

FIRST DIVISION

[G.R. No. 121204, December 02, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PACIFICO BARELLANO @ "JUNIOR," ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Epifanio Cabales and his friends Simplicio Garong, Benjamin Alico and Jose Dayola were drinking *tuba* in the evening of August 14, 1993 at the side of the auditorium in the middle of Barangay Tigbao, Matalom, Leyte when he was approached from behind and shot at the right side of the head with a .38 (*paltik*) revolver. He fell down on the ground face up. As he lay thus, his assailant fired a second shot which hit him at the right side of his upper lip. Thereafter, the malefactor walked away and then fired a third shot in the air.

For the fatal shooting of Epifanio Cabales, accused Pacifico Barellano @ "*Junior*" was indicted for Murder in an Information^[1] alleging –

That on or about the 14th day of August, 1993, at around 8:45 o'clock in the evening, in the municipality of Matalom, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused employing treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously shot (*sic*) EPIFANIO CABALES with a handgun, particularly a .38 (*paltic*) Revolver which the accused had provided himself for the purpose thereby causing and inflicting upon the victim [a] fatal gunshot wound on his head causing the immediate death of Epifanio Cabales, to the damage of his heirs.

CONTRARY TO LAW.

Upon arraignment, accused, assisted by counsel, pleaded not guilty to the crime charged.^[2] The case then proceeded to trial after which the court *a quo* rendered judgment,^[3] the dispositive portion of which reads:

PREMISES CONSIDERED, the court finds accused, Pacifico Barellano, Jr. guilty for (*sic*) the crime of murder as principal and sentences him to undergo a penalty of *Reclusion Perpetua*, there being no aggravating circumstance attending the commission of the crime, and to indemnify the heirs of the victim P50,000.00 as indemnity; to pay the amount of P6,300.00 as actual damages and P50,000.00 as moral damages, with cost[s].

SO ORDERED.^[4]

Dissatisfied, accused interposed this appeal alleging that –

“1. THE LOWER COURT ERRED IN NOT GIVING DUE COURSE TO THE DEFENSE OF ACCUSED.”

“2. THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT IN THIS CASE.”

The prosecution’s version of the incident is summed thus by the Solicitor General in the People’s brief.^[5]

On August 14, 1993, Felix Timkang went to the market in Barangay Tigbao, Matalom, Leyte to buy household needs. At around 6:30 in the evening, he met his friends Simplicio Garong, Benjamin Alico, Jose Dayola and the victim Epifanio Cabales. They started drinking *tuba* at the side of the auditorium located at the middle of barangay Tigbao, Leyte near the market place.^[6] At about 8:45 p.m., Timkang saw appellant Pacifico “Jun” Barcellano approach the victim from behind and shot the victim. Appellant hit the victim at the right side of his head. The victim fell down on the ground face up. Appellant fired a second shot (*sic*) which hit the victim at the right side of his upper lip. Thereafter, appellant walked away. Then appellant fired a shot in the air.^[7]

On August 15, 1993, Dra. Radegunda Uy conducted an autopsy on the body of the victim Epifanio Cabales and prepared an autopsy report.^[8] According to Dra. Uy, the first gunshot wound which penetrated the skull cavity of the head is fatal. The second gunshot wound which is located in the mouth inside the oral cavity penetrating the cranial fossa and with an exit wound in the middle back portion of the head is also fatal. The cause of death is hypovolemic shock, which means is (*sic*) severe blood loss and severe hemorrhage, secondary to [the] gunshot wound on the head.^[9]

Accused-appellant had a different story to tell. He testified that he is the common law husband of Catalina Lucido who lives in Barangay Tigbao, Matalom, Leyte.^[10] He met Catalina in Cebu City where the latter lived from 1982 to June 1993 and has three (3) children by her.^[11] Catalina returned to Barangay Tigbao, Matalom, Leyte in 1993.^[12] Desirous of seeing his in-laws, he went for the first time to Barangay Tigbao, Matalom, Leyte sometime in November 1992, however, staying there for only one night.^[13] He denied being at the scene of the crime at the time of its commission. He also denied having met Epifanio Cabales, Felicidad Cabales, Fernando Amoto, Felix Timkang, Simplicio Garong or Benjamin Alico on that fateful day.^[14] He testified that at around 2:00 o’clock in the afternoon of August 14, 1993, he was at the house of his parents-in-law.^[15] Together with Guillermo Lucido, his father-in-law, and several companions, they went to Barangay Tigbao, Matalom, Leyte, because it was market day and they went there to bet on the cockfights.^[16] They left Tigbao at around 5:30 p.m. and went home to Sitio Victory, Barangay Tigbao, Matalom, Leyte, where they bought some drinks and had a drinking spree while the others played pool on a billiard table which was at the side of the house of accused-appellant’s father-in-law.^[17] They started drinking at about 6:00 p.m. and

ended at around 1:00 a.m. the next day.^[18] Accused-appellant got so drunk that he fell asleep on a bench near the place where he and his companions were drinking and woke up later at past 6:00 a.m.^[19] After waking up, he went to the house where his wife was living and stayed at Sitio Victory for the entire day of August 15, 1993.^[20] On August 16, 1993, he went together with his father-in-law to Matalom, Leyte because the latter was summoned by the police and investigated on who shot "Anciong" Cabales.^[21]

Accused-appellant's defense is alibi. In insisting on his innocence, he claims that: 1.] the testimony of prosecution witness Felix Timkang which is the only one material from among the testimonial evidence presented, is not corroborated by any witness; 2.] the autopsy report which is a machine copy of the original should not be admitted in evidence despite the admission of said document by accused-appellant's counsel during trial; 3.] Jose Dayola was not presented as a witness, neither did he execute an affidavit regarding the shooting incident; and 4.] the trial court dwelt on the weakness of accused-appellant's defense rather than on the weakness of the prosecution evidence.

No rule in criminal jurisprudence is more settled than that alibi is the weakest of all defenses and should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime.^[22] In other words, alibi can not prevail over the positive identification of the accused by the prosecution witnesses^[23] as in this case.

Assuming *arguendo* that prosecution witness Felix Timkang's testimony is indeed uncorroborated, the alleged singularity of his testimonial declarations does not make them any less credible. The Court has consistently stated, time and again, that the testimony of a single witness, if positive and credible, will suffice to sustain a judgment of conviction even in a charge for murder.^[24] As aptly stated in *People v. Romeo Hillado*:^[25]

"... [W]ell-settled in our jurisprudence is the principle that the testimony of a single witness, if straightforward and categorical, is sufficient to convict.^[26] Thus, the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner.^[27] Witnesses are to be weighed, not numbered.^[28] Evidence is assessed in terms of quality not quantity. Therefore, it is not uncommon to reach a conclusion of guilt on the basis of the testimony of a lone witness. For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number and conviction can still be had on the basis of the credible and positive testimony of a single witness."^[29]

It needs be stressed in this regard that Timkang is no ordinary witness testifying on circumstantial matters. He is an *eyewitness* who positively identified accused-appellant as the malefactor who shot Epifanio Cabales twice:

"Q. Mr. Felix Timkang, could you still remember where were you

on the day of August 14, 1993?

A. I can remember, sir.

Q. Where were you then?

A. In Brgy. Tigbao.

Q. What municipality?

A. Matalom, Leyte.

Q. What were you doing then at Brgy. Tigbao, Matalom, Leyte?

A. I was there to buy what is needed in the house like salted fish, sugar and others.

Q. Would you tell us what was the occasion in your barangay on August 14, 1993?

A. It is market day.

Q. While you were at Brgy. Tigbao, Matalom, Leyte, buying some provisions, what happened next if any?

A. Epifanio was shot.

Q. Prior to the incident did you not meet any friends of yours in the *taboan* or market place?

A. I have (sic).

Q. Who were your friends whom you said you met?

A. Simplicio Garong, Benjamin Alico, Epifanio Cabales and Jose Dayola.

Q. When you meet (sic) with your friends Simplicio Garong, Benjamin Alico, Epifanio Cabales and Jose Dayola, what then did you do if any?

A. We were drinking.

Q. Where did you had (sic) your drink?

A. At the side of the auditorium.

Q. And where is this auditorium particularly located?

A. At the middle of Brgy. Tigbao.

Q. Is this auditorium near to (sic) the *taboan* or market place?

A. Yes, sir.

Q. What kind of drink did you drink?

A. *Tuba*, sir.

- Q. For how long did you have a drink with your friends?
A. We started 6:30 and we finished at 8:45.
- Q. On this length of time from 6:30 to 8:45, was there any unusual incident that happened in the course of your drinking?
A. There was.
- Q. By the way, when you said 6:30, was this in the morning or in the evening?
A. In the evening.
- Q. Will you please tell this Honorable Court what happened?
A. Epifanio was shot.
- Q. When was (*sic*) that shooting incident happened?
A. I don't know what time it was.
- Q. You said you ended your drink[ing] at about 8:45 in the evening. Will you please tell this Court what happened when you were able to end your drink at 8:45?
A. After our drinking spree that was the time that Epifanio was shot.
- Q. Will you please tell this Honorable Court how the incident happened when Epifanio was shot?
A. He was sitting.
- Q. Who was this whom you are referring to was sitting?
A. Epifanio.
- Q. *Did you see the person who shot Epifanio Cabales while he was sitting?*
A. *Yes, sir, I know.*
- Q. *Who was the person who shot Epifanio Cabales?*
A. *Jun.*
- Q. Do you know the real name of Jun?
A. No, sir.
- Q. Why do you know this person named Jun?
A. Because he had been there quite a long time.
- Q. *Could you recognize this person named Jun?*
A. *Yes, sir.*