

## SECOND DIVISION

[ G.R. No. 148123, June 30, 2008 ]

**RENE SORIANO @ "RENATO," PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

For review before the Court are the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> dated November 21, 2000 and May 3, 2001, respectively, of the Court of Appeals (CA) in CA G.R. CR No. 21084 which affirmed the Decision<sup>[3]</sup> dated April 17, 1997 of the Regional Trial Court (RTC), Branch 57 in San Carlos City, Pangasinan, finding petitioner Rene Soriano @ "Renato" guilty beyond reasonable doubt of the complex crime of homicide with frustrated homicide, and sentencing him accordingly.

#### The Facts

For the death of Ernesto Amarillo and the serious wounding of Soledad Ferrer, petitioner was charged with homicide and frustrated homicide under the following Information, docketed as Crim. Case No. SCC-2348:

That on or about the 29<sup>th</sup> day of December, 1994, at around 9:30 o'clock in the evening, in San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot Ernesto Amarillo and Soledad Ferrer, thereby inflicting upon Ernesto Amarillo serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said victim x x x; and that as a consequence of the shooting of Soledad Ferrer by said accused, the crime of Homicide would have been produced by reasons of causes independent of the will of the accused and that is due to the timely and able medical attendance rendered to Soledad Ferrer, which prevented her death.

Contrary to Article 249 in relation to Article 250 of the Revised Penal Code.<sup>[4]</sup>

When arraigned on March 28, 1995, petitioner pleaded not guilty to the charge. During trial, the prosecution presented Benjamin Cabansag, a tricycle driver and resident of Pagal, San Carlos City, Pangasinan, who allegedly witnessed the shootings. Benjamin testified that on December 29, 1994, between 9:00 p.m. and 9:30 p.m., he was conversing with Federico Castro and Alfredo Paragas in front of the house of *Kagawad* Cancino in Brgy. Pagal, San Carlos City. At about that time, petitioner, a neighbor of Cancino, arrived and, upon alighting from a tricycle, kicked the gate as he entered his own house. Not long after, petitioner came out with an

armalite rifle in hand, proceeded towards the middle of the road, fired shots upwards for about 15 minutes, and then started harassing passing tricycles. A single motorbike later passed by with the unsuspecting Amarillo and Ferrer on board. According to Benjamin, petitioner fired at and hit the passing duo. Amarillo died on the spot. Also hit and killed was petitioner's brother, Loreto Soriano. Ferrer, on the other hand, survived, but suffered serious injuries which eventually prevented her from testifying at the trial.<sup>[5]</sup> As the CA would later conclude, the injuries Ferrer sustained, consisting of lacerations, contusion, ecchymose, and cerebral laceration, definitely could not have been caused by bullets but must have been logically due to Ferrer's violent fall to the ground.

Roger Doldol, a police investigator, testified seeing, when he arrived at the crime scene, two lifeless bodies sprawled on the side of the road. They were later identified to be those of Amarillo and Loreto. He also testified that Ferrer was one of the victims shot and rushed to the hospital.<sup>[6]</sup> Doldol presented a photograph of Loreto's body behind the gate and testified that, based on the interview he conducted, Loreto was hit while on the side of the street, then pulled by his brother and sister behind the gate and into the family compound.<sup>[7]</sup>

Dr. Rachel Leyva-Uy, who conducted the autopsy on Amarillo's cadaver, declared the gunshot wound on Amarillo's neck to be the most fatal. She explained that, based on the location of the wound and the bullet's points of entry and exit, the fatal bullet came from behind the victim.

Dr. Manuel Austria, testifying on Ferrer's condition, stated that she suffered cerebral ostentation which impaired her learning capabilities and rendered her incapable of testifying at the trial. Lastly, Onofre Ferrer testified shouldering the hospital expenses incurred as a result of his sister Soledad's month long confinement.

Petitioner denied the accusations and presented an alibi. He stated that as 1<sup>st</sup> Lieutenant of the Philippine Army's 48<sup>th</sup> Infantry Battalion, 5<sup>th</sup> Infantry Division, he was at his base station in Camp Boloan, Kalinga, Apayao on the date and time the crime happened. He claimed that he learned of the criminal case against him only on February 2, 1995 when he received a subpoena relative thereto while in the camp. His fellow army officers corroborated his alibi as follows: (1) S/Sgt. Mario Salmos testified being with the petitioner on December 29 and 30, 1994, a fact he distinctly remembered because he was then the Sergeant of the Guard while petitioner was then the officer of the day (OD); (2) Lt. Dominador Tamo testified that he prepared the Guard Detail for December 29, 1994 and petitioner reported for duty on that date; and (3) 1<sup>st</sup> Lt. Prudencio Dimas stated that he personally turned over to petitioner the responsibility as OD on December 29, 1994. The defense adduced in evidence the Guard Detail and the Disposition and Location of Troops--documents in which the name of petitioner appeared as one of those assigned on duty from December 28 to 31, 1994.<sup>[8]</sup>

Petitioner testified that he learned of his brother's demise only on January 3, 1995. He immediately secured a travel order from his commanding officer so he could attend his brother's wake and funeral.<sup>[9]</sup>

Carmen Soriano, a *kagawad* of Brgy. Pagal and the wife of petitioner's uncle, also

took the witness stand for the defense. She testified that the prosecution witness, Benjamin, could not have possibly been at the *situs* of the crime inasmuch as she saw him at the wake of a certain Iling Cabansag in Brgy. Cacaritan, San Carlos City from 8:00 p.m. to 10:00 p.m. on December 29, 1994. In fact, she related that she, Benjamin, and one Ernesto Resuello, Jr., upon learning of the shooting incident, immediately repaired to the scene. And while there, she did not notice, so she claimed, any police officer investigating the incident, albeit investigator Doldol would later testify, on rebuttal, seeing Carmen during the investigation.

Another defense witness, Luciano Soriano, corroborated Carmen's account regarding the presence of Benjamin at the wake of Iling. According to Luciano, Benjamin was at the wake before the 8:00 p.m. gambling.<sup>[10]</sup>

In a bid to further discredit Benjamin, the defense parlayed the existence of bad blood between the Soriano and Cabansag families. In this regard, petitioner testified that Benjamin's brother, Florante, once stoned his house and later challenged him to a gun duel. Petitioner presented the police reports on the twin incidents.<sup>[11]</sup>

On April 17, 1997, the RTC, finding the prosecution's witnesses against petitioner, as accused below, more credible and their accounts more tenable, rendered judgment convicting petitioner of the complex crime of homicide with frustrated homicide. The *fallo* of the judgment reads:

WHEREFORE, in the light of the foregoing, the Court finds the accused, Rene Soriano guilty beyond reasonable doubt with crime charged, and Homicide being the graver offense, the accused is hereby sentenced to an Indeterminate prison terms of six (6) years and one (1) day of prison mayor, as minimum to twelve (12) years and one (1) day of reclusion temporal, as maximum, and to indemnify the heirs of Ernesto Amarillo and Soledad Ferrer in the amount of Fifty Thousand Pesos (P50,000.00) and Twenty Thousand Pesos (P20,000.00) respectively as civil indemnity, and to pay the costs.<sup>[12]</sup>

### **Ruling of the CA**

Even as he reiterated his main defense and invited attention to the testimonies of his fellow army officers supporting his alibi, petitioner, on appeal, impugned Benjamin's credibility as witness, tagging the latter's stated reaction during and shortly after the alleged shooting rampage as incredible and unnatural. Benjamin's reaction referred to consisted of his not hiding for safety during the shooting incident or telling anyone later in the wake about it. Petitioner further dismissed Benjamin's testimony as inconsistent with the physical evidence because the entry and exit points of the bullet found in Amarillo's body show that the firing position is not angular, contrary to Benjamin's testimony.<sup>[13]</sup> Petitioner also scored the prosecution for not calling to testify witnesses who were in a position to corroborate Benjamin's purported eyewitness account, specifically the persons Benjamin was allegedly conversing with shortly before the shooting.

As stated at the threshold hereof, the CA, in the herein assailed Decision dated November 21, 2000, as reiterated in a Resolution of May 3, 2001, dismissed

petitioner's appeal and effectively affirmed his conviction of the complex crime of homicide with frustrated homicide.<sup>[14]</sup> Thus, we have this petition.

### **Petitioner's Sole Issue**

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT CONVICTING HEREIN PETITIONER DESPITE THE MISERABLE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Essentially, petitioner faults the appellate court for making much, as did the trial court, of Benjamin's testimony as basis of its judgment of conviction, petitioner's well-founded alibi notwithstanding.

### **The Court's Ruling**

The conviction is **AFFIRMED**.

Petitioner relies on (1) his alibi and (2) the weakness of the prosecution's evidence as bases for his acquittal.

We are not persuaded.

As a rule, alibi is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable but also because it can easily be fabricated.<sup>[15]</sup> For alibi to prosper, the accused must satisfactorily prove (1) that he was somewhere else when the crime was committed and (2) that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.<sup>[16]</sup> In this case, petitioner alleged being in Camp Boloan, Kalinga, Apayao on the fateful night in question. Assuming the veracity of this allegation, it would still be not impossible for petitioner to leave the base camp and travel to and arrive in San Carlos City at about 9:30 p.m. of December 29, 1994.

Petitioner's reliance on the presumptive regularity of official functions to support his alibi, pointing to the official documents and testimony of his fellow officers regarding his presence in Camp Boloan on the night of the shooting, is misplaced. The presumption leaned on is disputable and can be overcome, as it had been overcome, by evidence to the contrary, which, in this case, is Benjamin's testimony that he saw petitioner in San Carlos City alight from a tricycle on the night of December 29, 1994. While petitioner's fellow officers also testified on his presence in Camp Boloan at about the same time, the Court is more inclined to accept the trial court's appreciation of the testimony of Benjamin and the weight it gave to such testimony as against those of the defense witnesses. We quote the pertinent portions of the trial court's sound holding:

As to the documents presented by the accused supporting his theory that he was in Kalinga Apayao, the Court cannot accord its reliance on the same because alibi cannot prevail over the positive identification of prosecution eyewitness. The facility which the accused can secure documents to bolster his claim that he was not present at the scene of the crime cannot be denied considering that the sources of such

documents are his fellow soldiers many of whom are his subordinates. Even assuming arguendo that the said documents are real, in the face of the clear and positive testimony of the prosecution witness regarding the participation of the accused in the crime, the accused's alibi dwindles into [nothing]. x x x However, in the case at bar, the eyewitness pointing to the herein accused as the author of the crime has positively and in a straightforward manner identified the accused as the one who committed the crime charged.<sup>[17]</sup>

Citing the RTC's Decision, the CA rejected the soldiers' testimony to prop up petitioner's defense of alibi, thus:

While it may be true that the witnesses who testified on the whereabouts of the accused are not related to him by blood, they belong to a group of men where loyalty and obedience are the first order. How many battles have been fought with a man in uniform sacrificing his own dear life just to save a brother in arms? Sadly to say, the seeming formidable defense of alibi is [dwarfed] by the positive identification of the accused by an eyewitness whose candid and straightforward account on what transpired on December 29, 1994 the defense failed to shatter.<sup>[18]</sup>

Against positive evidence, alibi becomes most unsatisfactory. Alibi cannot prevail over the positive identification of a credible witness. In this case, Benjamin testified that he saw Soriano on a shooting spree on December 29, 1994, as follows:

Atty. M. Ramos (Q). Sometimes on December 29, 1994 about 9:00 to 9:30 o'clock in the evening do you remember where you were?

[Benjamin] Cabansag (A). Yes, sir.

x x x x

Q. Kindly inform this Honorable Court?

A. I was in front of the house of Kagawad Cancino, sir.

Q. Did [you] have any companion at that time when you were in front of the house of Kagawad Cancino?

A. Yes, sir.

Q. Who were your companion[s] at that time?

A. I was with Federico Castro, Alfredo Paragas and no more, sir.

Q. And what were you doing there at that time in the company of Alfredo Paragas and the other person you have just mentioned?

A. We were just stand by, sir.

x x x x

Q. While you were there together with Mr. Paragas and Mr. Castro, do you remember if there was any unusual thing that happened at that date and time?

A. Yes, sir.

Q. What was that incident about?

A. When Rene Soriano alighted from the tricycle and kicked their gate, sir.

x x x x

Q. Now after kicking the gate of their house, what did Rene Soriano do after that?

A. He got a gun, sir.

Q. From where did Rene Soriano get the gun?