

LUCINO DIAZ, PETITIONER, VS. HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 98325. August 12, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Lucino Diaz was charged before the Regional Trial Court of Ilagan, Isabela, Br. XVI, of the crime of murder, penalized under Art. 248 of the Revised Penal Code, in an Information filed by the Provincial Fiscal as follows:

"That on or about the 14th day of February, 1978 in the municipality of Ilagan, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the accused Lucino Diaz alias Boy Diaz, with treachery, did then and there willfully, unlawfully, feloniously and criminally assault, attack and shoot one Julius Claraval, with a firearm, hitting him and inflicting a gunshot wound four (4) cm. above the left Cantuss of the upper left passing through the medulla oblongata with three (3) degrees elevation of the trajectory, through and through, which directly caused the death of the said Julius Claraval due to massive hemorrhage secondary to gunshot wound.

"CONTRARY TO LAW." (p. 27, Rollo)

Upon arraignment, Lucino Diaz (hereafter "Diaz") pleaded not guilty. After trial on the merits, he was convicted on April 12, 1989, premised on the testimony of Romeo Ramos (hereafter "Ramos") positively identifying Diaz as the assailant. The dispositive portion of which reads as follows:

"WHEREFORE, the accused Lucino Diaz is found guilty beyond reasonable doubt of the crime of homicide and shall suffer an indeterminate penalty of eight (8) years of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day as maximum, and shall indemnify the heirs of the victim, Julius Claravall, in the amount of P30,000.00, with costs.

"SO ORDERED." (p. 36, Rollo)

On October 31, 1990, the Court of Appeals affirmed in toto the trial court's decision, with costs against petitioner.

On April 4, 1991, the appellate court denied Diaz' motion for reconsideration.

Hence, this petition assailing the appellate court's decision on the following grounds:

"THE CONCLUSIONS AND FINDINGS OF FACTS BY THE RESPONDENT HONORABLE COURT OF APPEALS ARE NOT AMPLY SUPPORTED BY THE EVIDENCE AND FAILED TO CONSIDER MATERIAL FACTS WHICH WOULD LEAD TO A DIFFERENT CONCLUSION LEGALLY ENTITLING THE PETITIONER TO AN ACQUITTAL.

"THUS, PETITIONER INVOKES THE CASE OF MEDINA VS. HON. ASISTIO, G.R. NO. 75450, NOVEMBER 8, 1990 WHEN FINDINGS OF FACTS ARE REVIEWABLE.

"FINDINGS OF FACTS BY THE COURT APPEALS CANNOT BE PASSED UPON AND REVIEWED BY

THE SUPREME COURT IN A PETITION FOR CERTIORARI, EXCEPT IN 10 INSTANCES, SUCH AS WHEN SAID FINDINGS ARE: (a) CONTRARY TO THOSE OF THE TRIAL COURT; (b) CONCLUSIONS WITHOUT CITATION OF SPECIFIC EVIDENCE ON WHICH THEY ARE BASED; (c) PREMISED ON THE SUPPOSED ABSENCE OF EVIDENCE AND IS CONTRADICTED BY THE EVIDENCE ON RECORD." (p. 10, Rollo)

and further amplified as follows:

"1. THE RESPONDENT COURT FAILED TO CONSIDER THE VACILLATING STATEMENTS OF ROMEO RAMOS, ALLEGED LONE EYEWITNESS TO THE SHOOTING OF THE VICTIM WHICH ARE ESSENTIAL TO THE ISSUE AS TO WHETHER OR NOT HE HAD SEEN THE PETITIONER SHOOT THE VICTIM (People vs. Peralta, 67 Phil. 293)

"2. THE HONORABLE COURT OF APPEALS REJECTED WITHOUT REASON THE APPLICABILITY OF THE JURISPRUDENCE LAID DOWN BY THE HONORABLE SUPREME COURT IN THE CASES OF PEOPLE V. DELMENDO, 196 PHIL. 121 AND ALLIED CASES TO THAT (sic) CASE AT BAR THAT THE UNREASONABLE DELAY OR FAILURE TO IDENTIFY THE ACCUSED AT THE EARLIEST OPPORTUNITY CANNOT BE THE BASIS FOR CONVICTION.

"3. THE HONORABLE COURT OF APPEALS FAILED TO CONSIDER THAT ALTHOUGH ALIBI IS A WEAK DEFENSE, STILL IT SHOULD EXAMINE IT WITH THE SAME CARE GIVEN OTHER DEFENSES FOR COURTS SHOULD NOT HARBOR AT ONCE A MENTAL PREJUDICE AGAINST THE DEFENDANT WHO INVOKES THE DEFENSE (People v. Villacorte, L-21860, February 28, 1974).

"4. RESPONDENT COURT OF APPEALS FAILED TO CONSIDER THE DOCTRINE IN PEOPLE V. BELTRAN AND PEOPLE V. LOPEZ."

"5. RESPONDENT COURT (sic) CONCLUSION THAT PETITIONER HAD GONE INTO HIDING IS INCORRECT.

"6. RESPONDENT COURT GRAVELY ERRED IN UPHOLDING THE FINDINGS OF FACT OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES." (pp. 64-65, Rollo)

The facts of the case, as narrated in the Court of Appeals' decision, are as follows:

"On February 14, 1978, at 8:00 o'clock in the evening, Romeo Ramos saw Julius Claravall in his house at Rizal Street, poblacion of Ilagan, Isabela. Julius Claravall invited him to the birthday celebration of Boy Acena in front of the Ilagan Theater, Ilagan, Isabela (Tsn., July 24, 1984, pp. 5-6). At 10:00 o'clock in the evening, they proceeded to the Isabela High School, where a Junior-Senior Promenade was in progress. Romeo Ramos stayed at the gate of the school because his clothes were dirty. After thirty (30) minutes, Julius Claravall emerged from the dance hall and again invited him to watch a dance being held at St. Ferdinand College at Rizal Street (Tsn., August 12, 1984), pp. 8, 37, 41). When they reached the intersection leading to Bagumbayan and St. Ferdinand College, they stopped, stood and watched the people that were passing by. The junction was brightly illuminated from the light coming from a lamp post and a nearby warehouse of Atty. Juanito Chy (Ibid, p. 16, Tsn., October 9, 1984, p. 31). Just then, Fe Diaz, her brother, appellant herein, and another male companion, passed by. Appellant was in Khaki uniform, his shirt displaying an embroidered breastinsignia - 'CIC DIAZ' opposite which was the word 'CONSTABULARY' (Ibid, pp. 12-15, 29). He used to ride on Romeo Ramos' tricycle (Ibid, p. 30). Julius Claravall asked Fe Diaz; 'Puede ba ang sumabay?' (Ibid, p. 10; Tsn., September 20, 1984, pp. 33-35). Fe Diaz did not say anything, but appellant came near Julius Claravall and said: 'Dahan-dahan ka sa pananalita mo' (Ibid, p. 12). Julius remarked that he did not say anything bad and further said: 'Even if you have a gun, do not brag about it.' To this remark, appellant retorted: 'You are very proud, vulva of your mother, 'pulled out his .45 caliber pistol and, at one (1) meter away, shot Julius Claravall, hitting his mouth. Julius Claravall fell forward towards appellant but appellant pushed him,

thereby causing him to hit the ground face upwards. Romeo Ramos, who was three (3) meters away from Julius Claravall, tried to help him, but was stopped by appellant (Tsn., July 24, 1984, pp. 12-15). After appellant warned 'not to meddle or interfere', Romeo fled to the place of one of his friends, Henry Santiago, in Baculod, also a tricycle driver, where he spent the night (Ibid, pp. 20-21).

"At about 11:00 o'clock that evening, Julius Claravall's mother, Carmelita Claravall, was awakened by Dominga Pagalilauan. She informed that her son was fatally shot. Carmelita, together with her husband, Enrique Claravall, rushed to the scene of the shooting, where she found her son with a wound in the face, eyes closed, and without pulse; she concluded that he was dead. Shortly, Ben Ramos, a security guard of the St. Ferdinand College, came up to her and told her that Boy Diaz a PC soldier had shot her son (Ibid, pp. 61-64; Tsn., October 9, 1984, p. 32). The Claravall couple and their nephews, Pablo Claravall and Ernesto Lumabao, placed the cadaver in a butaca and took it home in a push cart (Tsn., October 9, 1984, pp. 32-34). At 7:00 o'clock in the following morning, Romeo Ramos went to the house of Julius Claravall, who was already dead.

"On February 17, 1978 at 2:00 o'clock in the morning, Romeo Ramos gave his statement in writing to the police authorities of Ilagan, Isabela (Ibid., p. 22). On June 12, 1978, he was also investigated by the Philippine Constabulary (Ibid., p. 24), during which investigation he gave a written statement (Exhibits 'B', 'B-1' and 'B-2'; Tsn., July 24, 1984, pp. 24-27).

"Atty. Oscar Abad, NBI Agent 3, responding to a written request dated February 15, 1978 of Emerenciana Claravall, sister of Julius Claravall, for investigative assistance relative to the February 14, 1978 shooting as well as for exhumation and autopsy of her brother's remains, made inquiries with several people in Ilagan, Isabela (Exhibit 'C'); another request, also contained in Exhibit 'C,' caused Dr. Virgilio Germale, a medico-legal officer of the NBI, to exhume and autopsy the (remains) (Tsn., October 9, 1984, pp. 77-82). The NBI physician found out that Julius Claravall suffered a gunshot wound in the left side of the face and an exit wound in the back of the head, probably caused by a .38 caliber gun (Exhibit 'A-1'; Tsn., April 2, 1984, p. 12). On the basis of the interviews and exhumation findings, the NBI referred the case to the then Provincial Fiscal of Isabela for the re-investigation with the end in view of prosecuting appellant. The NBI requested re--investigation because it learned from the local police authorities that a case of murder was filed against Romeo Ramos with the Municipal Court of Ilagan, Isabela. The NBI 'found out Romeo Ramos was not the culprit and that it was this PC soldier Boy Diaz who was the perpetrator' (Ibid., pp. 85-86). The NBI wanted to bring in appellant Lucino Diaz, alias 'Boy Diaz', but despite inquiries made re his whereabouts, he could not be located (Ibid., p. 87)." (pp. 37-39, Rollo)

Diaz disputes his conviction premised solely on Ramos' testimony positively identifying him. He argues that Ramos had earlier admitted at the PC investigation that he was not present at the time the victim, Julius Claravall, was shot (p. 11, Rollo). After the lapse of almost four months from February 14, 1978 or in June, 1978, however, Ramos changed his testimony and informed the authorities that Diaz was the one who had shot Claravall. Diaz, thus, insists that the appellate court should have examined more closely his defense of alibi, and because of his inconsistency, inquired further into Ramos' motive.

The Solicitor General, on the other hand, seeks the outright denial of the petition since Diaz, in effect, seeks a review of the appellate court's findings of facts which is legally possible only in instances where the findings of facts of the appellate court are: a) contrary to those of the trial court; b) conclusions without citation of specific evidence on which they are based; and c) premised on the supposed absence of evidence and are contradicted by the evidence on record (Medina, et al. and Asistio, et al., G.R. No. 75450, November 8, 1990, 191 SCRA 218).

The Solicitor General contends that the present petition does not fall under any of the foregoing instances.

Firstly, the appellate court adopted the same findings of fact as that of the trial court, upholding Ramos' positive identification of Diaz, whom Ramos' recognized as a frequent passenger on his tricycle. The appellate court also

disregarded Diaz' defense of alibi.

Diaz had claimed that it was physically impossible for him to be at the scene of the crime since he was in Santiago, Isabela from 5 p.m. of February 14, 1978, the day of the shooting, up to the following morning, to provide security for the Minister of National Defense, Juan Ponce Enrile, during the latter's campaign in the Interim Batasan elections. The appellate court, however, adopted the trial court's conclusion that, assuming Diaz' presence in Santiago, it was still possible for him to go to Ilagan between 5-8 p.m., since the distance between Santiago and Ilagan can be negotiated in one hour or even less. Also, both courts found that Ramos had no motive for falsely testifying against Diaz. Hence, both courts overruled Diaz' defense of alibi and convicted him based, on his positive identification by Ramos.

In anticipation of a denial of this petition for raising purely questions of fact, Diaz now seeks to convince Us that his petition raises a question of law to merit a review. He disputes Ramos' identification of him by pointing out Ramos' initial admission before the PC investigators that he was not present at the scene of the crime. Then, after the lapse of 117 days or on, June 12, 1978, he revealed the identity of the assailant, in effect, reflecting a flaw in his identification.

We however note with approval the appellate court's acceptance of the explanation for the delay:

"x x x. The heinous shooting of his friend, Julius Claravall, left a deep lasting etch in Romeo Ramos' mind. In the words of the Solicitor General, this eyewitness Romeo Ramos had no more father, mother, brother and sister to confide to. Added to this, the man responsible for this haunting traumatic experience was a PC Soldier and a body guard of a town mayor (People vs. Salcedo, G.R. No. 37080, May 3, 1983; People vs. Malibiran, L-4192, February 27, 1959 and People vs. Santos, L-4189, May 21, 1952)." (p. 40, Rollo)

Ramos' delay, therefore, or hesitancy (which is the more appropriate term) in informing authorities about Diaz as Claravall's assailant does not affect his testimony and his positive identification of Diaz is a valid basis for Diaz' conviction.

We also agree that Diaz' flight has been incontrovertibly established and is therefore evidence of Diaz' guilt. The Solicitor General also stated in this regard:

"As early as October 16, 1978, an order for appellant's arrest was issued (Records, p. 7). On November 16, 1978, the PC/INP of Calamagui, Ilagan, Isabela made a return with the warrant unserved because appellant could not be located at his given address (Records, p. 10). Thus on October 14, 1979, the trial court archived the case since appellant had not yet been arrested (Records, p. 16).

"On November 23, 1983, an alias writ of arrest was issued, and appellant was arrested only sometime in January, 1984 (Records, pp. 18 and 19).

"Thus, respondent Court aptly observed:

'IT is elemental principle of law that flight is evidence of guilt. This was held on one case where the accused surrendered himself only after two years (People vs. Hector L-52787, February 28, 1985; 135 SCRA 113). In the case at bar, the accused-appellant who was a PC soldier could not be arrested or located from as early as October 16, 1978 up to January 1984 (Records, pp. 18-91). For almost six (6) years, accused-appellant was in hiding. The PC could not serve the warrant of arrest. This is incontrovertible evidence.' " (pp. 146-147, Rollo)

ACCORDINGLY, the petition is DENIED.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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