

THIRD DIVISION

[G.R. No. 140898, September 20, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSE ISHIKAWA AMBA, ACCUSED-APPELLANT.**

DECISION

GONZAGA-REYES, J.:

Accused-appellant Jose Amba (hereafter accused-appellant) seeks the reversal of the Decision^[1] dated August 19, 1999 of the Regional Trial Court, Branch 272 of Marikina City in Criminal Case No. 98-2363-MK entitled "*People of the Philippines vs. Jose Amba, et. al.*" that found him guilty of the complex crime of attempted robbery with homicide.

Originally, accused-appellant and his co-accused Pastor Zamora (hereafter Zamora), who was acquitted by the trial court, were charged with the complex crime of robbery with homicide in an Information that reads:

"The undersigned 3rd Asst. Prov'l Prosecutor accuses JOSE AMBA @ AHMED and PASTOR ZAMORA @ JERRY OBALDO of the crime of Robbery with Homicide, committed as follows:

That on or about the 10th day of February, 1998 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a fan knife, conspiring and confederating together and they mutually helping and aiding one another, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously rob and divest one (1) gold necklace belonging to one Stephanie Sy, to the damage and prejudice of (sic) heirs of Stephanie Sy, that on the occasion and by reason of said robbery one of the accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one Stephanie Sy, thereby inflicting upon the latter stab wounds which directly caused her death.

CONTRARY TO LAW."^[2]

The undisputed facts show that:

On February 10, 1998, around 8 p.m., the victim, Stephanie Sy (hereafter Stephanie), then a 21-year old student of the University of the Philippines, together with her friend and schoolmate, Jennifer Llamas (hereafter Llamas), were on their way home to Marikina City. Tired and hungry, Stephanie and Jennifer decided to have a snack at the Seven-Eleven, a convenience store in Concepcion, Marikina City. After alighting from a jeepney, Stephanie and Llamas proceeded to walk along J.P.

Rizal Street towards Seven-Eleven. As they were about to enter the Seven-Eleven store, a man came out of nowhere and grabbed Stephanie's neck and hand. Stephanie struggled against her attacker and was able to kick him down, but he immediately got up and drew a knife, stabbing Stephanie on the right breast. The man then scampered away and disappeared from the crowd. Bloodied and gasping for breath, Stephanie managed to walk but after several steps, she fell to the ground. Recovering from shock, Llamas rushed to Stephanie's side to help her. Llamas then pleaded to the people around her to bring Stephanie to the hospital. It was at the nearby Amang Rodriguez Hospital that Stephanie was declared dead on arrival.

On March 5, 1998, the police arrested accused-appellant based on the claim of several witnesses that he was the assailant of Stephanie.

Upon arraignment, accused-appellant and Zamora pleaded not guilty. During trial, the prosecution presented documentary evidence and the following witnesses: SPO2 Jaime Gamueda (hereafter SPO2 Gamueda), the police investigator; eyewitnesses Llamas, Carlos Sian III (hereafter Sian), and Nelson Almuete (hereafter Almuete); Dr. Cristina Freyra, the Medico Legal Officer; and Amelita T. Sy, the mother of Stephanie. For the defense, the witnesses were: Brenda Buenaventura, a Marikina City employee detailed with the Public Attorney's Office; SPO2 Gamueda; Police Inspector Virgilio de Jesus, Chief of the Mobile Patrol Division, Marikina City; accused Zamora; Police Superintendent William Martinez Coronado; Jean Ishikawa Amba, sister of accused-appellant and wife of Almuete; accused-appellant, and Sian.

On August 19, 1999, the trial court rendered the assailed judgment, the dispositive portion of which states:

"WHEREFORE, foregoing premises considered, JOSE ISHIKAWA AMBA having been found GUILTY beyond reasonable doubt of having committed the crime of Attempted Robbery with Homicide is hereby sentenced to suffer a penalty of reclusion perpetua, the commission of the crime having been attended with the qualifying aggravating circumstances of treachery and abuse of superior strength and to pay the parents of the victim the amount of P75,000.00 as funeral expenses, the amount of P50,000.00 as indemnity for the death of the victim and P150,000.00 as moral and exemplary damages with cost. However, accused PASTOR ORO ZAMORA is ordered ACQUITTED for failure of the prosecution to present any evidence involving said Pastor Oro Zamora in the commission of the same criminal offense. The Bureau of Corrections, therefore is ordered to effect the immediate release of accused PASTOR ORO ZAMORA unless otherwise held for any other purpose.

SO ORDERED."^[3]

In this appeal, accused-appellant maintains his innocence and raises the following errors that the trial court allegedly committed:

"I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE

CRIME CHARGED AGAINST HIM BASED ON THE CONFLICTING AND INCREDIBLE TESTIMONIES OF THE ALLEGED EYEWITNESSES TO THE CRIME.

II

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF ATTEMPTED ROBBERY WITH HOMICIDE AND APPRECIATING THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND ABUSE OF SUPERIOR STRENGTH AGAINST HIM DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BY THE PROSECUTION BEYOND REASONABLE DOUBT."^[4]

The appeal is without merit.

Accused-appellant mainly contends that the testimonies of Llamas, Sian and Almuete, the three prosecution witnesses who positively identified him as the perpetrator of the crime, should not have been given credence by the trial court. Their testimonies on direct examination and cross-examination are allegedly not credible and convincing.

Accused-appellant claims that Llamas was not sure of her positive identification of accused-appellant until she was shown pictures of the accused-appellant and only after she saw him through a one-way mirror but with no other suspect in the police line-up. Accused-appellant interposes a similar objection to the accuracy of Sian's identification of accused-appellant because Sian was allegedly only able to identify him after a police officer showed Sian several pictures of accused-appellant. As to Almuete, the brother-in-law of accused-appellant, accused-appellant calls our attention to the fact that when Almuete testified, he disowned a sworn statement which accused-appellant claims Almuete executed during the course of the investigation. Accused-appellant believes that Almuete's disavowal of that sworn statement indicates that he is hiding something or has an ulterior motive in testifying against him. The motive, accused-appellant theorizes, is for Almuete to exact revenge on his wife, the sister of accused-appellant. Accused-appellant bases this conclusion on the fact that Almuete testified that his wife separated from him because of this case, but his wife contradicted this claim when she testified that she had long been separated from Almuete even before this case came into existence. Almuete's ulterior motive, according to accused-appellant, must necessarily affect his credibility. Accused-appellant thus insists that since these witnesses are not credible, his defense of alibi should have been accorded greater weight.

The arguments do not persuade.

Accused-appellant anchors this appeal on the issue of credibility. Jurisprudence is clear on this matter, that the issue of credibility is best addressed to the trial court judge who observed first hand the demeanor and deportment of the witnesses. Appellate courts will not disturb the findings on the credibility, or lack of it, accorded by the trial court to the testimony of witnesses, unless it be clearly shown that the trial court had overlooked or disregarded arbitrarily certain facts and circumstances of significance in the case.^[5]

We have carefully reviewed the records of this case, including the transcript of the

testimonial evidence, and we agree with the trial court that the testimony of the prosecution witnesses deserve credence. The prosecution witnesses categorically placed accused-appellant at the scene of the crime and positively identified him as the assailant. As a rule, greater weight is accorded to the positive narration of prosecution witnesses than to the negative testimonies of the defense. More so when the positive and categorical testimony has a ring of truth to it,^[6] as in the case at bar.

The most formidable evidence against accused-appellant is the unequivocal testimony of Llamas that it was accused-appellant who attacked her friend, Stephanie, while they were on their way to Seven-Eleven. During re-direct examination, Llamas reiterated that she was sure it was accused-appellant whom she saw, she testified in this manner:

"Q: Miss witness, during the direct examination, you mentioned and you were asked by this counsel what was the lighting condition and you mentioned that it was not so dark because of the Meralco post. However, you answered in the cross-examination that it was dark, will you please explain what you mean by your answer?

A: It was dimmed (sic) but not totally dark. I saw his left profile (sic) there was a lighted Meralco post several meters from us, sir.

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Q: What made you very sure that the person whom you saw was Amba when you responded to the question of the defense counsel during cross-examination that you were not very sure, will you please explain Miss Witness?

A: During the night itself (sic) I had seen his left side and semi-balding hair, that is enough for me to really pinpoint him sir."
^[7]

As Llamas said, the scene of the crime was sufficiently lighted, enabling her to identify accused-appellant. Taking into account Llamas' entire testimony, we cannot sustain accused-appellant's insinuation that she was conditioned to incriminate him simply because he was the lone suspect in the police line-up. Llamas was consistent and unwavering in saying that accused-appellant was the author of the crime. At most, the photographs of accused-appellant shown to Llamas during investigation and the alleged questionable police line-up merely served to refresh Llamas' memory.

Likewise, we cannot sustain accused-appellant's contention that Sian was only able to identify him because the police officer showed Sian several pictures of accused-appellant. In very clear terms, Sian stated that he recognized the assailant's face^[8] and that it was accused-appellant. Sian testified that he was waiting for a jeepney across J.P. Rizal Street when he saw accused-appellant stab a woman. Accused-appellant then passed by in front of him after the stabbing incident.^[9] Sian's recognition of accused-appellant is credible considering: the place was well lighted;^[10] he was more or less 10 to 15 meters away from crime scene;^[11] and after accused-appellant stabbed the victim, he passed by in front of Sian at a distance of only three arms-length.^[12]