

FIRST DIVISION

[G.R. Nos. 140727-28, January 31, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAQUIM PINUELA, ACCUSED-APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

This is an appeal from the joint decision^[1] of the Regional Trial Court of Iloilo City, Branch 25, in Criminal Cases Nos. 50306 and 50307, convicting accused-appellant Raquim Pinuela of the crime of Frustrated Homicide and Murder.

Accused-appellant was charged with Frustrated Murder and Murder in the following informations:

Criminal Case No. 50306 for Frustrated Murder:

That on or about the 30th day of January, 1999, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused Raquim Pinuela, armed with firearm, with deliberate intent and without justifiable motive, with evident premeditation and treachery and with a decided purpose to kill, did then and there willfully, unlawfully and criminally shoot Salvador Galvez, Jr. with .357 caliber revolver with which the accused was provided at the time, thereby causing upon said Salvador Galvez, Jr. gunshot wounds in the different parts of his body, thus the accused has performed all the acts of execution which would have produced the crime of murder as a consequence, but which nevertheless did not produce it by reason or causes independent to the will of the accused, that is by the immediate and timely intervention of third person and medical attendance afforded to the said offended party.

CONTRARY TO LAW.^[2]

Criminal Case No. 50307 for Murder:

That on or about the 30th day of January, 1999, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused Raquim Pinuela, armed with a firearm, with a decided purpose to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and criminally shoot David Galvez with a .357 caliber revolver with which the accused was provided at the time, thereby causing upon said David Galvez gunshot wound on the left bridge of his nose which caused his death few minutes after he was brought to Saint Paul's Hospital, Gen. Luna St., Iloilo City.

CONTRARY TO LAW.^[3]

Upon arraignment, accused-appellant pleaded not guilty to the charges filed against him. Thereafter, joint trial of the cases ensued.

From the evidence for the prosecution, the following facts are established:

On January 30, 1999, at 8:00 in the morning, Salvador Galvez, Jr. was in front of his store located at the corner of Rizal and Mabini Streets, Iloilo City talking to Henry Hualde. His brother, David Galvez, and his helper, Rodney Albito, were cleaning their *trisikad* at the side of the road.^[4] Victor Peñasales, a water vendor, was nearby.^[5] Suddenly, accused-appellant alighted from a *trisikad* in front of Salvador's store and shot David at close range in the head.^[6] He then turned his firearm at Salvador and fired five shots, hitting him in the abdomen and right thigh. Salvador, who was also armed, drew his gun and shot accused-appellant, but missed because the latter immediately fled towards the supermarket. Salvador and David were brought to St. Paul's Hospital where David expired, while Salvador survived after a successful operation by Dr. Michael Martinez.^[7]

Dr. Tito D. Doromal, a Medico-Legal Officer of the Iloilo Police Station, performed the post-mortem examination on the body of David and found that the cause of death was asphyxia by aspiration of blood secondary to gunshot wound. Considering that the entry of the wound was on the bridge of the nose and the exit wound was beside the left ear, he opined that the assailant was possibly facing the victim and was slightly taller. On the other hand, Dr. Martinez, the physician who operated on Salvador, found an abdominal gunshot wound penetrating the retroperitoneal right area and a gunshot wound on the right thigh with the recovery of a slug. According to him, the wound on the thigh was not fatal, but the wound on the abdomen could have been fatal were it not for the timely medical attendance.^[8]

In his defense, accused-appellant testified that he stayed in his house in Zarraga from noon of January 29, 1999 until February 1, 1999, because he was sick. He recalled that he had known the Galvez brothers for nine years having once lived near the supermarket, which was located about four houses away from their residence. On cross-examination, he stated that he was a sausage maker and that he frequently goes to the Central Market in Iloilo City from Zarraga every Saturday and Sunday. The distance from his house to the market can be traversed in one hour. He first came to know that he was a suspect in the killing and shooting of David and Salvador Galvez in the morning of January 30, 1999, while he was listening to the radio. Prior to January 30, 1999, he bore a grudge against Abraham Galvez, the brother of the victim, after the latter quarreled with his sister for not giving him liquor on credit. Lastly, he admitted that David killed his brother sometime in 1995.^[9]

The defense presented Gina Pinuela, sister of accused-appellant, who corroborated the latter's version of the incident.

On August 30, 1999, the trial court rendered its Joint Judgment, the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing facts and circumstances, the Court, finding the accused, Raquim Pinuel, guilty of murder and frustrated homicide beyond reasonable doubt, hereby sentences him as follows:

In Crim. Case No. 50307 for murder the penalty of *reclusion perpetua* with such accessory penalties as provided in Article 41 of the Revised Penal Code and to indemnify the family of David Galvez the amount of P75,000.00;

In Crim. Case No. 50306 for frustrated homicide the indeterminate penalty of imprisonment of Twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, with such accessory penalties as provided in Articles 41 and 42 of the Revised Penal Code and reimburse Salvador Galvez, Jr. the amount of P57,000.00 representing his expenses for hospitalization and medication.

Accused is also directed to pay the cost.

SO ORDERED.^[10]

Hence, this appeal where accused-appellant raised the sole error allegedly committed by the trial court that: "when an eyewitness for the prosecution testifies that he did not see accused commit the crimes, it was gross error to find him guilty beyond reasonable doubt."^[11]

Accused-appellant argues that prosecution witness Victor Peñasales failed to identify him as the assailant despite the fact that he was just one meter away from David. Thus, Salvador, who was situated about the same distance away from David, could not have identified him also. He further claims that the testimony of prosecution witness Rodney Albito, a man-servant of Salvador, was coached.

The trial court found that the identity of accused-appellant as the perpetrator of the crime was clearly and positively established not only by Salvador Galvez, Jr., who knew accused-appellant for many years, but also by prosecution eyewitness Rodney Albito, who was not known to have any misunderstanding or grudge against him. There is no evidence showing that he was prompted with ill-motive to falsely testify against accused-appellant. Significantly, the time of commission of the crime was at 8:00 in the morning, and the distance between the witnesses and the accused-appellant was so near with nothing to obstruct their view.^[12] Where conditions of visibility are favorable and the witness does not appear to be biased, his assertion as to the identity of the malefactor should be accepted as trustworthy.^[13]

After a careful review of the evidence on record, we find no reason to disturb the factual findings of the trial court. It is well settled that the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.^[14]

We are not persuaded by the allegation of accused-appellant that the testimony of prosecution eyewitness Rodney Albito was coached. Mere relationship of the witness with the victim does not automatically erode his credibility. In *People v. Apelado*,^[15] we held:

That Padua served as laundry woman of the victim's family will not erode her credibility. This Court has ruled that the relationship of witnesses to the victim, although by mere affinity or employment, can even render their testimonies more worthy of belief as it would be unnatural for them who are interested in vindicating the crime to implicate persons other than the real culprits.

In the light of the positive identification of accused-appellant as the perpetrator of the crime, his defense of denial and alibi cannot be sustained. Well-settled is the rule that the positive identification of the accused, when categorical and consistent and without any ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial. Unless substantiated by clear and convincing proof, such defenses are negative, self-serving, and undeserving of any weight in law.^[16]

Accused-appellant further argues that the prosecution did not present Henry Hualde because his testimony would be adverse to the case. We are not persuaded. It is the prosecution that determines who among its witnesses are to testify in court, and it is neither for the accused nor the court to override that prerogative. Corollarily, the failure of the prosecution to present a particular witness does not give rise to the presumption that evidence willfully suppressed would be adverse if produced, where that evidence is at the disposal of both parties or where the only object of presenting the witness would be to provide corroborative or cumulative evidence.^[17]

Finally, accused-appellant contends that the trial judge's intervention during cross-examination of the prosecution witnesses was prejudicial to him. However, a scrutiny of the questions propounded by the trial judge, fails to disclose any bias on his part which would prejudice accused-appellant. The questions were merely clarificatory. The trial court judge is not an idle arbiter during a trial. He can propound clarificatory questions to witnesses in order to ferret out the truth. The impartiality of a judge cannot be assailed on the ground that he asked clarificatory questions during the trial.^[18]

We agree with the trial court that the killing of David Galvez was attended by treachery. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defensive or retaliatory act which the victim might make. Two essential elements must concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (b) the said means of execution was deliberately or consciously adopted.^[19]

Based on the facts established by the prosecution, the suddenness of the attack without provocation on the part of David Galvez,^[20] who was squatting on the side of the road with his head bent down and without the slightest inkling of the fate that