

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDIE BALLINAS AND ONE (1) JOHN DOE, DEFENDANTS. EDDIE BALLINAS, APPELLANT.

G.R. No. 93300, October 04, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

For the death of Nestor AYTONG, EDDIE Ballinas and one "John Doe" were accused of murder in an information dated March 8, 1988.[1] After trial, Eddie Ballinas was convicted in the decision dated February 28, 1990,[2] and sentenced to suffer the penalty of reclusion perpetua with the accessory penalties provided for by law, to indemnify the heirs of the deceased Nestor Aytong in the sum of Thirty Thousand (P30,000) Pesos, and to pay the costs.[3]

The case against "John Doe" was archived.[4]

The prosecution's evidence reveals the following:

The principal witness, Elpego Mejos, declared that on July 17, 1987 at about 12 o'clock noon, while he was at his house at Salvacion Purok 6-B, Banaybanay, Davao Oriental, Eddie Ballinas arrived in a motorcycle with a companion armed with an armalite rifle backriding with him. Eddie asked for the address of Nestor Aytong. Then the two proceeded to Aytong's house, which was near that of Mejos. Eddie and Aytong engaged in a conversation, after which Eddie and his armed companion left on the same motorcycle.[5]

Again on July 18, 1987, at around 7 o'clock in the evening, Eddie and the same armed companion arrived in a motorcycle at Abundia Aquino's residence which was 30 to 35 meters away from the house of Mejos. Mejos approached the two and asked where they were going, and the armed companion replied, "Just there." The armed companion of Eddie proceeded to walk towards Aytong's house. Shortly after, four gunshots were heard from Aytong's house. Frightened, Mejos hid behind a coconut tree. From his position, he saw the armed companion of Eddie walking towards Eddie, who was waiting in his motorcycle. The duo then zoomed to Cabatan. When Mejos' arrived at Aytong's residence, the latter was dead.[6]

At the trial, Abundia Aquino testified that on July 17, 1987, Eddie, driving a motorcycle with an armed companion riding behind him, arrived at her place noontime of July 17, 1986. Both went to Aytong's house.

Then again, at around 7 o'clock in the evening of July 18, 1987, Eddie, together with the same armed companion, arrived in the same motorcycle in front of Aquino's house. The armed companion alighted and proceeded to Aytong's house, leaving Eddie mounted on the motorcycle the engine of which was turned off.

Thereafter, four gunshots were heard from Aytong's home. On hearing the shots, Eddie started the engine of the motorcycle. The armed companion returned and rode behind Eddie on the motorcycle. Both then sped off to Cabatan. Aquino then went to Aytong's house and found Aytong dead.[7]

Upon investigation, three empty shells of M-16 armalite ammunition were recovered from the scene of the crime.[8] Nestor Aytong sustained four gunshot wounds and died of hypovolemic shock secondary to fatal gunshot wounds.[9]

The appellant proffered the defense of alibi, testifying, thus: On July 17, 1987, he was in his house at Poblacion, Lupon, Davao Oriental the whole day. He never left his residence. On July 18, 1987, he was at the wedding celebration of a Ricky Gabinete in Poblacion, Lupon, Davao Oriental since 9 o'clock in the morning. He returned home at 6 o'clock in the evening, then roasted the head of the lechon he brought home from the wedding, and feasted on it with his neighbors, Felipe Polleros and Cresenciano Benedicto. Their small party lasted till about 11 o'clock at night, after which his neighbors repaired to their respective houses. For his part, he went to sleep.[10]

Cresenciano Benedicto substantially corroborated the recollection of Eddie.[11]

Justiniano Figuracion, Sr., 62 years old, 'a widower, retired public school teacher, and barangay captain of Poblacion, Lupon, Davao Oriental, swore to Eddie's good character and reputation.[12]

In returning its verdict, the trial court relied on the testimonies of Mejos and Aquino in the participation of Eddie in the gunning down of Aytong by his armed companion. It found Eddie guilty of murder on the theory of conspiracy.

In this review, the appellant Eddie Ballinas assigns two errors committed by the trial court, namely: (1) in mistakenly holding that he was positively identified and (2) in admitting Exh. "C".

The accused laments the considerable delay of the prosecution witnesses in identifying him as one of the culprits. He claims it took the witnesses six (6) months and three (3) days—i.e., from July 18, 1987, the date the murder was allegedly committed, to January 21, 1988, the date the prosecution witnesses executed their affidavits implicating him—to pinpoint him as the culprit. In the police blotter and in the investigations conducted by the police authorities, these prosecution witnesses never mentioned, much less insinuated, that they suspected him as one of the assailants. Such conduct, the appellant argues, goes against the grain of common experience, for as held in *People v. Alto*.^[13]

The long continued silence of a witness and his failure to report the commission of the crime to the authorities engender serious doubt as to his motives and render his testimony suspicious.

For this reason, the appellant posits, the trial court should have bestowed scant credence on the testimonies of the People's witnesses, particularly Mejos and Aquino, and instead concur with his version.

Besides, if he was one of the perpetrators of the murder, he could not have attended the wake and burial of Aytong or engaged in conversation with the relatives of the deceased.^[14] Indubitably, his conduct indicates innocence, appellant concludes.

We are not impressed.

The record shows that immediately after the incident. Mejos told the relatives of the deceased, among them Ernesto Aytong, that he had witnessed the killing of Nestor Aytong and that Eddie was the driver of the motorcycle used by the gunman in going to the place where Aytong was killed and in getting away therefrom.^[15]

While it is true that the report of Ernesto Aytong to the police authorities listed the assailants as unknown,^[16] nevertheless, the appellant can not make a mountain out of this molehill, so to speak. For the appellant himself conceded that he was a suspect in the slaying of Aytong.^[17] He was picked up by PFC Alberto Songcuya^[18] from his residence on July 19, 1987, just a day after the killing, and was brought to the police station for questioning. In another instance, on November 19, 1987, he was summoned to appear at the police station relative

to the murder of Aytong. He also disclosed that he was investigated by the police authorities nine times.[19]

Moreover, the records show that the prosecution witnesses, particularly Mejos and Aquino, were investigated by the police authorities a few days after the killing.[20] And this is shown by the fact, as Eddie admitted, that he was picked up and investigated by the police on July 19, 1987, subpoenaed on November 19, 1987, and investigated nine times.

The asseveration, therefore, of the appellant that it took the witnesses six months to identify him is fallacious and without basis.

What stands out is that the affidavits of Mejos and Aquino were executed only on January 21, 1988, or six months after the incident. We are satisfied with the explanation offered by the prosecution. During this period, Eddie (who is a first cousin of the deceased, Eddie's mother and the deceased's father being sister and brother) was given every opportunity to bring, or reveal the whereabouts of, the triggerman to the police authorities.[21]

Basically, the issue on the identification of the accused hinges on the credibility of the witnesses. On this regard, we have held that the credibility of witnesses is the sole province of the trial court. Only when the trial court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, will this Court overturn the findings of the trial court with respect to the credibility of the witnesses.[22] The rationale for this rule is that the trial court has observed the witnesses on the witness stand, and discerned their credibility. Hence, the trial court is in the best position to gauge whether or not the witnesses are telling the truth. In this case, we find that the trial court has not overlooked any fact of substance or value which might affect the result of the case. For the evidence amply demonstrates beyond reasonable doubt that indeed, Eddie was a conspirator in the murder of Nestor Aytong.

Be it noted that the People has established beyond reasonable doubt that the unknown companion of Eddie was the triggerman in the slaying of Nestor Aytong. The defense in this appeal does not assign this as an error.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. While proof of the agreement need not rest on direct evidence, the agreement itself may be inferred from the conduct of the parties, disclosing a common understanding among them with respect to the commission of the offense.[23] Mejos and Aquino's recitals that Eddie was the driver of the motorcycle used in the commission of the crime are eloquent testaments to a conspiracy in the murder of Aytong. They are also proofs of treachery that the malefactors, without warning and with no risk to themselves, snuffed out Aytong's life. As regards the generic aggravating circumstance of the use of motor vehicle, the evidence indeed shows that Eddie, et al. had deliberately availed of a motorcycle in order to consummate and facilitate their dastardly act.[24]

And there is no room for doubt that the two prosecution witnesses, Mejos and Aquino, positively identified the appellant as the same person who drove the motorcycle which carried, on two occasions, the unknown gunman to and from the scene of the crime.

Mejos is a close relative of Eddie (second degree cousin) and is personally known to him. Prior to the incident Mejos even had a short conversation with Eddie. Aquino also personally knows Eddie. She could not be mistaken because she was positioned just five meters away from Eddie when the latter arrived with his backriding armed companion on July 18, 1987 on a motorcycle in front of her house.

Although we have, in other cases, relied on the strength of the charge that witnesses have not actually seen the killing of a victim, we also believe, as in this case, that when circumstantial evidence points only to one or two persons as being the perpetrators of the crime, we can not question the fallibility of that evidence. In the present case, the witnesses pointed only to a lone armed man entering the house of Nestor Aytong, heard four gunshots,

saw the armed man leave the house of Aytong and ride away on the motorcycle of his co-conspirator, and found the victim sprawled dead on the floor. There were no other persons the witnesses could have suspected of killing Aytong. Furthermore, at noontime on July 17, 1987, the day before the killing, the two accused arrived in their neighborhood and Eddie asked from Mejos for the house of the would be victim.

Although the evidence is not clear on what motivated Eddie and his armed companion to kill Aytong, this observation assumes no importance where the culprits have been positively identified. We have held:

At any rate, motive becomes relevant, and its absence may assume determinative significance, only when the accused has not been positively identified, and proof thereof becomes essential only when evidence of commission of the crime is purely circumstantial or is inconclusive. This Court has time and again ruled that lack of motive does not preclude conviction when the crime and the participation of the accused therein are definitely established.[25]

Furthermore, the appellant has not shown why these witnesses should falsely charge him. No iota of evidence has been presented to suggest that there existed any evil motive on the part of the witnesses to implicate the appellant. Nor has it been shown that there was an existing animosity between the appellant and the witnesses sufficient to motivate or impel the latter to perjure themselves. We find no reason therefore for the witnesses to incriminate the appellant other than to tell the truth as they had witnessed it.

[W]here there is no evidence, and nothing to indicate that the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[26]

The fact that Eddie attended the wake and burial of Aytong does not detract from his conspiratorial role in the killing of Aytong. His attendance could have been a camouflage to evade detection of his involvement in the killing of Aytong, or to throw off suspicion from him.

Exh. "C" which reads in full, thus:

19[th] of November, 1987, Acknowledgment Receipt, this is to certify that Eddie Ballinas of Lupon, Davao Oriental, received the amount of P500.00, Philippine currency from Ernesto Aytong Banaybanay, Davao Oriental, purposely to look for the suspect in the person of Rolando Valles.

is inadmissible in evidence, the defense contends, invoking sections 12 and 17, Article III of the Constitution.[*]

We do not agree.

The trial court correctly admitted Exh. "C". Even if Exh. "C" were obtained during the custodial investigation on November 19, 1987, there is nothing in it which suggests confession or admission of the guilt of Eddie in the murder of Aytong. Nor would it incriminate him. We are in accord with the observation of the trial court, thus:

[Moreover], the acknowledgement receipt (Exh. "C") is a silent but eloquent manifestation that herein accused had knowledge of the identity of the gunman. His claim of ignorance of the contents thereof is not convincing on the face of the testimony of policeman Soncuya.[27]

At any rate, the trial court did not consider this piece of evidence in arriving at the verdict of guilt of Eddie of the crime charged.

The trial court correctly dismissed the alibi of the appellant on the face of his identity having been fully established by the prosecution. As a matter of law, positive identification prevails over the plea of alibi.[28] For the plea of alibi to be appreciated, it is not enough to prove that the accused was somewhere else when the crime was committed, but it must likewise be demonstrated that it was physically impossible for him to be present at the

scene of the crime at the time of its commission.[29] The appellant had not proven that it was physically impossible for him to have been at the scene of the crime at the time of its commission, especially because, as the trial court found, the appellant's house was only a ten-minute ride to Aytong's house.

WHEREFORE, the decision appealed from is AFFIRMED, except as to the indemnity which is increased to P50,000.00 pursuant to prevailing jurisprudence.

SO ORDERED.

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

[1] Rollo, 1.

[2] Hon. Ricardo M. Berba, Presiding Judge, RTC Branch 5, Mati, Davao Oriental.

[3] Rollo, 46.

[4] Ibid.

[5] TSN, August 5, 1988, 4-6.

[6] Ibid.

[7] TSN, September 5, 1988, 4-6.

[8] Exhibit I.

[9] Exhibit A.

[10] TSN, December 19, 1989, 35-40.

[11] TSN, December 18, 1989.

[12] TSN, December 19, 1989.

[13] L-18660 and L-18662, November 29, 1968, 26 SCRA 342.

[14] TSN, December 19, 1989, 54-56.

[15] TSN, August 5, 1988, 12.

[16] Exh. 1.

[17] TSN, December 19, 1989, 47.

[18] Exh. 2, Appellants' Brief, 5.

[19] TSN, December 19, 1989, Appellants' Brief, 5.

[20] TSN, August 5, 1988, 14.

[21] Ibid., 15.

[22] People v. Reception, et al., G.R. No. 94127, July 1, 1991; People v. Elizaga, No. L-38272, October 26, 1976, 73 SCRA 524, 529; People v. Dayday, L-20806-7, August 14, 1965, 26 SCRA 342.

[23] Art. 8, Revised Penal Code; People v. de la Cruz, G.R. No. 84714, October 5, 1990; People v. Saavedra, May

18, 1987, 149 SCRA 610.

[24] *People v. Tiongson*, G.R. No. L-31228, October 24, 1972, 47 SCRA 243.

[25] *People v. Leopoldo Traya*, L-48065, January 29, 1987.

[26] *People v. Perez*, G.R. No. 84362, July 7, 1989, 175 SCRA 203, 214, citing *People v. Patog*, 144 SCRA 429 (1985).

[*] Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Sec. 17. No person shall be compelled to be a witness against himself.

[27] *Rollo*, 43.

[28] *People v. Carandang*, 52 SCRA 859 [1973]; *People v. Baringuel*, G.R. Nos. 63753-54, December 21, 1990.

[29] *People v. Dalusag*, 133 SCRA 15 (1984); *People v. Rosario*, 134 SCRA 496 (1985).

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