bicycle and were therefore in constant motion and changing positions.[17]

Between the opinion of Dr. Lucero that the victim died on the spot and Durana who testified that the victim was still able to walk about 10 meters to the Martinez Hospital, we give credence to the latter. For obvious reason: Durana saw the victim walk to the Martinez hospital.

II. Durana is a paid witness, as such his testimony should not be believed.

The appellant capitalizes on the admission of the father of the victim, Vicente Cuaderno, that he gave Durana P25.00 each day he appeared in court to testify, which could have amounted to P1,000.00,[18] thus rendering his testimony not credible at all.

While we held in a case[19] that the witness, by receiving money from the complainant, morally becomes beholden to the giver, this generalization, nevertheless, must be viewed in its proper perspective. By itself, this giving of money to the witness does not compel outright dismissal of his testimony as incredible or manufactured. Instead, it should be considered as one of the factors in evaluating its probative value. In the case at bar, we believe such admission is an indicium of the truthfulness of the version of the prosecution regarding the killing and robbery. While the father of the victim could have denied outright having given the witness money, he nonetheless admitted it with frankness. And the money received by Durana, as pointed out by the Solicitor General, was relatively meager. Nor was it shown by the appellant that without said amount the witness would not have testified. In *People v. Rafael Lacson, et al.*, decided in 1961,[20] in which it was charged by the appellants that the prosecution witnesses were being supported during the trial by political enemies of the accused, the Court held that assuming that to be true, it was no evidence that for such trifling sums the witnesses would agree to perjure themselves and falsely charge the appellants of a capital offense.[21] We here uphold this doctrine.

III. Ricardo Durana has not positively identified the appellant as one of the perpetrators of the criminal act.

To underscore this contention, the defense cited the declaration of Durana that he only met the appellant twice in his life. The first one occurred at the stabbing and robbery incident he witnessed. And the second time happened on October 28, 1987 when he testified at the trial of this case.[22] Yet Durana in his statement before the Kalookan City Police Station on May 1, 1987 stated that the appellant was the person who stabbed the victim, Romeo Cuaderno.[23] This knowledge, it is argued, is based on the hearsay information Durana acquired from Bonie, the brother of Dodo (co-accused Fernando Sanchez y dela Cruz), who is the witness' friend, that it was Benjie (appellant Virgilio Osias y Mallari) who was Dodo's companion at the time of the incident.[24] Thus, his supposed positive identification as one of the perpetrators of the criminal act is a pure conjecture, the appellant concludes.

This is only half the truth. It is true that Durana testified that he only met the appellant twice. That is, on April 25, 1984, at the incident he witnessed, and on October 28, 1987, when he testified in the trial court. But Durana

likewise declared that he already knew the appellant while still at 9th Avenue.[25]

This apparent contradiction will come into light when viewed from the perspective of the entire testimony of Durana. The clarificatory questions propounded by Judge Cancio upon Durana did seem to exact a heavy toll on Durana's answers, as note the following excerpt from the stenographic notes.

[Judge Cancio asking clarificatory questions]

COURT: Under what circumstances why you came to know the alias of Osias as Benjie?

A: When I met Bonie, sir, the brother of Dodo at about 2:00 o'clock in the afternoon of that day I told him that his brother's companion stabbed somebody and it was then that Bonie told me that the companion of his brother was Benjie.

COURT: But at the time Bonie told you that the companion of his brother Dodo was Benjie you don't know who was this Benjie then?

A: Yes, sir.

COURT: And at the time also you don't know yet the person of Virgilio Osias?

A: Yes, sir.

COURT: In fact, the person you pointed in court as Virgilio Osias to be the same person allegedly you saw stabbed Romeo Cuaderno was unknown to you at the time of the incident? Or do you know him already?

A: I don't know him yet.

COURT: Alright, so Bonie the brother of Dodo told you at about 2:00 o'clock in the afternoon of the incident that the companion of his brother Dodo was a certain Benjie?

A: Yes, sir.[26]

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COURT: Who gave you the name Virgilio Osias?

A: Bonie sir, the brother of Dodo.

COURT: Did you not testify a while ago that what Bonie told you was that the name of that man was Benjie?

A: Yes, sir. What he told me was that he was Benjie.

COURT: And that is what I am asking from you, how did you come to know that this Benjie refer to Virgilio Osias when you don't know Virgilio Osias from then on?

A: Yes, sir, because I saw him only at the time of stabbing.

COURT: But you did not answer my question. My question to you is you admitted that you don't know Virgilio Osias, now how did you come to know that the nickname Benjie which was furnished to you by the brother of Dodo refer to a person whose real name is Virgilio Osias?

A: I just know him by his face, sir.

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COURT: But when you were asked to point to Virgilio Osias you pointed to that man whose name was Virgilio Osias, how did you know that Virgilio Osias is the name of that man?

[Witness could not answer the question][27]

The answers provided by Durana, who is a toy vendor, suggest that he was confused and bewildered and obviously did not understand the questions propounded by Judge Cancio.

However, when Atty. Pacis made further clarification, Durana answered in this tenor:

COURT: When you entered this courtroom before this case was called, Vicente Cuaderno, the father of the deceased pinpointed to you that Benjie is the one Virgilio Osias the accused in this case before you testified in this court now?

A: No, sir, I know him already when we were still at 9th Avenue.[28]

What Durana probably meant was that he already knew the appellant while still at 9th Avenue, but was not quite familiar with him, and from the time he transferred therefrom to 502 Socorro Street, Kalookan City, i.e. his present address, he had not seen the appellant again, save on those two instances. And that Bonie, the brother of Dodo, (co-accused Fernando Sanchez y de la Cruz) who is his friend, told him the real name of the appellant at about 2 o'clock in the afternoon of April 25, 1984, when the two met.

Nevertheless, granting arguendo that Durana lied that he knew the appellant before the stabbing incident, the same does not render false the rest of his testimony.

It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. And it has been aptly said that even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected but such portions thereof deemed worthy of belief may be credited.[29]

The primordial consideration is that the witness was present at the scene of the crime and that he positively identified Virgilio Osias as one of the perpetrators of the crime charged[30]--robbery with homicide.

First, Durana recalled that he was just six meters away from the place where the stabbing and robbery incident took place, and that he had an unobstructed view of the incident because no vehicle passed by when the incident took place.[31]

Second, Durana vividly witnessed the stabbing and robbery incident. His testimony on this matter is positive, clear, and categorical.

[Ricardo Durana on direct examination]

FISCAL RALAR: You said when you saw Dodo taking possession of the bicycle from Romeo Cuaderno, who was with him if there was?

A: There was, sir.

Q: Who was with him during that time?

A: Virgilio Osias, sir.

Q: When you saw Dodo taking possession of the bicycle from Romeo Cuaderno, how far were you?

A: I was about six (6) meters away from them, sir.

Q: What happened when Dodo was taking the bicycle from Romeo Cuaderno?

A: I saw Benjie stab Romeo Cuaderno.

Q: Who is this Benjie you referred to, Mr. Witness?

A: Virgilio Osias, sir (witness pointing to the accused herein whom he earlier identified).[32]

And third, Durana was able to identify positively the appellant, thus:

[Durana on redirect examination]

FISCAL RALAR: May I ask one more question, your Honor. What made you sure that it was Virgilio Osias who was the one who stabbed the deceased Romeo Cuaderno as the person now whom you identified today?

A: Because I got familiar with his face as he and Dodo were carrying the bicycle away.[33]

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[Durana on recross examination]

COURT: x x x My question to you is you admitted that you don't know Virgilio Osias, now how did you come to know that the nickname Benjie which was furnished to you by the brother of Dodo refer to a person whose real name is Virgilio Osias?

A: I just know him by his face, sir.[34]

Perforce the defense of alibi put up by the appellant must fail. As correctly ruled by the trial court:

The defense set up by the accused is one of alibi. It was not established that it was physically impossible for him to have been at the scene of the crime on the date and at the time of the incident. The accused admitted in his testimony that he was at his residence the entire day of April 25, 1984 - the day of the incident. His house, however, is also located at Caloocan City. This being so, his defense cannot be relied upon. (See *People vs. Regato*, 127 SCRA 288).

Moreover, the accused was positively identified by the eyewitness and the other prosecution witnesses. Positive identification by the prosecution witnesses of the accused renders the defense of alibi totally destroyed. (*People vs. Danes*, 131 SCRA 286).[35]

WHEREFORE, the decision appealed from is hereby **AFFIRMED** subject to the modification that the civil indemnity is increased to P50,000.00 in accordance with current jurisprudence. Costs against the appellant.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Appellant's Brief, 7.

[2] Exhibit "B".

[3] Original Record, 1.

[4] *Ibid*, 12.

[5] *Rollo*, 26.

[6] *TSN*, October 28, 1987, 10.

[7] *People v. Delfin, et al.*, L-15230 and L-15979-81, July 31, 1961, 2 SCRA 911.

- [8] TSN, October 28, 1987, 22.
- [9] TSN, November 23, 1987, 6.
- [10] Appellant's Brief, 19.
- [11] TSN, October 28, 1987, 16-17.
- [12] Ibid, 12.
- [13] Ibid, 9.
- [14] Exhs. C, C-1.
- [15] TSN, October 27, 1987, 8.
- [16] Exh. C.
- [17] Appellees Brief, 13.
- [18] TSN, October 29, 1987, 16-17.
- [19] People v. Pampaluna, Justice Makasiar, ponente, L-33805-9, March 31, 1980, 96 SCRA 787, 815.

[20] 1 SCRA 414, 449.

- [21] Cited in People v. Cuadra, No. L-27973, October 23, 1978, 85 SCRA 576, 587.
- [22] TSN, October 28, 1988, 30.
- [23] Ibid.
- [24] Ibid, 25-26.
- [25] Ibid, 30-31.
- [26] Ibid, 25-26.
- [27] Ibid, 30-31.
- [28] Ibid, 31.
- [29] People vs. Mozar, G.R. No. L-33544, July 25, 1984, 130 SCRA 579, citing People vs. Malilos, 24 SCRA 133.
- [30] People vs. Cacho, No. 60990, September 23, 1983, 124 SCRA 671.
- [31] TSN, October 28, 1987, 17.
- [32] Ibid, 5-6.
- [33] Ibid, 28.
- [34] Ibid, 31.
- [35] Decision, Rollo, 25.

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