

## THIRD DIVISION

[ G.R. No. 201584, June 15, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
APOLONIO "TOTONG" AVILA Y ALECANTE, ACCUSED-  
APPELLANT.**

### DECISION

**PEREZ, J.:**

We resolve in this Decision the appeal from the September 13, 2011 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04311. The CA sustained the September 9, 2009 Decision of the Regional Trial Court (RTC), Branch 219 of Quezon City, which found Apolonio "Totong" Avila (accused-appellant) guilty beyond reasonable doubt of murder, and imposed on him the penalty of *reclusion perpetua*.

### The Facts

In an Information<sup>[2]</sup> dated October 23, 2002, the prosecution charged the appellant with the crime of murder, to wit:

"That on or about the 20<sup>th</sup> day of October 2002, in Quezon City, Philippines, the said accused, conspiring, confederating with another person whose true name, identity and whereabouts has not as yet been ascertained and mutually helping each other, with intent to kill, qualified by evident premeditation and treachery, taking advantage of superior strength, did then and there wil[l]fully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one [JANJOY] VASQUEZ Y DAGANATO, by then and there shooting [her] with a gun hitting [her] on the head and stomach, thereby inflicting upon [her] serious and mortal wounds which were the direct and immediate cause of [her] untimely death, to the damage and prejudice of the heirs of said [Janjoy] Vasquez y Daganato.

CONTRARY TO LAW."<sup>[3]</sup>

Upon being arraigned, appellant pleaded NOT GUILTY to the crime charged. Pre-trial conference was terminated on December 12, 2002. Thereafter, trial on the merits ensued.

The prosecution's version of the facts of the case as laid down in the RTC Decision<sup>[4]</sup> and the Appellee's Brief<sup>[5]</sup> is hereby summarized as follows:

On October 20, 2002 at about 7:30 in the evening, Ryan Vasquez, the 9-year-old brother of the victim, returned home after borrowing a guitar next door as instructed by his sister. Ryan was atop the staircase leading

to their house when he saw "Totong" and another man lingering outside their door. Ryan saw the two men peeping inside the house and out of fear of being spotted by Totong and his companion, he hid in a spot by the stairs, which was more or less 8 meters away from where the men were standing.<sup>[6]</sup> While hiding, Ryan saw Totong fire the first shot. The bullet went through the door, hitting his sister [Janjoy] on the right side of her body.<sup>[7]</sup> Totong then kicked the door open and shot [Janjoy] on the head.<sup>[8]</sup> The two men immediately fled the scene. Ryan rushed inside the house and saw his sister lying on the ground bleeding. He hurried to his Ate Milda's nearby house and asked for help. Ryan's Ate Milda and Kuya Ricky brought [Janjoy] to the hospital.

The victim's neighbor and aunt sought to shed light on the whereabouts of accused-appellant before and after the shooting incident. Bryan Hermano, a 19 year old construction worker and neighbor of the Vasquez family, testified that on the same night between the hours of 7 and 8 o'clock in the evening, he was at the basketball court when he overheard Totong talking to his companion, Bong Muslim, about his plan to kill Rovic Vasquez, father of the victim. Unfortunately, before he could warn Rovic Vasquez, he learned that Janjoy was already shot. Jonalyn Vasquez, aunt of the victim, was at home that night and around 7 to 7:30 in the evening, she heard a gun shot coming from the next house. Upon hearing the gun shot, she immediately went outside and saw the accused walking on the pathway between her house and the victim's house. She claimed that no person other than the accused used said pathway after the shooting incident. The father of the victim, Rovic Vasquez, testified as to the funeral and burial expenses incurred by his family. He maintained that he incurred expenses for the burial lot and coffin amounting to P60,000.00 and expenses for food and drinks during the wake amounting to P8,400.00. A handwritten receipt amounting to P113,412.18, showing a breakdown of total expenses was also submitted.

The defense of accused-appellant is one of denial and alibi. His version of the facts as summarized in his Brief<sup>[9]</sup> is hereby adopted as follows:

"Between 11 o'clock to 12 o'clock in the evening of October 20, 2002, Apolonio Avila was inside a room which he rented on that same day at Freedom Park, Batasan Hills, Quezon City. While sleeping, he heard a loud bang at the door and several men forcibly entered. They introduced themselves as policemen and barangay officials further asked him if he was Totong. Avila was then informed that he was a suspect in a crime that took place at the lower part of Batasan and was invited to go to Police Station 6 without being presented a warrant of arrest. Upon arrival thereat, they waited for Rovic Vasquez, the private complainant in the case. At that time, he was not required to give any statement nor was he asked to sign a waiver. When the complainant arrived, he was brought to Camp Karingal to be incarcerated. He was not informed of the reason of his detention and was subjected to inquest proceeding only after three (3) days, on October 23, 2002. He affirmed that he was only renting a room in Freedom Park and was a resident of Santiago, Caloocan City. He confirmed knowing the complainant as he was a '*kababayan*' but he firmly denied knowing a 'Toto Pulis' and 'Boy Muslim'."

Accused-appellant was the sole witness for the defense. On cross-examination, he testified that Rovic Vasquez, father of the victim, was his friend and *kababayan*. He claimed that he has known Rovic for a long time and there was no point in time when their friendship has turned sour even at the time when he was arrested. He also claimed that he only moved to Freedom Park, Batasan Hills, Quezon City because the complainant invited him to their place to rent a room as it would be more convenient for him. Accused-appellant also testified that no weapon search was conducted when he was apprehended, neither was he subjected to a paraffin test.

### **Ruling of the Regional Trial Court**

After trial on the merits, the trial court rendered judgment on September 9, 2009. The trial court found accused-appellant guilty, imposing upon him the penalty of *reclusion perpetua*. The lower court held him liable to the heirs of the victim for P113,412.18 as actual damages; P50,000.00 as civil indemnity for death; and P50,000.00 as moral damages. The dispositive portion of the decision reads:

**"WHEREFORE**, finding the accused **APOLONIO AVILA Y ALECANTE** guilty beyond reasonable doubt of the crime of Murder, he is hereby sentenced to suffer the penalty of Reclusion Perpetua. The accused is likewise ordered to pay the heirs of Jan Joy Vasquez y Daganato the total amount of *TWO HUNDRED THIRTEEN THOUSAND FOUR HUNDRED TWELVE PESOS AND EIGHTEEN CENTAVOS (P213,412.18)*, as civil liability.

SO ORDERED."<sup>[10]</sup>

Aggrieved, the accused sought to reverse the foregoing decision by pointing out the supposed glaring inconsistencies in the testimonies of the prosecution witnesses. The accused argued that Ryan Vasquez could not have witnessed the incident because it was only after he returned from the store that he saw his sister already bleeding. The accused-appellant insists that the eye witness testimony was seriously marred by the admission of Ryan that he only testified upon his mother's instructions. In addition, the accused-appellant dismissed the testimony of Jonalyn Vasquez as implausible, theorizing that his presence near the scene of the crime, as testified by Jonalyn, does not outrightly equate to his guilt. He further argues that his "nonchalance" about the incident certainly appears counterintuitive to how guilty persons normally react after committing a crime. He opined that while criminals often flee the crime scene, he, on the other hand, stayed put and cooperated with the police. Lastly, accused-appellant insists that Bryan Hermano's testimony actually exculpated him as it showed that he was somewhere else at the time of the commission of the crime.

### **Ruling of the Court of Appeals**

The CA found no merit in accused-appellant's arguments. The CA held that contrary to Avila's contention, the testimony of witness Ryan Vasquez was reasonably consistent in spite of his young age. The few dispensable ambiguities in the matter concerning his exact whereabouts at the time he witnessed the shooting was later clarified in his re-direct examination. In his cross-examination, the child became momentarily ambiguous when he stated that he discovered his sister already shot

and bleeding after returning home from the store.<sup>[11]</sup> Nonetheless, the CA found the ambiguities rather circumstantial, if not, completely understandable given that the line of questioning was leading, viz:

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Q: So you went to the store and [bought] something?

A: Yes, Sir.

Q: And later on, after buying that something, you [returned]?

A: Yes, Sir.

Q: And you already discovered that your sister Jan Joy was shot when you [returned] from the store?

A: Yes, Sir.

Q: As a matter of fact, she was bleeding already at the time you [returned]?

A: Yes, Sir.<sup>[12]</sup>

The CA observed that the questions were all answerable by a "yes" and that it is only but natural that the child witness answered in the affirmative. Nonetheless, the witness managed to clarify his earlier statements during the re-direct examination. The witness also cooperated unhesitatingly when he was presented with the pictures of the crime scene. Not only did he identify the pictures, he also described them, in particular, where he hid at the time of the shooting, how he could make out the assailants from where he stood<sup>[13]</sup> and where and how the accused and his companion were positioned shortly before committing the crime.<sup>[14]</sup> The CA maintained that there is nothing in the testimony that may be considered irrevocably flawed. It is not uncommon during the trial that witnesses omit certain details, sometimes inadvertently, in the narration and in the process commit inconsistencies. More than anyone else, a 9-year-old child is susceptible to this.

With regard to Bryan Hermano's testimony, the CA ruled that any ambiguity as to his location between the time he heard of the plot and the time of the shooting was ironed out later in his testimony. Accused-appellant casts doubt on the testimony of Jonalyn Vasquez because it was in conflict with that of Ryan Vasquez's. Jonalyn recounted that she saw accused pass by the pathway between her house and that of the victim's; whereas Ryan initially told the court that accused and his companion rushed out of the scene after shooting the victim. The CA held that the manner of describing the action of the accused after the commission of the crime is generally a matter of observation, and thus, the perception of one witness may differ significantly from that of another's, especially in this case where witnesses were situated in separate locations, allowing them to witness the occurrences from different vantage points. Hence, the perceived contradiction in Jonalyn's testimony and that of Ryan should not be taken to mean that neither of the testimonies was truthful. If at all, the flimsy distinctions in their testimonies should be seen as badges of credibility instead of fabrication.

As for the testimonies of the other witnesses, the CA held that the supposed inconsistencies pointed out by the defense are simply ambiguities that can be deciphered after a more thorough reading. Moreover, the nature of their testimonies does not serve to prejudice the prosecution just because they do not point directly to the accused as the culprit of the crime. The testimonies were presented to shed light on such incidental matters.

The CA affirmed the decision of the RTC and denied the appeal. The dispositive portion of the decision reads:

**"WHEREFORE**, premises considered, the appeal is hereby DISMISSED for lack of merit. Accordingly, the assailed Decision of the Regional Trial Court (RTC) of Quezon City, Branch 219 dated September 9, 2009 is **AFFIRMED** in toto.

SO ORDERED."<sup>[15]</sup>

The case was certified and elevated to this Court by the CA pursuant to Section 13 of Rule 124 of the Revised Rules of Court after it has reviewed and affirmed the decision of the RTC.

### **Our Ruling**

We adopt the CA decision and affirm accused-appellant's conviction. Accused-appellant's contentions are bereft of merit.

#### ***The defense of denial cannot be given more weight over a witness' positive identification***

The CA appropriately did not give credence to accused-appellant's defenses of alibi and denial; more so when it is pitted against the testimony of an eye witness. The child witness in this case positively identified the accused several times during the trial as the person who killed his sister. Such resoluteness cannot be doubted of a child, especially of one of tender age. The testimony of a single witness, when positive and credible, is sufficient to support a conviction even of murder.<sup>[16]</sup> The defense failed to destroy the credibility of the child witness during the questioning. The defense of denial of the accused cannot be given more weight and credence over that of the child's positive identification. It is established jurisprudence that denial cannot prevail over the witnesses' positive identification of the accused-appellant; more so where the defense did not present convincing evidence that it was physically impossible for accused-appellant to have been present at the crime scene at the time of the commission of the crime.<sup>[17]</sup> A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters.<sup>[18]</sup> Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.<sup>[19]</sup>

#### ***Inconsistencies in testimonies with respect to minor details may be disregarded without impairing witness credibility***

As consistently ruled by the Court, the testimony of children of sound mind is likely to be more correct and truthful than that of older persons, so that once established that they have understood the character and nature of an oath, their testimony should be given full credence.<sup>[20]</sup> The trivial inconsistencies in Ryan's eye witness narration of details are understandable, considering the suddenness of the attack, the dreadful scene unfolding before his eyes, and the imperfection of the human memory. It is for this reason that jurisprudence uniformly pronounces that minor