

FIRST DIVISION

[G.R. NO. 147996, September 30, 2005]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BAYANI ROMA,
APPELLANT.**

DECISION

AZCUNA, J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the decision^[1] of the Court of Appeals in CA-G.R. CR No. 22947, which affirmed with modifications the decision^[2] of the Regional Trial Court of Cebu City, Branch XX, finding appellant, Bayani Roma, guilty of murder.

On May 20, 1991, an information for murder was filed against Bayani Roma, Edwin Galeon, "Bating" and "Bitoy," as follows:

That on or about the 13th day of April, 1991, about 11:30 o'clock in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with handguns, conniving, confederating and mutually helping with one another, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly and unexpectedly fire shots at one Garland Egos, hitting him on the vital parts of his body, thereby inflicting upon him the following physical injuries:

"GUNSHOT WOUNDS, MULTIPLE, HEAD, FACE AND RIGHT LOWER EXTREMITY"

as a consequence of which, said Garland Egos died almost instantaneously.

CONTRARY TO LAW.^[3]

On October 12, 1994, appellant pleaded not guilty to the crime charged. Since his co-accused were at large, they were not arraigned.^[4]

Trial proceeded in due course. The prosecution presented four witnesses, namely, Dr. Jesus P. Cerna, Antonio Montilla, Stephen Egos and Nicasio Egos. Their testimonies were for the purpose of showing that appellant was one of the assailants who shot and killed the victim, Garland Egos.

Dr. Jesus P. Cerna testified that he performed a post-mortem examination on the body of Garland Egos. His examination revealed that the victim had abrasions on several parts of his body and sustained four gunshot wounds, as follows: gunshot wound number one was located on the right temporal region, above the right part of

the head, in front of the forehead; gunshot wound number two was located at the right part of the face known as the zygomatic area; gunshot wound number three was found on the right thigh; and gunshot wound number four was located above the right knee. He recovered three slugs from the body of Garland Egos. He identified the post-mortem examination report in open court. The report stated that the cause of death was shock secondary to multiple gunshot wounds.^[5]

Antonio Montilla testified that he knew both the victim and appellant, since they were neighbors. At about 11:30 p.m. of April 13, 1991, he was standing outside the San Antonio de Padua Chapel in Lorega, San Miguel, Cebu City, right beside a fenced in area where a benefit dance was going on. He heard someone shout, "Watch out." At that exact moment, just two meters away from him, he saw Edwin Galeon shoot Garland Egos twice, which caused the latter to fall to the ground. Immediately after that, Bitoy and appellant fired one shot each at the victim successively as he was lying on the ground. He could positively identify Bitoy and appellant since the place was well lit and his view was unobstructed because most of the people had run away after the first two shots were fired by Galeon.^[6]

The third witness for the prosecution was Stephen Egos. He is the younger brother of the victim. He testified that on April 13, 1991 at past 11 p.m. he was at a dance hall in Lorega, San Miguel with his friends. His testimony corroborated that of Antonio Montilla. He added that after Galeon fired the second shot, Bating pointed a gun at him and said, "If you are going to help, I will break your head." This prevented him from helping his brother. After that, with the victim already lying on the ground, Bitoy and appellant fired one shot each at the victim successively. Then, appellant shouted, "No one should come near; if you come, you will die."^[7]

The last witness for the prosecution was Nicasio Egos, who is the father of the victim. He testified that the vigil, which lasted 14 days, and the burial cost him a total of P61,000. He also claimed for moral damages for the death of his son in the amount of P100,000.^[8]

The defense presented three witnesses, namely, appellant Bayani Roma, Celedonio Gucor and Maria Sentillas. Their testimonies were for the purpose of proving that appellant was not involved in the killing of Garland Egos because he was not at the scene of the crime at the time the shooting took place.

Celedonio Gucor is the boyfriend of Edna Roma, who is the sister of appellant. Gucor testified that in the evening of April 13, 1991, the parents of Bayani Roma requested him to look for Bayani so that he could take his supper. At around 10:45 p.m., Gucor and Edna Roma went to look for appellant in the basketball court, where the benefit dance was being held, which was near the chapel. They searched for over an hour but failed to find appellant. He suddenly heard a gunshot and looked in the direction of the gunshot and saw someone he didn't know fire a shot at the victim. After that, he saw Bating and Bitoy shoot the victim, who was already on the ground.^[9]

The second witness for the defense is appellant himself, who raised the defense of alibi and denied participation in the shooting of Garland Egos. To prove his defense of alibi, he testified that he and Maria Sentillas went to the dance at 9 p.m. He claimed that he had a conversation with the victim for about 10 minutes before

leaving the place of the dance to bring Maria Sentillas home at around 10 p.m. After bringing Sentillas home, he proceeded to a drinking spree at a store that was near the house of Sentillas and far from the site of the shooting. He remained there until 2 a.m.^[10]

The final witness for the defense was Maria Sentillas. She corroborated the testimony of appellant. She said that appellant accompanied her to her house and stayed there up to 10:30 p.m. A certain Cadie Camacho invited appellant for a drinking session at a nearby store. When she slept at around 12:15 a.m., the drinking session was still on-going.

In its decision, promulgated on December 3, 1998, the trial court found appellant guilty and decreed as follows:

WHEREFORE, in view of the foregoing considerations, the Court is constrained to convict co-accused Bayani Roma beyond reasonable doubt for the crime of Murder as charged in the Information, and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment of from *Prision Mayor* in its maximum period to *Reclusion Temporal* or from Ten (10) Years and One (1) Day to Twenty (20) Years including the accessory penalties provided for by law.

Co-accused Bayani Roma is likewise hereby ordered to indemnify the heirs of victim Garland Egos the amount of Fifty Thousand Pesos (P50,000.00) for moral damages and Ten Thousand Pesos (P10,000.00) burial expenses.

Bayani Roma is hereby credited with the full period of his preventive imprisonment, if he had agreed in writing to abide by the rules imposed upon convicted prisoners, otherwise only 4/5 thereof.

The case versus the three accused is hereby archived and let an alias warrant issue against them.

SO ORDERED.^[11]

Appellant questioned the decision of the trial court with the Court of Appeals, raising the following issues:

I

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES PARTICULARLY ANTONIO MONTILLA AND STEPHEN EGOS AND COMPLETELY DISREGARDED THE TESTIMONY OF THE DEFENSE WITNESSES THAT THE ACCUSED-APPELLANT WAS NOT INVOLVED IN THE KILLING.

II

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT WAS INVOLVED IN THE KILLING THE TRIAL COURT ERRED IN FINDING THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PREMEDITATION.

The Court of Appeals affirmed the trial court's decision, with modifications, as follows:

The trial court judiciously exercised its discretion in giving full weight and credence to the testimonies of the prosecution witnesses. The submissions of the accused-appellant do not merit consideration.

Firstly, the portion of Montilla's testimony quoted by accused-appellant in his brief seeking to establish the alleged ill-motive of the said witness to testify against him is without merit. The portion being assailed reads:

FISCAL CAPACIO to witness (Antonio Montilla) on direct examination:

Q: As Barangay Tanod did you feel it was your duty to introduce yourself to the police because you witnessed to [sic] the shooting incident?

A: I did not execute any affidavit because I was also one of the witnesses in that case where the same accused shot another person, and that accused Bayani Roma intruded [into] our house and in fact I am now in custody of Romy Cordova.

COURT:

Q: Who is this Romy Cordova?

A: He is Major, your Honor.

FISCAL CAPACIO:

Q: Why are you in custody of Major Cordova

A: Because I requested the Mayor that I be placed under the custody of Major Cordova because these accused waylaid me.

Q: In short, you sought police protection?

A: Yes, sir. (TSN, April 7, 1995, 9)

The contention of accused-appellant that the above-quoted portion of Montilla's testimony establishes ill-motive on his part is misleading. A closer look at the quoted testimony shows that it was made in response to the public prosecutor's question on why the witness did not volunteer information to the police investigators. The assailed portion of the witness' testimony is more to establish the facts of his failure to volunteer information to the authorities and to execute [an] affidavit and definitely not to prove the ill-motive being alleged by the accused-appellant. Clearly, his testimony was quoted out of context and as such it miserably failed to establish accused-appellant's allegation. It is a settled rule that, where there is failure on the part of the defense to prove that the prosecution witnesses were moved by an improper motive, the presumption is that the said witnesses were not so moved and that their testimonies are entitled to full faith and credit (*People v. Sancholes*, 271 SCRA 527, 540 [1997]). Moreover, the testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein (*People v. San Gabriel*, 223 SCRA 84 [1993]).

Secondly, the non-execution of affidavits by prosecution witnesses Antonio Montilla and Stephen Egos prior to their testimonies in court is not a ground to discredit their testimonies. There is no law which requires that the testimony of a prospective witness should be reduced into writing in order that his declaration in court may be believed (*People v. Embarga*, 319 SCRA 304, 316 [1999]).

Thirdly, the failure of the prosecution witnesses to volunteer information regarding the incident to official investigators is capable of rational explanation. Montilla opted not to volunteer information to the authorities because of his fear of reprisal from the assailants, one of whom is accused-appellant who had previously intruded into his house. In fact, Montilla sought the protective custody of Major Cordova out of fear for his life. As for Stephen Egos, he did not volunteer to execute an affidavit during the investigation of the incident at the Prosecutor's office in May 1991 because he wanted that the accused be arrested first. He was afraid to suffer the same fate as his older brother if he volunteers information against the accused. As held in the case of *People v. Navales* (266 SCRA 569, 590 [1997]), initial reluctance to volunteer information regarding the crime due to fear of reprisal is common enough that it has been judicially declared as not affecting a witness' credibility.

Lastly, the relationship of Stephen Egos to the victim is not sufficient basis to discredit the testimony of the witness. A witness's relationship to a victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse thereof somebody other than the real culprit (*People v. Villanueva*, 302 SCRA 669 [1999]).

The arguments raised by accused-appellant are factual in nature and boil down to the issue of credibility of witnesses and their testimonies. Deeply embedded in our jurisprudence is the rule that when the issue of credibility of witnesses is concerned, appellate courts will generally not disturb the findings of facts of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless certain facts of substance and value have been plainly overlooked which, if considered might affect the result of the case (*People v. Quejada*, 223 SCRA 77, 86 [1993]). In giving full weight and credence to the testimonies of prosecution witnesses Antonio Montilla and Stephen Egos, the trial court observed:

The testimonies of the prosecution witnesses have inspired belief and therefore have to [be] given full faith and credence over the testimony of co-accused Bayani Roma and his witnesses. The prosecution witnesses' demeanor in court were straightforward and candid. There were [sic] no tinge of ill-will that can be ascribed to them to falsely testify against the accused. Nor did the latter and his witnesses presented [sic] a clear and convincing evidence of motive on the part of the prosecution witnesses to fabricate a charge against him.