PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO DE LABAJAN @ GADOY, ACCUSED-APPELLANT.

G.R. Nos. 129968-69. October 27, 1999

Ponente: PARDO, J.

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PARDO, J.:

In rejecting this appeal, the Court relies on the time honored doctrine that, "the testimony of a single witness positively identifying the accused as the one who committed the crime, when given in a straightforward and clear cut manner is sufficient to sustain the finding of guilt by the trial court"[1] and "that alibi cannot prevail over the positive testimonies of prosecution witnesses."[2]

In two separate informations for murder and frustrated murder, respectively, Asst. Provincial Prosecutor Tito S. Carpina of Cavite accused Armando De Labajan @ Gadoy as follows:

> Criminal Case No. TG-2425-95
>
> "INFORMATION
>
> "The undersigned 1st Assistant Provincial Prosecutor accuses ARMANDO DE LABAJAN @ GADOY of the crime of FRUSTRATED MURDER, committed as follows:
>
> "That on or about the 10th day of September 1994, at around 8:00 o'clock in the evening at Barangay Luksuhin, Municipality of Silang, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to kill, being then armed with a short unlicensed firearm, and with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously, fire upon and shoot the person of Marites Carpio hitting her on the left forearm, the above-named accused, having thus performed all the acts of execution which should have produced the crime of murder as a consequence thereof but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by reason of the timely and able medical attendance rendered to the said victim which prevented her death, to her damage and prejudice.
>
> "CONTRARY TO LAW."[3]
>
> Criminal Case No. TG-2426-95
>
> "INFORMATION
>
> "The undersigned 1st Assistant Provincial Prosecutor accuses Armando De Labajan @ Gadoy of the crime of MURDER, committed as follows:
>
> "That on or about the 10th day of September 1994, at around 8:00 o'clock in the evening, at Barangay Luksuhin, Municipality of Silang, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, being then armed with a short unlicensed firearm, and with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously, fire upon and shoot the person of one Romeo Miano, Jr., inflicting upon him mortal gunshot wound thereby causing his

subsequent death, to the damage and prejudice of his legal heirs.

"CONTRARY TO LAW"[4]

Upon arraignment accused-appellant pleaded not guilty to both informations and waived his right to a pre-trial conference. The two cases were tried jointly.

A perusal of the records and the transcripts reveals the following events:

On September 10, 1994, at around 8:00 in the evening, Romeo Miano, Jr. and Marites Carpio were inside the house of Evelyn Termo at Luksuhin, Silang, Cavite. At around 11:00 in the evening there was a burst of gunfire, one bullet hit Marites Carpio at the wrist and chest and the other bullet hit Romeo Miano, Jr. also at the chest which caused his instantaneous death.

Marites Carpio, survived the gunshot wounds she sustained, and testified that the shots came from outside the house and that she did not see the person who fired the shots.

Evelyn Termo, the owner of the house, saw accused-appellant Armando De Labajan moved the plastic curtain near their kitchen and thereafter, fired a gun. She was about two to three meters away from the accused when he fired two shots hitting Romeo Miano, Jr., who died on the spot and Marites Carpio who was seriously wounded. Evelyn further stated that the house was illuminated by a "gasera" from inside and also outside. All of them were eating on the floor or "hapag" and when Romeo Miano, Jr. was shot he was standing to get water from the "bangerahan" and when he fell she held him and placed him on her lap.[5]

Accused-appellant Armando De Labajan on the other hand testified that on September 10, 1994, at around 5:00 in the afternoon he and his mother-in-law, Leonarda Tulonghari, went to Roberto Manaor at Luksuhin, Silang Cavite to seek financial assistance to buy medicine for his brother who was in the hospital suffering from a stab wound. From there they went to the house of Mr. Cosme Sierra who later on accompanied them to Barangay Captain Tadio Batino to accompany them to the mayor. The Barangay Captain was not around when they arrived. They waited for a while but when it was already dark, they decided to leave the place and went back to the house of his employer, Mr. Cosme Sierra. They talked for a while outside and he proceeded home at around 7:00 in the evening. After a while they heard gunshots, but they gave no concern, as it was a usual occurrence in their place.[6]

Accused-appellant upon reaching his home ate supper and went to sleep. He was awakened when policemen came and invited him for investigation at the Municipal Building. After the investigation he was brought to jail and was not allowed to go home that same night. It was only the following morning that he was released. After five days, he was again invited by the police for interrogation and was made to sign a document, and was no longer allowed to go home and was detained in jail.[7]

Cosme Sierra, the employer of accused-appellant Armando De Labajan corroborated the latter's testimony that on September 10, 1994, around 4:00 in the afternoon, he met accused-appellant in his house at Luksuhin, Silang, Cavite. The accused-appellant was asking for assistance because his brother was stabbed. He accompanied accused-appellant to the house of the Barangay Captain, Mr. Tadio Batino. It was already past 6:00 in the evening when they left the barangay captain's house. Accused-appellant stayed a while in his house and left at around 7:00 in the evening, and after only two minutes they heard gun shots. He came to know later that the shots came from the hut of his Pareng Antolin, which is approximately around half a kilometer from his house. When he heard the gunshots, accused-appellant was still in front of his house and still within his sight.[8]

The trial court after hearing and considering the testimonies and evidence for both parties ruled that accused-appellant Armando Labajan shot and killed Romeo Miano, Jr. and injured Marites Carpio. The trial court

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gave weight to the credibility of the prosecutions witness Evelyn Termo and discredited the testimony of accused-appellant Armando De Labajan and defense witness Cosme D. Sierra due to inconsistencies.

The trial court in its decision stated:

> "By scrutinizing closely the testimony of defense witness Cosme Sierra, the Court has entertained disturbing questions which created doubt as to the credibility of his testimony. One of these is why in the entire course of his testimony, no mention was made regarding the accused mother-in-law? The accused have maintained that from 4:00 o'clock in the afternoon of September 10, 1994 up to the time that he went home, his mother-in-law was always with him. Another is the fact that from the time the accused left his house up to the time he heard the shots, two minutes have elapsed; that he could still see the accused because the latter has only travelled (sic) a distance of ten (10) meters which his highly incredible.
>
> "Considering also as to what has been said by the accused, the Court opines and so holds that his credibility is questionable to say the least. According to the accused, of the Two Hundred Fifty (P250.00) that was needed to buy medicines for his brother who was confined at the hospital, Two Hundred Pesos was given to him by Berto Manaor. Being Fifty Pesos short of the required amount, instead of going to the hospital to attend to his brother, he just went home to eat and sleep.[9]
>
> x x x x
>
> "Moreover, the Court finds it rather puzzling as to why the accused's mother-in-law whom the accused claimed to be with him all the while and even up to the time that he heard the shots, was not presented as witness to corroborate his story. The Court is therefore of the opinion that the accused version of the incident is a mere fabrication and thus is unworthy of belief."[10]

As to the identity of the assailant, the same is established by the testimony of prosecution witness Evelyn Termo. Said the trial court:

> "x x x The Court finds no cause to doubt the testimony of Termo because the accused is her "compadre" and their houses are near each other. x x x"[11]
>
> "The Court observes that while there is an inconsistency in the testimony of Evelyn Termo as to when she actually saw the accused fire the gun, the Honorable Supreme Court said "Discrepancies in minor details indicate veracity rather than prevarication and only tend to bolster the probative value of such testimony" (People vs. Macasa, 229 SCRA 422). Besides, the alleged inconsistency does not in any way refute the positive identification made by witness Termo that it was the accused Armando De Labajan who shot his victims (People vs. Canceran, 229 SCRA 581)."[12]

Thus, in its decision rendered on March 18, 1997, the trial court found accused-appellant Armando De Labajan guilty beyond reasonable doubt of murder and frustrated murder. The dispositive portion thereof reads:

> "WHEREFORE, the Court hereby finds the accused, ARMANDO DE LABAJAN alias Gadoy, GUILTY beyond reasonable doubt in Criminal Case No. TG-2425-95 for "FRUSTRATED MURDER," and also GUILTY beyond reasonable doubt in Criminal Case No. TG-2426-95 for "MURDER".
>
> "There being no mitigating nor aggravating circumstances, the Court hereby sentences him, in Criminal Case No. TG-2425-95, to suffer an indeterminate penalty of 12 years and 1 day to 14 years, 8 months and 1 day of reclusion temporal and to indemnify Marites Carpio the sum of Five Thousand Pesos (P5,000.00) as actual damages.
>
> "In Criminal Case No. TG-2426-95 for "MURDER" which, under the law (Republic Act No. 7650), is now considered a heinous crime, without any mitigating nor aggravating circumstance attending, the Court hereby sentences him to suffer imprisonment of RECLUSION PERPETUA and to indemnify the heirs of the late

> Romeo Miano, Jr. the sum of Fifty Thousand Pesos (P50,000.00) as moral and compensatory damages."[13]

In an amended decision, the trial court issued the following modification of the judgment rendered on March 18, 1997, thus:

> "However, upon a close reading of the provisions of the indeterminate sentence law as well as Art. 248 of the Revised Penal Code as amended by Republic Act no. 7659, which defines and penalizes the crime of Murder, and Art. 50 of the same law which imposes the proper penalty attached to the crime of Frustrated Murder, this Court realizes that the proper penalty that should have been imposed upon the said accused should have been fixed at eight (8) years and 1 day of prision mayor, as minimum, to 14 years 8 months 1 day of reclusion temporal as maximum, which is the proper range of penalty that is imposable upon the accused, considering that the proper penalty to be imposed upon the accused for the crime to which he was found guilty by the Court in this case, ranges from prision mayor, medium, to reclusion temporal, medium, there being no circumstances proven to modify his criminal liability.
>
> "WHEREFORE, in the light of the foregoing, let the decision of this court dated March 18, 1997 be modified insofar as the penalty previously imposed upon the accused is concerned, i.e. "12 years and one day to 14 years 8 months and 1 day of reclusion temporal" and instead, this court hereby sentences accused to a penalty of imprisonment ranging from 8 years and 1 day of prision mayor, as minimum, to 14 years, 8 months and 1 day of reclusion temporal as maximum."[14]

On March 19, 1997, accused-appellant filed a notice of appeal.

On July 23, 1998, accused–appellant filed with this Court his brief, and raised the following errors committed by the trial court:

> 1. The trial court seriously erred in giving full weight and credence to the testimony of the prosecution witnesses and in disregarding the evidence for the defense.
>
> 2. The trial court gravely erred in convicting accused-appellant of the crimes charged in the information despite insufficiency of proof to prove his guilt beyond reasonable doubt.

According to the accused-appellant, the trial court erred in relying heavily on the testimony of prosecution witness Evelyn Termo, despite the inconsistencies in her testimony and obvious ill feelings towards the accused-appellant, because her nephew Boyet was accused as the one who stabbed the brother of the accused-appellant. He alleged that it was impossible for Evelyn Termo to see who shot the victims because at the time she was preoccupied eating dinner and there was no electricity in their place, thus the darkness would prevent her from seeing the face of the assailant who according to her was outside the house.

However, contrary to the allegations of the accused-appellant, the testimony of Evelyn Termo is credible. First, she does not have any motive to frame up or lie to cause the conviction of accused-appellant. Second, her testimony was given in a straightforward, clear and convincing manner. Third, there were no inconsistencies as alleged by accused-appellant that would lead this Court to believe that Evelyn Termo was lying.

The same however, can not be said of the testimony of accused-appellant. It is very suspicious why his mother-in-law whom he alleged to be with him throughout the day was not presented as a corroborating witness. It is also very unusual if not unnatural for accused-appellant to go home and sleep instead of going to the hospital to see his injured brother, especially so when he was out looking for money to buy the medicine needed for his brother.

Also, during the direct examination of accused-appellant, he gave conflicting testimonies, thus:

> "Court: So, you went to the house of Sierra? You stated that you arrived at the house of Manaor at 5:00 in the

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afternoon?

A: Around that time when I arrived from the hospital.

"Court: But you also stated that you were in the house of Sierra at 4:00 in the afternoon, What is your answer?

A: I am not sure of the time, your Honor. It is hard to calculate.

"Court: What time did you arrive from the hospital?

A: In the afternoon, your honor.

"Court: Which came first, your coming from the hospital or your going to the house of Sierra or the house of Manaor?

A: After arrival from the house of Cosme."[15]

In the case at bar, accused-appellant was only a few meters away from the scene of the crime. His only defense is that he was still in front of the house of Cosme Sierra when they heard the gunshots. However, this Court time and again has ruled that when the accused raised the defense of alibi it is not sufficient to allege that he was at another place at the time of the crime. "An element of a credible alibi, physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places."[16] So, because of the proximity of his whereabouts to the crime scene, it was very possible that accused-appellant was the one who fired the shots. Witness Evelyn Termo positively identified accused-appellant as the one who fired the shots.

is well-settled that where there is no evidence, and nothing to indicate that the principal witness for the prosecution were actuated by any improper motive, the presumption is that they were not so actuated and their testimonies are thus entitled to full faith and credence."[17] "It is doctrinally settled that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination."[18]

We are, therefore, morally convinced that accused-appellant Armando de Labajan @ Gadoy shot and killed Romeo Miano and injured Marites Carpio.

IN VIEW WHEREOF, the Court AFFIRMS in toto the appealed decision and the amended decision of the trial court, except that the award of moral damages is deleted and the compensatory damage is considered as civil indemnity ex-delicto.

With costs against accused-appellant.

SO ORDERED.

Davide, Jr. C.J., (Chairman), Kapunan, and Ynares-Santiago, JJ., concur.

Puno, J., on official business abroad.

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[1] People vs. Villablanca, G. R. No. 89662, October 1, 1999, citing People vs. Asoy, 251 SCRA 682 (1995); People vs. Villanueva, 284 SCRA 501, 509 (1998), citing People vs. De Roxas, 241 SCRA 369 (1995); People vs. Corea, 285 SCRA 679, 689 (1998), citing People vs. Trigo, 174 SCRA 93 (1989).

[2] People vs. Villablanca, supra, People vs. Eleuterio Gargar, G.R. No. 110029-30, December 29, 1998; People

vs. Araneta, G. R. No. 125894, December 11, 1998; People vs. Midtomod, 283 SCRA 395 (1997).

[3] Original Record, p. 23.

[4] Id., at .1.

[5] TSN, August 22, 1995, pp. 7-9.

[6] TSN, October 1, 1996, pp. 5-10.

[7] Id, at pp. 12-14.

[8] TSN, August 20, 1996, pp. 2-8.

[9] Original Records, Decision, pp. 115-116.

[10] Id., at p. 116.

[11] Id., at p. 117.

[12] Id.

[13] Original Records, Decision, p. 118.

[14] Id., Amended Decision, March 21, 1997, pp. 123-124.

[15] TSN, October 1, 1996, pp. 8-9.

[16] People vs. Navales, 266 SCRA 569, 587 (1997), see also People vs. Javier 269 SCRA 181 (1997); People vs. Amaca, 277 SCRA 215 (1997); People vs. Midtimod, 283 SCRA 395.

[17] People vs. Ravanes, 284 SCRA 634 (1998); Naval vs. Panday, 275 SCRA 654 (1997); People vs. Bacalto, 277 SCRA 252 (1997), People vs. Palomar, 278 SCRA 114 (1997).

[18] People vs. Pili, 289 SCRA 181 (1998); People vs. Daranan, 294 SCRA 27 (1998); People vs. Peralta, 283 SCRA 81 (1997); People vs. Santos, 283 SCRA 443 (1997).

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