

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO DE LA CRUZ, ACCUSED-APPELLANT.

G.R. Nos. 71044-45. March 16, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Caloocan City, Branch 123 finding accused RODOLFO DE LA CRUZ guilty of the crime of murder and sentencing him to reclusion perpetua, to indemnify the heirs of the deceased Luisito Apostol the sum of P30,000.00, and to pay the costs.

The accused-appellant with two other persons identified only as "Flory" and "Jojo" were charged in two informations: (1) for Murder and (2) for Frustrated Murder respectively and allegedly committed as follows:

"That on or about the 23[rd] day of September, 1979 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually helping one another, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one Luisito Apostol y Castro hitting the latter on the vital parts of his body, thereby inflicting upon him serious physical injuries which injuries caused his instantaneous death."

"That on or about the 23rd day of September, 1979 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually helping one another, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab one Simplicio de Castro y Rama hitting the latter on the vital parts of his body, thereby inflicting upon him serious physical injuries, thus performing all the acts of execution which would have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the herein accused, that is due to the timely, able and efficient medical attendance rendered to the victim at the V. Luna Memorial Hospital, which prevented his death."

The prosecution's evidence which attributed the killing of Luisito Apostol to herein appellant and established the finding of his guilt was summarized by the lower court as follows:

"xxx [T]hat on September 23, 1979, the deceased Luisito Apostol and his cousin, complainant Simplicio de Castro were at the Blue Heaven Restaurant from 2:30 A.M. up to about 4:30 A.M. drinking beer. Before they left the restaurant, there took place some altercation and throwing of bottles among the employees of the restaurant because Fe Ramos Atienza, a waitress, asked the management for her commission for the drinks she ordered and when they refused, she wanted to leave. The management refused to allow her to leave since it was still early for her to go home. So she started throwing bottles. Luisito Apostol and Simplicio de Castro were not involved in the trouble. They only tried to pacify the waitresses who were throwing bottles at each other. The three accused who were all waiters in the restaurant, likewise, were not involved in the quarrel that took place. They also tried to pacify the quarrelling waitresses (TSN, p. 6 May 22, 1980).

"As a result of this incident Fe Ramos Atienza left with her two customers Apostol and de Castro. After

leaving the place Fe Ramos Atienza and her two companions boarded a passenger jeepney at Sangandaan, Caloocan City, not far from the Blue Heaven Restaurant. The three accused ran after them. While the jeepney was stopped because of the red signal light, the three accused blocked the jeepney, pulled out the three who happened to be the only passengers at the time, and when outside the jeepney Apostol was stabbed and after being mauled, de Castro was also stabbed. The two victims were brought to the Ospital ng Kalookan where Luisito Apostol died on the same day. Simplicio de Castro, being a soldier, was transferred to the V. Luna Hospital after staying two hours at the Ospital ng Kalookan. At the V. Luna Hospital, de Castro was operated on in connection with his stab wounds. He stayed in said hospital for approximately six months. Lt. Col. Carlito Dominguez, the army doctor who operated on him testified that the injury inflicted on de Castro could have caused his death if they had not operated on him."

The lower court acquitted the appellant of the crime of frustrated murder but convicted him on the charge of murder. Judgment was rendered against de la Cruz only, as John Doe alias Flory and Peter Doe alias Jojo remained at large.

The appellant raised the following assignment of errors in this appeal:

I

THAT THE COURT-A-QUO ERRED IN HOLDING THAT THE TESTIMONIES OF PROSECUTION WITNESSES FE RAMOS AND SIMPLICIO DE CASTRO ARE SUFFICIENT TO ATTRIBUTE THE KILLING OF LUISITO APOSTOL TO HEREIN ACCUSED-APPELLANT.

II

THAT THE COURT-A-QUO ERRED IN HOLDING THAT A JUDGMENT OF CONVICTION DESPITE THE ABSOLUTE ABSENCE OF EVIDENCE TO SUPPORT THE SAME (SIC). (p. 1, Appellant's Brief)

The issue raised in the two assigned errors is whether or not the trial court erred in determining the value and credibility of the evidence presented.

We have carefully studied the records of this case and we find no reason to deviate from the well-settled rule that the findings of fact of the trial court and its conclusions regarding the credibility of witnesses are generally accorded high respect by the appellate court in view of its opportunity to examine the demeanor of the witnesses as they testify (*People v. Adones*, G.R. No. 63453, September 24, 1986; *People v. Ramilo*, G.R. No. 52230, December 15, 1986; *People v. Aboga*, G.R. No. 70255, January 29, 1987).

Appellant De la Cruz contends that the testimony of the prosecution witness, Fe Ramos did in fact support his claim of innocence.

Ramos testified:

"Q. In other words, Mrs. Witness, it was Flory and Jojo who ganged upon Luisito?

A. Yes, sir.

xxx

xxx

xxx

"Q.

This Rudy the accused now who is under custody, what exactly did Rudy do in connection with those two

companions of yours?

A.

I did not see anything that he did but he was with the two, sir. (Tsn, p. 8, May 22, 1980)"

De la Cruz then alleges that since the lower court ruled out conspiracy, he could not be held liable for murder on the basis of the above testimony.

Upon a perusal of her entire testimony, it can be gleaned that Ramos did not see the appellant actually stab the victim Apostol. However, such did not automatically support the appellant's claim of innocence as she did in fact corroborate the other prosecution witness' testimony that the appellant was one of those who ganged up on the victim (Tsn, May 22, 1980, p. 4).

The other prosecution witness, Simplicio de Castro was the one who positively identified the appellant.

It is a well established rule that the testimony of a single witness, if positive and credible, is sufficient to support a conviction even in a charge for murder. (People v. Romero, 119 SCRA 234).

The appellant questions the credibility of de Castro by alleging grave material inconsistencies and contradictions in his testimony. He further alleges contradictions in de Castro's testimony vis-a-vis the other prosecution witnesses' testimonies.

This is, however, not the case. As mentioned earlier, de Castro's testimony was corroborated by Ramos rather than contradicted. Both testified to the fact that Jojo, Flory and the appellant de la Cruz ganged up on the victim. Although Ramos testified that she did not see who actually stabbed Apostol such statement does not in any way contradict de Castro's testimony that he saw the appellant stab Apostol.

The appellant then alleges that de Castro could not have given an accurate account of what happened, as at the time of the incident, the latter himself had already sustained nearly fatal wounds.

This is based on the testimony of Dr. Carlito Dominguez, the physician who attended to witness De Castro when he was brought to the hospital. Dominguez testified:

"Q.

If this surgical procedures were not taken by the hospital will this injury cause the death of the patient?

A.

Yes, sir. Possible. (Tsn, p. 4 September 22, 1982).

The contention is without merit. De Castro was still in a condition to discern the things happening around him. Although he already sustained two stab wounds, he did not lose his senses nor his posture; in fact he even had the sense to run away when Ramos shouted for him to run (Tsn, November 19, 1980, p. 21).

Furthermore, Dr. Dominguez testified that when de Castro was brought to him, his physical condition was that "he was conscious, coherent, in other words depressed to normal." (Tsn, September 22, 1982, p. 3).

De la Cruz next questions the fact that de Castro did not mention his name when the latter was asked by Detective Lascano as to who their assailants were, although he knew their names. (Tsn, November 19, 1980, p. 29).

We agree with the Solicitor General that:

"xxx Det. Lascano investigated Simplicio on the very date of the incident, September 23, 1979, when

Simplicio was still in very serious condition that he could only affix his thumbmark instead of his signature (p. 4, tsn., July 18, 1980). Obviously Simplicio was suffering from the stab wounds when he was investigated that it could have blurred his memory. But after he was cured, he positively identified him in open court. There is no motive advanced why Simplicio would concoct such a fabrication. A man not accustomed to open trial could not have falsified and still appear credible to the trial court. The trial court gave him credence because he was telling the truth."

In the case at bar, alibi does not deserve much credit as it was established only by the accused himself. (See *People v. Abigan*, G.R. No. 69674, September 15, 1986).

As correctly pointed out by the court:

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"The Court is not inclined to believe this uncorroborated claim that he stayed behind at the restaurant when the victims were chased outside by the assailants. From testimonies of the witnesses, there were a number of employees of the restaurant, waitresses, waiters or helpers, who were in the restaurant at the time. Anyone of these could have been presented to testify and corroborate the testimony of defendant Rodolfo de la Cruz that he stayed behind. Absence of such corroboration, in the light of the categorical statement of one of the victims, Simplicio de Castro that he saw accused Rodolfo de la Cruz stab Luisito Apostol because there was a lighted post at the place of the incident, (Tsn, p. 8, November 19, 1980) is fatal to the defense."

It is a well-established rule that alibi cannot prevail over positive testimony (*People v. Abigan*, Supra; *People v. Canada*, G.R. No. 63728, September 15, 1986; *People v. Ibal*, G.R. Nos. 66010-12, July 31, 1986).

WHEREFORE, the judgment appealed from is AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Alampay, Paras, Padilla, Bidin, and Cortes, JJ., concur.

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