

FIRST DIVISION

[G.R. No. 171453, June 18, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL DELPINO, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a petition for review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 01513 affirming, with modification, the Decision^[2] of the Regional Trial Court of Sorsogon, Sorsogon, Branch 52, in Criminal Case No. 3534, entitled "*People of the Philippines v. Manuel Delpino and John Doe.*"

The Information^[3] dated January 26, 1994 charged accused-appellant Manuel Delpino and one John Doe of Murder for the death of Gabriel Lorica y Canon, the accusatory portion of which reads:

That on or about the 16th day of December, 1993, in the municipality of Sorsogon, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a short firearm, with intent to kill and with treachery and evident premeditation, did then and there, willfully, unlawfully, and feloniously, shot one Gabriel Lorica, thereby inflicting upon the latter mortal injury which directly caused his death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.

Upon arraignment on May 10, 1994, the accused pleaded "not guilty" to the crime charged.^[4] The case thereafter proceeded to trial.

The prosecution presented Mark Lorica,^[5] the seven (7)-year old^[6] son of the victim, Marilyn Lorica,^[7] the victim's wife, and Dr. Myrna Listanco,^[8] the Municipal Health Officer of Sorsogon, who conducted an autopsy on the body of the victim. The facts as alleged in the Brief for the appellees filed by the Solicitor General summarized the case as follows:

On December 16, 1993, around 10:00 p.m., Mark Lorica (principal witness) and his father Gabriel (victim) were watching TV inside their house in Sampaloc, Sorsogon, Sorsogon, when they heard a knock at the door (TSN, August 30, 1994, p. 20). The victim asked who was knocking, but no one answered (*Ibid.*). The victim opened the door, and while he was stooping down to get his slippers, Manuel Delpino (appellant), armed with a short firearm, shot him on his neck (*Ibid.*, p. 21). When the victim fell down, appellant approached him and verified whether he was already dead (*Ibid.*, p. 11).

Mark tried to sneak to his aunt's house but failed because the culprit remained at the place. He returned to their house and waited for his mother who was still working at Philocean (*Ibid.*, p. 12). When his mother arrived at 10:00 p.m., he told her about the incident (TSN, February 21, 1996, p. 5).

The family of the victim spent P10,000.00 for his wake, burial and interment.^[9]

On the other hand, the defense presented the accused-appellant^[10] and Oscar Lanuza (Lanuza),^[11] who corroborated his testimony. Their respective testimonies were summarized in the Brief for the Appellant, to wit:

Manuel Delpino denied that he was the one who shot and killed Gabriel Lorica. He testified that on December 16, 1993 at about 10:00 o'clock in the evening, he and Lanuza and Winnie were inside the JB Line Terminal at Magsaysay St., Sorsogon, Sorsogon washing buses. They started washing buses at about 7:00 o'clock in the evening and finished at 1:00 o'clock in the morning. That he did not leave the JB Line Terminal from the start up to the time he finished washing all the buses in the terminal. They washed 18 buses and it took them at least ½ hour to wash one bus.

Oscar Lanuza corroborated the testimony of Manuel Delpino. He further testified that he and the accused worked from 7:00 o'clock in the evening to past 12:00 midnight on December 16, 1993 inside the JB Line Terminal. That Manuel Delpino did not leave the place because he was beside him sleeping and it was a rainy night. He was surprised why Manuel Delpino was implicated in the killing of Gabriel Lorica when he was with him washing JB Line buses that evening of December 16, 1993.^[12]

On March 2, 1998, the trial court rendered a Decision finding the accused-appellant guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused Manuel Delpino guilty beyond reasonable doubt of the crime of Murder and there being no aggravating and mitigating circumstances, hereby sentences the accused to suffer imprisonment of reclusion perpetua and hereby ordered (sic) him to pay the heirs of Gabriel Lorica the amount of P10,000.00 for actual damages incurred during the wake and to indemnify the heirs of Gabriel Lorica the amount of P50,000.00 as civil indemnity without subsidiary imprisonment in case of insolvency and to pay the cost. The accused being a detention prisoner in the service of his sentence his detention shall be fully credited.

SO ORDERED.^[13]

The case, which was elevated by the accused to this Court pursuant to Article VIII, Sec. 5 (d) (2) of the Philippine Constitution,^[14] was transferred to the CA in the Resolution dated October 6, 2004,^[15] conformably with the decision in *People of the*

On December 19, 2005, the CA rendered a Decision^[17] affirming, with modification, the appealed decision. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The assailed decision of the court *a quo* is **AFFIRMED** with the **MODIFICATION** that the accused-appellant is ordered to pay the heirs of the victim Gabriel Lorica the amount of P50,000.00 as moral damages, in addition to the P50,000.00 civil indemnity and P10,000.00 actual damages awarded by the trial court.

Costs against the accused-appellant.

SO ORDERED.^[18]

On February 27, 2006, the CA elevated the records of the case to this Court in view of the accused-appellant's Notice of Appeal^[19] dated January 5, 2006.

In their respective Manifestations,^[20] accused-appellant and the Solicitor General informed the Court that they will no longer file a supplemental brief, apart from their appellant's brief and appellee's brief earlier filed with this Court.

The crucial issue raised by accused-appellant pertains solely to the credibility of the prosecution witnesses, particularly the positive identification of accused-appellant as the assailant as against his defenses of denial and alibi.

Accused-appellant insists that at the time of the incident, he was inside the JB Line Terminal on Magsaysay St., Sorsogon, Sorsogon, washing buses. He testified that he was with Lanuza. The latter also testified in court and corroborated accused-appellant's testimony that they were together that entire evening. The accused-appellant testimony narrated that from 7:00 p.m. until 1:00 a.m., he and Lanuza were busy washing buses at the terminal.^[21] Lanuza further supplied that the accused-appellant did not leave the place as they even slept there.^[22] Accused-appellant contends that since he was able to prove that he was somewhere else at the time of the incident, he should be acquitted of the crime charged.

In refutation of the accused-appellant's arguments, the prosecution asseverates that alibi cannot prevail over the positive identification of the accused-appellant as the culprit. Besides, for the defense of alibi to prosper, it must be so convincing as to preclude any doubt that the accused-appellant could not have been physically present at the crime scene at the time of the incident. The Solicitor General held that the accused-appellant failed to discharge this burden.

As culled from his testimony, accused-appellant was at the JB Line Terminal washing buses on the alleged time and date of the incident. We note, however, that during the trial, it was also established that the said terminal was so near to the victim's house that the distance of the two could be negotiated by walking in ten to twenty minutes. Considering the proximity of the bus terminal to the place of the crime, accused-appellant failed to satisfy the requirement of physical impossibility. We quote the trial court's observation in this regard:

The Court has personal knowledge that the distance from the house of the victim to the JB Lines Terminal can be negotiated by walking in a matter of ten to twenty minutes, granting that they in fact worked in that evening of December 16, 1993 washing buses.^[23]

To establish alibi, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime.^[24] Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places."^[25] In the case at bar, accused appellant failed to satisfy the said requisites, especially the second. It was shown during the trial that it would take the accused ten minutes to walk from the JB Line Terminal to the house of the victim.^[26] Besides, in going home, he would have to pass by the house of the victim.^[27]

Alibi will not prevail if the accused was positively identified by the witness. As here, prosecution witness Mark Lorica readily pointed to the accused-appellant as the one who shot his father. He was candid in his testimony and he was able to pinpoint the accused-appellant in open court, thus:

q: Who is your father, Mark?

a: Gabriel Lorica, sir.

q: Do you know where he is now?

a: Yes, sir.

q: Where is he now at present?

a: He is in the cemetery.

q: Why is he or your father in the cemetery?

a: He is already dead.

q: Do you know the cause of his death?

a: Yes, sir.

q: What was the cause of his death?

a: He was shot.

q: Who shot your father, if you know?

a: Manuel Delpino.

q: When you said Manuel, you are referring to Manuel Delpino the accused in this case?

a: Yes, sir.

q: If he is around, will you be able to identify Manuel Delpino?

a: Yes, sir.

q: Please do so?

a: That person there (witness pointing to a man inside the courtroom who identified himself as Manuel Delpino.)^[28]

The Court has held that a witness is not incompetent to give a testimony simply because he or she is of tender age. The requirements of a child's competence as a witness are: (1) capacity of observation; (2) capacity of recollection; and (3) capacity of communication.^[29] It is the degree of a child's intelligence that determines the child's competence as a witness. If the witness is sufficiently mature to receive correct impressions by his senses, to recollect and narrate intelligently, and to appreciate the moral duty to tell the truth, he is competent^[30] to testify. A minor's testimony will suffice to convict a person accused of a crime so long as it is credible.^[31]

Even during the cross-examination, Mark was unfazed and consistent in his account of the event when his father was shot by accused-appellant, to wit:

ATTY. GABITO:

q: Do you remember what time of day when your father was shot? Was it nighttime or daytime?

a: It was night time.

q: And, in what specific place was your father shot?

a: In the sala of our house.

q: Now, considering that it was nighttime, was your balcony lighted.

a: Yes, sir, it was lighted.

q: What kind of light was your light?

a: A bulb.

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q: You said your father was shot on the balcony, was your father in that balcony before he was shot?

a: While we were watching TV program inside our house, somebody knocked, when he stepped out of the door, he stoop to see who was knocking, when he bend down he was poked with a gun.

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a: And, after that a person suddenly entered, he poked a gun to my father and triggered the gun.

q: Now, who is that person that you saw?

a: Manuel Delpino.

xxx

q: Now, while these things were happening, where were you specifically, in what place of the house were you?

a: I was in the door.

q: And will you demonstrate to us, the nearness of your father to his assailant?