

FIRST DIVISION

[G.R. No. 149492, January 20, 2003]

**JOEL LUCES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review seeking to annul and set aside the March 23, 2001 decision^[1] of the Court of Appeals^[2] in CA-G.R. CR No. 23581 which affirmed with modification the decision^[3] of the Regional Trial Court of Bugasong, Antique, Branch 64 finding petitioner Joel Luces guilty beyond reasonable doubt of the crime of homicide in Criminal Case No. 0249.

Petitioner was originally charged with Murder under an information which reads:

That on or about the 11th day of November 1997, in the Municipality of Patnongon, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being armed with a knife, with intent to kill and with treachery did then and there willfully, unlawfully and feloniously, attack, assault and stab with said knife one Clemente Dela Gracia, thereby inflicting upon the latter fatal wound on the vital part of his body which caused his death shortly thereafter.

Contrary to the provisions of Article 248 of the Revised Penal Code as amended by Republic Act 7659.^[4]

Upon arraignment on April 22, 1998, petitioner pleaded not guilty.^[5] Trial on the merits thereafter followed.

The facts, as testified to by prosecution witness Dante Reginio,^[6] reveal that at 6:30 in the evening of November 11, 1997, Dante Reginio, Nelson Magbanua, and the victim, Clemente Dela Gracia, were on their way to the house of Didoy Elican. As they were walking along the road at La Rioja, Patnongon, Antique, they met petitioner who collared the victim, saying, "Get it if you will not get it tonight, I will kill you."^[7] Thereafter, petitioner immediately stabbed the victim on the chest with a "Batangueño" knife. The place was illuminated by a street light 3 to 4 arm's length away from the petitioner, enabling Dante Reginio to easily recognize the latter who happened to be his barangay mate. The victim was rushed to the hospital while the petitioner fled from the crime scene.^[8]

On November 14, 1997, Dante Reginio and Nelson Magbanua executed a sworn statement identifying the petitioner as the culprit.^[9]

On cross-examination, Dante Reginio was confronted with an affidavit of desistance dated November 14, 1997 allegedly executed by him and Nelson Magbanua stating, among others, that:

Long after the incident happened and after we have executed a sworn statement before the office of the PNP of Patnongon sometime in November of 1997, we have come to realize that after a thorough recollection and reflection of what had happened during the incident, that the person who stab[bed] to death Clemente Dela Gracia in the evening of November 11, 1997, at Brgy. La Rioja, Patnongon, Antique, was not Joel Luces but it might be some other persons because it was already quite dark in the evening and we [were] a little bit far from the scene of the incident.^[10]

Dante Reginio, however, denied knowledge of the aforequoted affidavit and claimed that his signature appearing thereon was a forgery.^[11]

The examination conducted by Dr. Deogracias P. Solis on the cadaver of the victim revealed that the latter sustained the following injuries, to wit:

Wound stab more or less oblique ... two (2) cms. long, chest anterior, mid-sternal line level of 4th rib, fracturing the fourth rib and directed posteriorly cephalad and left laterally and injuring the right auricle with a wound of about 1.3 cms.

Wound incised, ...3"... muscle deep more or less horizontal, palm left outer proximal quadrant.

Conclusion: Cause of death was shock cardiogenic due to above-described wound.^[12]

On the other hand, the defense evidence consisted of denial and alibi. Petitioner declared that at 6:00 pm. of November 11, 1997, he was in San Jose, Antique, waiting for the arrival of his wife from Iloilo City. When his wife arrived at 7:00 pm., they left for Brgy. La Rioja, Patnongon, Antique, and reached home at about 7:30 pm. The following day, November 12, 1997, his friend told him that he was the suspect in the killing of Clemente Dela Gracia. For fear that he might be incarcerated, he went into hiding, but his mother convinced him to surrender to the police station of San Jose Antique. On November 25, 1997, he finally surrendered to the authorities and denied authorship of the crime.^[13]

Nelson Magbanua was presented as hostile witness for the defense. He admitted that he signed an affidavit of desistance stating, inter alia, that the person who stabbed the victim "...was not Joel Luces but it might be some other persons..."^[14] He stressed, however, that he knew it was the petitioner who stabbed the victim but he yielded to the pleas of petitioner's wife and signed the affidavit because he pitied her as she was then pregnant. He added that when he signed the document in the house of the petitioner, Dante Reginio, was not with him.^[15]

Atty. Maribeth T. Padios, a branch Clerk of Court before whom the affidavit of desistance was allegedly subscribed, declared that two persons who represented

themselves as Dante Reginio and Nelson Magbanua signed the affidavit in her presence. She claimed that she did not explain the contents of the affidavit to the affiants inasmuch as the same is no longer her duty.^[16]

On July 16, 1999, the trial court rendered a decision finding the petitioner guilty beyond reasonable doubt of the crime of homicide. The dispositive portion thereof reads:

In [v]iew thereof, this Court finds the accused Joel Luces guilty beyond reasonable doubt of the offense of Homicide and in the absence of any aggravating or mitigating circumstance to offset each other, he is hereby sentenced to an indeterminate imprisonment of eight (8) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.

Accused is ordered to pay the offended party the amount of P50,000.00 as indemnity for the death of Clemente dela Gracia; nominal damages of P10,000.00 and cost.

The bailbond posted by the accused is cancelled.

Accused is ordered remitted to the New Bilibid Prison, Muntinlupa City, within three (3) months from the finality of this decision, unless his continued detention in the Province of Antique is justified.

SO ORDERED.^[17]

On appeal, petitioner's conviction for the crime of homicide was affirmed but the penalty was modified as follows:

WHEREFORE, the Decision appealed from is AFFIRMED with the MODIFICATION that the indeterminate penalty imposed is Eight (8) years and One (1) day of *prision mayor* minimum to Thirteen (13) years Nine (9) months and Ten (10) days of *reclusion temporal* as maximum. In all other respects, the Decision is AFFIRMED.

SO ORDERED.^[18]

Dissatisfied, petitioner interposed the instant petition for review anchored on the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONBLE DOUBT OF THE CRIME OF HOMICIDE.

II

THE COURT A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE AFFIDAVIT OF DESISTANCE (EXHIBIT "1").

III

THE COURT A QUO GRAVELY ERRED IN CONSIDERING THE FLIGHT OF ACCUSED-APPELLANT AS AN INDICATION OF HIS GUILT.

IV

THE COURT A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S ALIBI.^[19]

The instant petition is anchored mainly on the veracity of the affidavit of desistance allegedly executed by Dante Reginio and Nelson Magbanua. Petitioner contends that the statement in the said affidavit that the person who stabbed the victim "...was not Joel Luces but it might be some other persons..." shows that the prosecution failed to establish beyond reasonable doubt the identity of the culprit.

The contention is without merit. The affidavit of desistance relied upon by petitioner as a means to exculpate himself from criminal liability was sufficiently impeached by the testimonial evidence of the very same persons who allegedly executed the affidavit. Dante Reginio declared that the signature appearing above his type-written name on the affidavit of desistance was not his, while Nelson Magbanua stated that he merely signed the affidavit out of pity for the petitioner's wife. As between the assailed affidavit of desistance and the sworn testimonies of the witnesses before the court, the latter should prevail. An affidavit of desistance obtained as an afterthought and through intimidation or undue pressure attains no probative value in light of the affiant's testimony to the contrary.^[20]

Moreover, the reliance of petitioner on the testimony of Atty. Padios before whom the affidavit of desistance was allegedly subscribed is misplaced. The only participation of Atty. Padios was to administer the oath to the persons who signed the affidavit. From her testimony it appears that she did not ascertain if the persons who appeared before her and represented themselves as the affiants were indeed Dante Reginio and Nelson Magbanua. Moreover, she did not even explain the contents of the affidavit to determine whether the affiants voluntarily and knowingly executed the same. Hence, her testimony regarding the execution of the affidavit of desistance cannot outweigh the testimony of Dante Reginio and Nelson Magbanua denying the veracity of the said affidavit and unequivocally pointing to petitioner as the person who stabbed the victim.

The Court of Appeals did not err in sustaining the conviction of the petitioner. A careful review of the records shows that the positive identification of petitioner by Dante Reginio is convincing and worthy of credence. Finding no ill-motive that would impel said witness to testify falsely against the petitioner, the trial court's assessment of his credibility must be affirmed.^[21] The settled rule is that the findings of fact of the trial court should not be disturbed on appeal, unless some facts or circumstances of substance and value have been overlooked which, if considered, might well affect the result of the case. ^[22] We find no cogent reason to depart from this doctrine in the case at bar.

The denial and alibi put up by petitioner cannot prosper. Such defenses are inherently weak and cannot prevail over the positive identification of petitioner.^[23] Moreover, San Jose, Antique where petitioner claimed to be staying at the