

## SECOND DIVISION

[ G.R. No. 188975, July 05, 2010 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALBERT TEÑOSO Y LOPEZ ALIAS "PAKING" AND EDGARDO COCOTAN ALIAS "PAOT," APPELLANTS.**

### D E C I S I O N

**MENDOZA, J.:**

At bench is an appeal from the March 19, 2009 Decision of the Court of Appeals<sup>[1]</sup> *affirming with modification* the February 7, 2007 Decision<sup>[2]</sup> of the Regional Trial Court, Tayug, Pangasinan, Branch 51. The RTC convicted the accused of the crime of Murder and sentenced both of them to suffer the penalty of *reclusion perpetua* and to indemnify, *in solidum*, the heirs of the victim in the liquidated sum of P300,000.00 as stipulated, and to pay the costs.<sup>[3]</sup>

In addition to what the RTC had imposed, the Court of Appeals ordered the accused to pay the heirs of the victim the amount of P50,000.00 as moral damages.

THE FACTS:

Accused Albert Teñoso and Edgardo Cocotan were charged with the crime of Murder.<sup>[4]</sup> The Information<sup>[5]</sup> indicting them reads:

That on or about March 20, 2004, in the morning, along Ylarde and Zamora St., municipality of San Nicolas, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed and with the use of unlicensed firearm with treachery and evident premeditation, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously shoot ROSITO SAMBRANO @ Jongjong at his back which caused his death, to the damage and prejudice of the heirs of said ROSITO SAMBRANO @ JONG-JONG.

CONTRARY to Article 248 of the Revised Penal Code in relation to Republic Act 8294.

The evidence for the prosecution showed that in the morning of March 20, 2004, Rosito Sambrano, also known as "Jongjong," was asked by Rebecca Saldivar to bring her 6-year-old son, Leoncio Saldivar IV, to Barangay Siblot, San Nicolas, Pangasinan; that Jongjong and Leoncio rode a motorcycle with Leoncio seated in front of Jongjong; that when they were near the public market, a shot was heard and they fell; that Albert Teñoso alias "*Paking*" and Edgardo Cocotan alias "*Paot*"

approached them and held Jongjong by his two arms; that they then mauled him and, later, shot him; and that thereafter, Leoncio reported to his mother saying, *"Mama, Kuya Jongjong (is) already dead. He was killed by Kuya Paot."*<sup>[6]</sup>

In his defense, accused Teñoso admitted that he was in the vicinity when the shooting occurred, but denied any participation therein. He claimed that on that day, he and Paot were summoned by Mayor Christopher Jones Rodrigo to put up a streamer in front of the public market; that at the market, he asked Paot to get a ladder from a fire station about 40 meters away; that later, he heard shouts and saw people running; that he went near the place of the commotion and there he saw Paot fighting with someone he did not know; that the two were grappling for a gun until he heard an explosion followed by successive blasts; that when the two separated, he saw a gun on the pavement, picked it up, boarded a tricycle, and went home; and that he was brought to the police station where he surrendered the gun.<sup>[7]</sup>

On his part, Cocotan asserted that he did not kill Jong Sambrano; that he was hired as a personal driver and security of then Mayor Rodrigo; that at that time, he and Teñoso were asked to hang a streamer at the tricycle terminal; that while on his way to get a ladder from a nearby fire station, a motorcycle driven by Jongjong stopped near him; that they then stared at each other; that he sensed that Jongjong was about to draw a gun from his waistline; that upon seeing this, he immediately held Jongjong's waist causing the latter to fall down from his motorcycle; that as Jongjong attempted to get his gun, he got hold of its nozzle; that when Jongjong pulled the trigger, the bullet hit him on his left toe; and that, thereafter, he heard a shot from behind him and then they got separated from each other.<sup>[8]</sup>

The trial court gave weight to the evidence of the prosecution over that of the defense, and convicted the accused of the crime of Murder in its February 7, 2007 Decision.<sup>[9]</sup>

Aggrieved, the accused appealed the said decision to the Court of Appeals. In the Appellants' Brief,<sup>[10]</sup> the accused prayed for their exoneration anchored on the following:

### **"ASSIGNMENT OF ERRORS**

#### **I**

**THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANTS GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.**

#### **II**

**THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE VERSION OF THE ACCUSED-APPELLANTS AND INSTEAD RELYING HEAVILY ON THE INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.**

### III

**THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT ALBERT TEÑOSO NOTWITHSTANDING THE DUBIOUSNESS OF HIS IDENTIFICATION.**

### IV

**THE COURT A QUO GRAVELY ERRED IN CONSIDERING THE ATTENDANCE OF QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION.**

### V

**THE COURT A QUO GRAVELY ERRED IN FINDING THE PRESENCE OF THE AGGRAVATING CIRCUMSTANCE OF USE OF UNLICENSED FIREARM.**

### VI

**THE COURT A QUO GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANTS CONSPIRED TO COMMIT THE OFFENSE CHARGED.**

### VII

**THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE RESULT OF THE PARAFFIN TEST CONDUCTED ON ACCUSED-APPELLANT ALBERT TEÑOSO.**

### VIII

**THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE VOLUNTARY SURRENDER OF THE FIREARM BY ACCUSED-APPELLANT ALBERT TEÑOSO."<sup>[11]</sup>**

As earlier stated, on March 19, 2009, the Court of Appeals rendered the assailed Decision<sup>[12]</sup> affirming with modification the RTC Decision. It wrote:

We find the appeal bereft of merit.

In the main, accused-appellants anchor their arguments on the credibility of the prosecution's witnesses whose testimonies were replete with discrepancies. They assert that the trial court erred in giving credence to the respective eye-witness accounts of Saldivar IV and Torio alleging that the same were laden with inconsistencies and that the identification given was uncertain and vague. They further contend that the out-of-court identification made by Saldivar IV was suggestive and hence, should be disregarded. They also impute error on the part of the trial court in disregarding the results of the paraffin tests on Teñoso and failure to

present in evidence the firearm allegedly used by them. They contend that the mitigating circumstance should have been appreciated in favor of accused-appellant Teñoso. Lastly, they insist that the trial court erred in considering the qualifying circumstances of treachery, evident premeditation and use of unlicensed firearm since the prosecution failed to prove the same.

We are not persuaded.

On the issue of credibility of a witness, the well-established rule is that the assessment of credibility of the witness is a matter best assigned to the trial court which had the firsthand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct and attitude during cross-examination. Such matters cannot be gathered from a mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry great weight and will be sustained by the appellate court unless the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the outcome of the case. The exception finds no application in the case before Us.

In challenging the reliability of the prosecution witnesses, accused-appellants labor on unfounded and tenuous arguments which will find no approval from this Court. As We see it, the eye-witness accounts of Torio and Saldivar IV were clear and unequivocal in pointing to both accused-appellants as the victim's attackers on the fateful morning of 20 March 2004.

x x x x x x x x x

Accused-appellants cannot also harp on the varying statements of the child-witness with respect to whether he was playing or not before they left their house or the fact that the child-witness did not immediately relate his experience to his mother as soon as he saw her. Being collateral matters, these have no bearing on the commission of the crime and will not render his entire testimony unworthy of belief. As previously held by the Supreme 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 fully understood the character and nature of an oath, their testimony should be given full credence. In the same vein, the perceived contradictions with regard to the estimated distance between the witness and the victim or how far the latter was able to run after the mauling are insignificant details that cannot damage the entirety of Torio's testimony.

Neither will the disparity on the testimony of each witness with respect to the number of shots heard by them, have an effect on the veracity of their eye-witness' accounts considering that they were situated differently from the other. It should be stressed that the same incident, when viewed from different angles or perspectives, may result in different impressions on the part of several witnesses. The circumstances attending the incident may add to the confusion, as in the case at bar,

where the quarry attempted to escape and the policemen all made an effort to detain him. Recollection of a particular happening, especially if it is unquiet or even tumultuous, is at best imperfect but not necessarily perjurious. The narration of the same event by different witnesses cannot be expected to be absolutely symmetrical, with all of them agreeing fully on every detail, as if recorded in their minds with computer accuracy.

Anent Saldivar IV's alleged vague description and out-of-court identification of Teñoso, suffice it to state that whatever perceived vagueness or irregularity there were in the identification of Teñoso had been cured by the subsequent positive identification in court of Teñoso not only by Saldivar IV, despite the attempt of the trial judge to mislead the child witness by pointing to another person, but also by witness Torio. Thus, as previously held by the Supreme Court, the *'inadmissibility of a police line-up identification . . . should not necessarily foreclose the admissibility of an independent in-court identification.'*

Thus, on the face of the categorical and unmistakable identification made by the witnesses for the prosecution, We find that the prosecution was able to establish beyond any tinge of doubt that Teñoso and Cocotan were responsible for the death of Sambrano. In the light of their positive identification and the credible accounts of the events leading to the victim's demise, their respective defenses of denial, cannot overcome his positive identification by the eyewitnesses. A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. This is especially true since We do not find any reason why the Saldivars would involve their 6-year old son in this whole ordeal if not for their earnest effort to attain justice.

Also, the seeming nonchalant actuation of Teñoso in picking-up the gun after the victim was gunned down and the flight of Cocotan to evade arrest, all the more fortify their guilt for the death of Sambrano. Moreover, the fact that Teñoso was found negative for the presence of gunpowder nitrates will not, by itself, prove his innocence. As held in *People v. Manalo*,

"The second assigned error would stress the alleged absence of physical evidence showing that the accused-appellant fired a gun. To this, We need only remark that such circumstance neither proves his innocence as well. In fact, even if he were subjected to a paraffin test and the same yields a negative finding, it cannot be definitely concluded that he had not fired a gun as it is possible for one to fire a gun and yet be negative for the presence of nitrates as when the hands are washed before the test (*People v. Talingdan*, 191 SCRA 333 [1990]; *People v. Roallos*, 113 SCRA 584 [1982]). The Court has even recognized the great possibility that there will be no paraffin traces on the hand if, as in the instant case, the bullet was